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REPORT

OF THE

DEBATES AND PROCEEDINGS

OF THE

CONVENTION

FOR THE

REVISION OF THE CONSTITUTION

OF

THE STATE OF INDIANA.

1850.

VOLUME II.

H. FOWLER, OFFICIAL REPORTER TO THE CONVENTION.
A. H. BROWN, PRINTER TO THE CONVENTION.

INDIANAPOLIS, IND.
1850.

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Mr. DOBSON. Before we leave this place we will have to designate the number of the districts, and we may as well do it now as at any other time. If the matter were left to the Legislature, we might insert these words, but at the first election under the new Constitution they are to be elected as we district the State. I think, therefore, that we may as well leave the amendment as it is.

Mr. HENDRICKS. Very well; I withdraw the amendment.

Mr. BORDEN moved to amend the section by adding the following proviso:

"*Provided*, That every organized county shall be entitled to elect at least one member of the House of Representatives."

In support of his amendment, Mr. B. addressed the Convention as follows:

Mr. PRESIDENT: I have considered this question as being one of great importance, and as I have desired to submit my views upon the subject to the Convention, although it is near the hour at which we usually adjourn, if no other gentleman desires to continue the debate, I will proceed to state those views as briefly as I am able, consistently with the nature and importance of the question. The report made by the Chairman of the Committee on the Legislative Department (Mr. Bright) proposes to empower the General Assembly to reduce the House of Representatives to sixty members, and also that the Senate may be reduced to not less than one-third of the number of the House. Now, sir, to this reduction of the House of Representatives, I am utterly opposed; and so far from desiring to see that body reduced below its present number of one hundred, I would much rather see it increased to one hundred and fifteen or a hundred and twenty members, and a provision inserted that would secure to each county in the State at least one Representative. On this question, I consider myself bound by instructions.

At the Convention at which I was placed in nomination for a seat in this body, the following, among other propositions, was laid down:

"The division of the State into single districts for the election of Representatives; but each county to have at least one member of the House of Representatives."

And, sir, I stand here to defend, to the utmost of my power, both of these principles. Should we, as proposed in the proposition I have just read, give to each organized county in the State one member of the House of Representatives, we could then reduce the Senate to thirty-four members, which would be a reduction in that body of sixteen members from the number of which it is at present constituted. Add these sixteen to the present number of the House of Representatives, and it would make that House consist of a hundred and sixteen members. There are now ninety organized counties in the State, and it would of

course take ninety out of the hundred and sixteen members to represent these counties. That would leave an excess of twenty-six members to be distributed among the largest counties. This arrangement would give two members to every county having the number of 2500 free white male persons, over the age of twenty-one years, and would include one of the counties which I represent (Allen) which has 3214 free white male citizens, as returned by the Auditor of State. But, sir, if the Convention is not prepared to go that far, let us provide that any county having one-half of the ratio, shall be entitled to send one member. This would secure to all the counties numbering over 2000 free white male persons, two Representatives; and would allow to all the counties having one thousand such persons, one Representative.

Sir, I cannot but think that some concession should be made by the large counties to the smaller counties in the northern part of the State.

The gentleman from Switzerland (Mr. Kelson) has said that we must either take territory or population as a basis of representation, and I understood him to say that if we take one of these principles, we shall be necessarily compelled to abandon the other. Now, sir, with all deference to that gentleman, I do not see that any such necessity follows at all. Allow me to ask him why we may not unite both of these principles? I am decidedly of opinion that the Senate should be based upon the whole number of inhabitants; but I am for basing the House of Representatives on the whole number of free white male persons, over the age of twenty-one years; and then taking into view in the apportionment of the House of Representatives that each county, as a political organization, is entitled to be represented, I think the uniting of all these elements in the apportionment will, in my opinion, not only be productive of the most beneficial results, but be entirely satisfactory to a great majority of the people of the State. If we look at the House of Representatives of the United States, we there see that each State has at least one Representative in Congress; and all men admit that it is a correct principle. It works well in the National Government, and I can see no reason why the same principle should not operate equally well in a State Government.

Sir, it has been said in this debate that those of us who are disposed to stand by the small counties in this, the severest hour of their trial, are disposed to introduce the odious principle that property and not numbers should be represented in the popular branch of the Legislature. Let me here say, sir, once for all, that this charge is without the slightest foundation, and that nothing can be further from the truth than such an imputation. No, sir; it is because we think that property should not have a pre-

ponderating influence in the government of this State that we desire to see the large counties limited in the number of representatives they may have. Not, sir, that we desire to prevent capital from having the weight that legitimately belongs to it, but we are opposed to its possessing the all-controlling influence in the Legislature.

Sir, the great interest of the State of Indiana is agricultural; and while that class of our population engaged in these pursuits retain the ascendancy in the councils of our State, we have no reason to fear but that she will be well governed. Let us not, however, attempt to conceal from ourselves the fact that the towns and cities of our State are rapidly on the increase; that banks, insurance companies, railroads, and other corporations and associations have increased beyond anything we could have expected, or even dreamed of a few years ago, and that, at no distant day, unless some measures are taken to prevent it, there is reason to fear that the capital and moneyed influence of the State will govern its legislation. And, sir, it is because I find that in nearly all the large counties, such as Jefferson, Marion, Tippecanoe, Vigo, and others, large cities are gaining the ascendancy, and sending up here their three or four members to the popular branch of the State Legislature, that I desire to see a provision inserted in the new Constitution that shall retain and secure to the farmers in the new and sparsely settled portions of the State their full share in the representation of the State. In regard to the increase of population in the States of this Union, it is a fact that has been well ascertained, that, after they reach a certain point in population, the rural districts remain stationary, while the towns and cities continue to increase. In many of the old States the population of the country has even decreased to a very great extent, while the large cities and towns are constantly drawing the population to them. I therefore contend, that, in fixing the principle for the apportionment of representation, which, for aught we know, is to continue for a century to come, these facts should be constantly borne in mind; and unless we do bear them in mind, it will be found that, in time, the agricultural counties will be too much at the disposal of the commercial counties, having within their limits the large cities and towns of the State.

And now, sir, let me again repeat what has already been observed by others—that the principle for which we contend is not new, notwithstanding that some gentlemen would seem to insinuate such to be the case. It is a great mistake to suppose that numbers is the only principle that has heretofore been observed in this country in regard to representation. In addition to the General Government, to which I have already alluded, I would direct the attention of members to the book of Constitu-

tions of the several States of the Union, which are now lying on their tables. This book, I presume, will be regarded as the collected wisdom of the American people in regard to the best method of construing organic law for the wise government of a people; and by turning over these pages what do we find? In Massachusetts, Connecticut, and the rest of the New England States, it is expressly provided that each township shall have one member in the lower branch of their Legislature; and in several of the States, the number of representatives in the popular branch of the Government amounts to three or four hundred. In New York and Pennsylvania, the agricultural interests of these States, in order to secure themselves against the overpowering influence of their great cities, have provided in their new Constitutions that each county shall have at least one member in the House of Representatives. In New Jersey, one representative is sent from each county, without regard to its population. The same principles may be found in the Constitutions of Delaware and Maryland. In North Carolina, my own native State, under their new Constitution, each county, without respect to its population, is entitled to send one member to the popular branch of the Legislature, whether it has the ratio fixed in the Constitution or not. It is the same in Georgia and in South Carolina. In the State of Louisiana, it is expressly provided in her new Constitution that "each parish shall have at least one representative." In Tennessee, the rule was adopted that every county having two-thirds of the ratio of representation should have one representative; and I am told by a gentleman I have reason to believe is well informed upon the subject, that, practically, this gives to all her counties one representative. I have not had time to examine the Constitutions of all the States minutely, but I find that the Constitutions of Alabama, Missouri, Arkansas, Mississippi, and Michigan, each contain a provision that each county shall be entitled to at least one representative; and a friend, who has examined the matter, informs me that the Constitutions of twenty-five out of the thirty-one States of the Union, in some shape or other, contain the same principle. Now, sir, with this evidence before us, am I not justified in saying that the united experience of our country requires us to adopt this principle, or one similar to it? Sir, the more this subject is examined, the more I am satisfied it will be found that there is nothing so really odious in allowing each county which has one-half or two-thirds of the ratio to be represented in the popular branch of our State Legislature.

Sir, I cannot but believe that when the State Government has come to the conclusion that any portion of the territory of the State should be organized into a county government, it would seem to me as necessarily following that the interest of that portion of the territory would

be so separate that from any other county that it ought to be represented in the government that had organized it. Sir, I am not only a "State rights" man in regard to our National Government, but I am, to some extent, a State rights man in county matters; and I hope that this Convention will re-organize the county boards and vest in them the power of local legislation, and thus render it unnecessary that the Legislature of our State should be occupied with that class of business. The business which even now is committed to their care is very important. They have to act on all claims against the county; they have to take care of the poor; to erect county buildings; to construct roads and bridges; and to transact various other important business which I have not time now to mention. And how, could these miniature republics be properly represented in the great council of the State, unless the principle for which we contend should be adopted? Can it be done by attaching them to some adjoining county? Sir, there are many questions which have reference to each county in its capacity of a separate political organization which never could be fully and fairly represented by a person who had his feelings and wishes divided by representing at the same time another county. I have known of jealousies and unfriendly feelings existing between counties when they have been attached together for purposes of representation, and I have always looked upon the joining of counties together for such purposes, as an evil that, if it were possible, should be avoided. When a person is elected to represent two counties, whatever may be said to the contrary, it practically results in his becoming the representative of but one; for it is a matter of course that he will be attached to the county in which he resides; and in all local matters he will be disposed to give more particular attention to its interests than to the interests of the other county, especially where the interest of the two counties might happen to conflict. There was much truth in the remark of the gentleman from Owen, (Mr. Dobson,) that there was now a double necessity that as far as possible, each and every county in the State should be represented in the Legislature, and for the very reason that he suggested. We have decided to have the General Assembly meet but once in two years. Now, we know that when two counties are attached together for the purposes of electing a representative, they usually take it in turns; and thus under the new Constitution, one of such counties would only in fact be represented once in four years. I repeat, sir, that if the system reported by the committee on the legislative department should be carried into effect, it would do manifest injustice to the smaller counties. In my opinion the new counties in the northern portions of the State, of all others, need most to be represented in the Legislature,

to enable them to secure their rights. These counties are just organized and are now being settled. They are, as it were, just in the chrysalis state, and for that very reason they stand more in need of attention than the older counties, whose interests are permanent, and which have already received the fostering care of the Government. The remoteness, too, of these counties from the seat of Government, makes it doubly necessary that each of them should have some one upon the floor of the House of Representatives who would in truth and in fact, and not in name only, represent their interests.

Sir, I know that some of the smaller counties in the northern portion of the State have been held up to ridicule on this floor; and it has been triumphantly asked here if such counties, with their sparse population, were each to have as many representatives as Wayne, with her four thousand seven hundred and eighty-two polls. No, sir; no one has ever contended for this. We have no objection that Wayne and the other large counties should have their two or three representatives. All that we ask is, that each of these small counties should have, at least, one representative. Suppose, sir, that the population of these northern counties is now sparse, is that any reason why they should be deprived of their voice, when you have already recognized their separate territorial existence?

But, say gentlemen from the large counties, the small counties will be allowed each a representative once in four years; or should there be some three of them joined together to form a representative district, then once in six years; and that once in two years they will be allowed to participate in electing a representative for the whole district. It is contended that this ought to be sufficient for them; and that at all events one person ought to be able to represent three or four such counties. Sir, need I repeat what I have already said, that the interests of even contiguous counties, are not always identical, and that the person elected to represent them, necessarily becomes the representative of one in preference to the others, for the reason that his personal interests and attachments unite him in feeling with the county in which he resides. Besides, sir, as is frequently the case where one county is the larger of the two, it will overpower and entirely control the representation, and thus the smaller county goes entirely unrepresented if the interests of the counties should in any way conflict. For all these reasons, then, which, whatever weight they may have with the Convention, have great weight with me, I think the course we ought to pursue is, to give to each of the counties, at least one representative.

I now come to speak of another feature of this report to which I object. For anything

that I can yet see, the odious principle of representing fractions, by what is termed in the language of the politicians of this State, the system of "floats," will be continued if the report of the committee should receive the sanction of the Convention. I think, sir, that we should endeavor to fall upon some plan which will effectually put an end to this system and make the representative districts permanent, so that no party hereafter in power by this system of gerrymandering may perpetuate their power in defiance of the will of the people. Sir, this system holds out too many inducements to do injustice to political opponents, not to be abused; and in my opinion, no majority in either party, ought ever to be entrusted with it. I am aware, sir, that equality between counties is not to be obtained. There will ever be fractions; and therefore mathematical accuracy cannot be had in any system of apportionment, sir, if counties were not already organized, and if we were at liberty to disregard township and county lines, and begin at the confluence of the Ohio and Wabash, in Posey county—and, sir, I believe that we always begin in the pocket to apportion the representation for any purpose—and there count the first two thousand voters and authorize them to send a member to the Legislature, and thus proceed on through the State until every two thousand polls should have a representative, we might make the representation equal. But this we cannot do. On the contrary, in any system of apportionment which we may adopt, we must have reference to the existing political organization in the State. I have already alluded to the fact that both in our national and State Government—and I may add that in every representative government in the world where they pretend to have a system of popular representation—they are compelled from necessity to have some reference to the local division established by law in apportioning their representatives. It was a wise institution of the great Alfred, and much improved upon by our pilgrim forefathers, to divide the country into counties and townships. They have ever been looked to in our political organization, and from this division some of the most beneficial effects have resulted to our Government. They already exist in this State, and we cannot disregard them in any plan of apportionment which we may adopt, even if we should desire to do so. And, sir, allow me to say further, that as long as any attention is paid to the political organization of the counties, perfect equality in representation cannot be obtained. Sir, we are compelled, in all our efforts, to equalize the representation to take in a county here, and to throw away a county there, to enable us make the fraction larger or smaller; and it was in attempting to correct this evil of large fractions that the system of floats, to which I have alluded, was introduced, which has since been

so much perverted by both of the great political parties of this State.

And now, sir, in connection with this subject, let me call the attention of the Convention to another feature of the system heretofore practiced in the State which does great injustice to the small counties, and even some injustice to the medium sized counties, but not to the same extent. I am told that the whole number of polls in our State is not far from 200,000. If they do not reach that number now, they probably will do so by the time of the first apportionment under the Constitution which we may adopt. And, sir, if we limit the representatives in the popular branch of the Legislature to one hundred, we can see how this system will practically work. Take Marion county, for instance, with her 4226 polls, and she would be entitled to two representatives and would have but a small fraction. Now, sir, supposing that there were four counties like Allen, the one in which I reside, with 3214 polls. Each county would be entitled to send one representative, and each would also have a fraction of over 1200 polls which would make their united fractions over 4800 polls, which would go unrepresented, thus losing two representatives in the district of country comprising the four counties. Sir, do we not all see that every county must lose a fraction, and that the more counties there are, the more chances there are of losing fractions, and that very frequently the smaller counties have much larger fractions than the larger ones? I have not examined the matter sufficiently to speak with certainty, but I am told that in both of the apportionments of 1840, and 1845, three-fourths of all the fractions which went unrepresented in the House of Representatives, were lost in the middle sized and small counties. Sir, I cannot believe that the framers of the Constitution of 1816, ever designed that such an unjust system as this should be adopted in our State. I learned from one of the members of the Convention that framed that Constitution—the late Col. Polk of Fort Wayne—that no other idea was entertained in the Convention than that every county should have at least one member in the popular branch of the General Assembly. And, sir, in support of this idea we find in the very first apportionment, and in several of the subsequent ones, that each county, without reference to its population, was authorized to send one member to the House of Representatives. Indeed, sir, if we turn to the Constitution, we will find that in the very language employed, this idea is fully carried out, for in speaking of the apportionment of representatives in the House it uses this language:

"The number of Representatives shall, at the several periods of making such enumeration, be fixed by the General Assembly, and apportioned among the several counties, ac-

cording to the number of white male inhabitants above twenty-one years of age in each."

But, sir, when it comes to speak of the apportionment of the Senate it says:

"The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the General Assembly and apportioned among the several counties or *districts* to be established by law according to the number of white male inhabitants of the age of 21 years in each," &c.

Now, sir, it may be observed by gentlemen what a marked distinction there is between the language which relates to the apportionment for the House and that for the Senate. When it refers to the House of Representatives it speaks only of *counties*, and says nothing whatever in regard to *districts*. On the other hand, when it refers to the apportionment of Senators, the language is entirely changed, and it speaks not of *counties* only, but also of *districts*.

This, sir, has always been conclusive to my mind that the old Constitution never contemplated that counties should be joined together and formed into districts for the purpose of representation in the Lower House; but that, on the contrary, in the formation of senatorial districts, they might be so constituted if it was found to be necessary.

Sir, I am fully satisfied, from all that I have heard and read upon the subject, that the Constitution intended that the very principle I am contending for should prevail; and one objection I have to the report is, that it now expressly does what the old Constitution never authorized to be done—that is, to provide that two counties may be united together for the purpose of electing one representative to the popular branch of the General Assembly. As there will of necessity be fractions, the only way to represent them is either by the system of "floats" or by allowing each county to have one member or at least one to every county having one-half or two-thirds of the ratio of representation.

This would secure one member to each of the counties of Adams and Wells, which constitute a part of my district, and would thus comply with the instructions which were given to me when I was placed in nomination. It is true that one of the counties which I represent upon this floor (Allen) has no favors to ask in this respect. She is now the eighth county in the State in point of population, contains the largest area of any county in the State, and has more good tillable uncultivated lands, with prospects in every respect equal to those of any other county in Indiana. Sir, I was surprised when, during the past year, I passed through the different parts of that county, to find what extensive tracts of rich land were lying unsettled, held by those greatest of all enemies of a new country, the land speculators. We have

a flourishing city now numbering between four and five thousand inhabitants, and it will soon double, and probably treble its present population; and, sir, unless I am greatly mistaken. Allen county, at no distant day, is destined to be the "Empire" county of the State, and Wayne, which has heretofore been designated as the "old Dominion," will be compelled to yield the palm to Allen. But, sir, strong as she now is, and encouraging as are her prospects for the future, she would despise to deprive her sister counties who are so unfortunate as to be less prosperous than herself of a fair and equal representation with her in the legislation of the State. If, sir, she were like some other counties of the State which seem never to look beyond their own borders, unless it be to gain some political ascendancy in the affairs of the State, she, too, would probably desire to retain the present number of one hundred members in the House of Representatives, and to continue what the present system practically carries out—to give the advantage of all or nearly all the fractions to the large counties. No, sir, we desire nothing of the kind. On the contrary, we desire that the younger and weaker counties should be protected by having a fair representation on the floor of at least one of the branches of the General Assembly.

Sir, in addition to the instructions to which I have referred, I am also instructed to vote for a plan requiring the General Assembly either themselves to divide, or cause to be divided, those counties having more than one member, so that the districts may be single. This might be done by the county boards of the respective counties, dividing them into as many districts as there are members to be elected in the county. Should this principle be carried out, it should be so regulated in the Constitution that the county boards would not be authorized to divide any township in forming a district; and the districts ought to be constituted of contiguous townships, and other necessary provisions ought to be inserted in the Constitution calculated to secure a just and equal division of the counties for the purpose of representation.

Sir, I favor the single district system for many reasons, only a few of which I can now take time to mention. In the first place, I regard it as a method better calculated than any other to arrive at the real opinions and wishes of the voters of the State upon all measures of public policy, and this from the fact that it brings the representative home directly to his constituents, and requires him to be chosen by those only who are best acquainted with him.

This, sir, I hold to be a very important principle—to make every representative as directly responsible as possible, to those he represents. I favor it also, for the reason that it gives no more political influence, so far as voting is concerned, to a person residing in one portion of the State, than it does to a person re-

siding in another. Sir, I deem it of much importance that we should at least, make the effort to equalize the votes in every part of the State as far as possible; and I cannot see how this can be done while we allow the voters residing in those counties having three or four members, to vote for the whole number of members to which a county may be entitled, and thus give the voter in one county, four votes, whereas, were he residing in another county, he could only give but one. And, sir, I object to this system further, on the ground that it gives to the members when assembled at the Capital, from the large counties, a decided advantage. Inasmuch as the same influence elected them all, they usually act in concert on all questions coming before the body of which they are members. I know that it has been contended here, that because four thousand voters in one county are entitled, each, to vote for four members, the representatives, when assembled in the halls of legislation, have only four votes, and that this system does not really give to persons residing in those counties more power than it does to the residents of any other four counties, each having a thousand voters. But, sir, were gentlemen to contend with me until doomsday, they cannot convince me that their position is practically correct. Need I say to gentlemen, that as you concentrate political power, you thereby render it doubly efficient? And when those gentlemen shall make me believe that in any election for a member of a deliberative assembly fifty votes given by fifty men can ever be made as efficient as fifty votes controlled by two men, then, and not till then, will I believe their theory. Sir, when this proposition was up some weeks since in the form of a resolution of inquiry, introduced by the gentleman from Putnam, (Mr. Stevenson,) it did not then appear to receive that favorable attention from the Convention that would seem to indicate its adoption; and from all that I have seen and heard since, I fear that neither it nor the proposition to give to the small counties a fair proportion of representation will be engrafted upon the Constitution. Sir, I shall repeat this much; because if the larger counties are determined to retain a principle which gives them an unfair advantage in the fractions, thus securing to them from two to three representatives each, it does seem to me that the single district system should be ingrafted upon the Constitution; for nothing, in my opinion, would probably tend more to reconcile the voters in the small counties, to the new Constitution, than for their delegates, when they return home, to be able to say to them—"It is true that the Convention refused to increase the House of Representatives as you desired, and would not give one member to each county, or even to those counties having one-half of the ratio of representation; yet we have so provided that a man in Wayne county cannot give four votes to your one, for we have ar-

ranged it so that he can only vote for one person in the district in which he resides; and, therefore, so far as this principle prevails, you have as much political weight in the affairs of the State as he has."

Sir, I hope this principle of dividing counties into districts, will prevail for another reason. It is the best calculated of any other system to break up the central influence in the counties which has heretofore exercised altogether too much control in the business affairs of the counties. I am told that three-fourths of all the members of this Convention reside at the county seats of their respective counties. Now if the Constitution required that counties sending more than one member to the House of Representatives, should be divided, then only one member, at any rate, in any one county, could reside at the county seat, and the farmers would have, at least, some chance of electing a man that would represent their interests. Sir, if no other reason had any weight, this one recommends the measure to my most cordial support, inasmuch as it prevents the overshadowing influence, which the large towns are rapidly acquiring, not only over the affairs of the counties in which they are located, but also over the legislation of your State.

Sir, in all ages, and in all countries, the influence of large cities and towns, when exercising a controlling power over the destinies of a people, has been detrimental to their best interests. I believe that the greatest of political philosophers now admit that it was the overshadowing influence of the city of Rome, that finally proved fatal to the prospects of that republic. If those laws had been passed which the true but much abused friends of their country advocated, and which were calculated to secure each Roman in the enjoyment of his home; if the political power of that great republic had been diffused among the honest yeomanry of the country, and not concentrated in their great metropolis and the other cities of the republic, it is more than probable that she would never have fallen a victim of the united evils of internal convulsions and foreign invasion.

We find too, sir, that the little Grecian republics were entirely ruled by their cities and towns, and that their luxury and licentiousness proved their ruin. Sir, I trust that we will avoid the rock on which they split—that we will place the rural districts forever beyond the control of the commercial parts of this State. I know, sir, that the idea that the towns of this State could ever attain such an influence as in any measure to control its legislation is deemed futile; but, sir, those gentlemen who have been connected with the legislation of your State tell me that even now when three or four of the largest towns of the State unite their influence on any subject, it is almost impossible to resist them; and if such is the case now what may it come to be when these towns shall have greatly increased in number and in size. Sir,

we should not place the power of the State in the hands of this interest. Such a course is anti-republican, and contrary to the genius of our institutions. No, sir, every motive should induce us to disperse the power over the State, and not concentrate it at particular points where it may not always be used for the best interests of the people. I again repeat that the single district system ought to prevail, as I believe it is the most safe and efficient plan to equalize the power and influence of the large and the small counties.

Sir, it has been intimated by some of the members representing large counties that they are prepared to vote for an increase of the House of Representatives if those representing the interests of the small counties could be induced to reduce the Senate to some thirty-two or thirty-four members, provided that the whole number in both Houses did not exceed the present number of the members of the General Assembly—namely one hundred and fifty. So far as I am personally concerned I can say that I came here rather expecting, and perhaps desiring, a reduction of the Senate to some thirty-four or thirty-six members; but I expected an increase in the House of some fourteen or sixteen members, thus keeping the whole number of the members of the General Assembly as at present. I know that there are some who have shown a great anxiety to reduce the number in both Houses, thinking it would have a tendency to expediate legislation; but in this I think they are deceived; for it occurs to me that facts will show that in those States where they have the largest number of representatives—the New England States for instance—business is done with more dispatch than it is in smaller bodies. Now when we consider the present number of the inhabitants of the State, and the prospect that in some twenty years hence she will double her present population, I do think that one hundred and twenty men to represent her great interests in the popular branch of the Legislature are as few as ought to be asked for or desired.

But, sir, after all the argument that has been urged on this floor in regard to the Senate, I am still of opinion that, in point of numbers, it could be reduced to advantage, and I would go for it did I not think that by thus voting gentlemen might begin to entertain the idea that the House of Representatives could also be reduced with equal advantage, and might vote to reduce it accordingly. The opinion has been expressed by several gentlemen—in which I, in a great measure, concur—that the reduction of the Senate would tend to give more permanency to our legislation.

I know that it has been repeated on this floor until it has become almost threadbare, that one of the greatest evils complained of by the people of the State, and which, perhaps, operated as much as any other cause in requiring

the convoking of this assembly, was “the evil of too much legislation;” and, more than all, “the constant changeability of our laws.” And, s'r, the question arises, how can these admitted evils be remedied in the organization of the legislative department of the Government? Now, sir, in my opinion, the most effectual manner of accomplishing this object is by improving the character of the Senate. If, by reducing the number of senators, and lengthening the term of their service to four years, we can draw forth the wisdom and worth of the State, we shall thereby do much, in my opinion, towards giving a permanent character to our State policy. Sir, I have heard it intimated that a proposition will be made to abolish the Senate entirely, or, if retained at all, it should be made the same as the House of Representatives, by being elected by the same voters, and for the same period of service. In this view, I certainly cannot concur, as I have always looked upon the Senate, in the institutions of our country, as a body, who, from the fact of their being composed of the older men of the country, and mostly possessing much experience, would be most likely to correct the evils of too much legislation. They should be men who are thoroughly acquainted with the affairs of the State, stable in character, not only from the fact of their holding well matured principles and opinions, but also from the fact that only one-half of them will be changed in every two years. This arrangement I regard as necessary, in order that those senators who are to supply the places of those who retire should have the benefit of the experience of those who are to remain. In so far, I agree with the report of the committee, that the length of their service should be four years, and that one-half of the body should be elected fresh from the people every two years. One of the greatest objections I have to the Senate, as at present constituted, is, that it is too numerous, and too similar in its character to that of the House of Representatives, and for that reason, operates as but a slight check upon the action of that body. The majority of the Senate is elected by single counties, and these counties, also, elect the majority of the members of the House. Being elected by the same voters and in the same counties, it has generally been found that what the representatives of these counties passed in the House, the persons representing the same counties in the Senate mostly sanctioned. Now, if the Senate is reduced to some thirty-six or forty members, it would take, in most of the districts—say three-fourths of them—two or three counties to make a senatorial district, and but very few senators would be chosen by single counties. This, I imagine, would have a much better tendency to constitute the Senate in such a way as to make it a reasonable check upon the House of Representatives; and if, in addition to this reduction, we

should apportion the one House on the whole number of the inhabitants of the State, and the other on the whole number of polls, it would also better tend to produce this result, than to constitute them both upon the same basis. Sir, the subject is one that should command the deliberate consideration of this body.

Mr. President, I had designed to present some further views in regard to what I consider to be the proper plan of apportionment, and the best method of organizing the two houses, so as to make them not merely a check upon each other, in theory, but a check really and in fact. But as it is now late, and as I am not disposed to trespass further upon the patience of gentlemen, I will express, in conclusion, the hope that the amendment which I have submitted, or something similar in principle, will receive the approbation of this body.

The amendment I have submitted, or some other provision similar in its character, that will secure to the small counties and the agricultural districts from the overwhelming power of the large counties, and the leading commercial points of this State, would receive the sanction of this body.

Mr. DOBSON. It appears that we are getting a little entangled. The proposition of the gentleman from Allen is to amend the section, and is not an amendment to my amendment.

Mr. BORDEN. Then I will withdraw my amendment for the present.

The question was then taken on the amendment as amended, and the yeas and nays being ordered and taken, resulted as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Bicknell, Blythe, Borden, Bowers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Dobson, Edmonston, Elliott, Garvin, Gootee, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Hogen, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, Lockhart, Maguire, Mather, May, McClelland, McFarland, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Wallace, Wheeler, Wiley, Work, and Wunderlich—67.

NAYS.—Messrs. Badger, Barbour, Beard, Berry, Bourne, Bright, Butler, Coats, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Helm, Helmer, Hitt, Hovey, Huff, Johnson, Kelso, Kinley, Logan, March, McLean, Miller of Gibson, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby,

Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—62.

So the amendment as amended, was adopted.

Mr. BROOKBANK offered to amend, by adding a proviso, that any county having two-thirds of a representative ratio, shall be entitled to one Representative; and after the year 1860 the Legislature shall have the power to increase the Representatives to any number, not exceeding 120.

Mr. COLFAX moved further to amend, so that such addition shall not increase the members of the General Assembly to a greater number than 150, in all. His object was to reduce the number of Senators, if the House should be increased.

Cries of "No, no, no."

Mr. FOSTER. Can there be a division of the question on the amendment offered? I cannot vote for the proviso. Although I voted for the amendment already passed, yet I feel it necessary that the smaller counties should be represented. By adopting the two-thirds ratio, the greater part of them will be represented. But if the amendment is persisted in, to give the Legislature from 115 to 120 members, I cannot vote for it, unless there is a division of the question.

I would here remark that I am pledged to my constituents to reduce the number of Senators and Representatives, so far as my single vote would go. I have voted so all the time, but have been out-voted, and I cheerfully submit. But I wish gentlemen to understand, if they wish to provide for the small counties, by giving them a two-thirds ratio, they will be mistaken; for myself and others will be obliged to vote against it.

Mr. SMITH of Ripley. I wish to say a few words.

Mr. COOKERLY. I move that the Convention adjourn.

A division being called for, there were for the motion, yeas 48, noes 52.

So the motion did not prevail.

Mr. KENT moved to lay the amendment to the amendment on the table.

Mr. GOOTEE moved that the Convention adjourn; and pending the question on the amendment of Mr. COLFAX.

The Convention adjourned.

MR. BORDEN'S SPEECH

On the Compromise Resolutions, delivered in the Convention on the 3d inst.

I wish, sir, to ask whether, inasmuch as the gentleman from Posey has introduced a new proposition, and no motion to postpone indefinitely has been since made, it will not be in order now to make such a motion.

The PRESIDENT. The motion to post-

pone indefinitely is in order now, although it was not in order yesterday evening, a motion of the same kind having been made a short time before.

Mr. BORDEN. I move, then, sir, that the resolutions and pending amendments be indefinitely postponed; and I have a few words to say upon that motion. Yesterday when the Convention adjourned, I was addressing a few observations to this body in regard to this matter, and I wish to correct a misapprehension that I see prevailing in a paper of this morning. The paper seems to intimate that there was some difficulty between the gentleman from Posey and myself. It would seem, from this paper, that the impression has got abroad that I was addressing some observations to the gentleman from Posey of an unpleasant character. This, certainly, is a great misapprehension of the facts. Now I will state what I had in view on that occasion. And first, I will observe, that during the last summer I paid but little attention to the proceedings of Congress. I was absent from home during a great part of the time. After my return my time was occupied in attending to my affairs, and I had but little leisure to ascertain what was going on in Congress. I know but little, therefore, about the particulars of the compromise measures, and by the proposition which is here submitted to us we are called upon to indorse the whole of them together. As I was desirous of being more particularly informed upon the subject, I addressed certain questions to the gentleman from Posey, because he introduced the proposition, and I therefore supposed that he, having had more leisure than myself, had informed himself thoroughly of the proceedings of Congress in relation to those measures, or else he would not ask us to indorse them; and that he could inform the Convention whether we were acting properly or not in indorsing those measures by wholesale, and I stated to him at the time that I hoped he would give us this information. I say, then, that as regards the fugitive slave law, I have not had time to give it that thorough examination which so grave a subject really demands, not having had an opportunity to do so, and not knowing what constructions may be put upon it by the courts. I have heard, however, in conversation here in the Convention, some things stated in regard to the interpretation put upon it by the United States Judge in this district, which, if it be true, will prevent me from giving my support to all its features, although I say here that no man will go further than I will to sustain the Union. I will go as far as he who goes farthest to maintain the laws of the land so long as they remain in force on the statute book. And when gentlemen get up on this floor as they have done, and say that those who will not vote for the resolutions of the gentleman from Wayne are disunionists, they do me injustice, and they do injustice to

many others also. I said, a few days ago, that the Convention had nothing to do with such resolutions as these—that they were improperly introduced here, and that I did not think the Convention had any right to call upon me to express an opinion in regard to the subjects embraced in these resolutions; and that in my opinion the Convention ought to lay them upon the table, and return to its legitimate business, as my constituents did not send me here to do the business which properly appertains to Congress. What is it that this Convention should desire under the circumstances? They should chiefly desire to promote peace and harmony throughout the country. Ours is the province to pour oil upon the troubled waters, and not to agitate them. The excitement that prevailed has mostly subsided since the adjournment of Congress; for with the exception of a very few traitors at the South, and fanatical agitators at the North, there now remains nothing to disturb the tranquility of the country.

I have no doubt, sir, but there are many portions of the fugitive slave bill that requires modification; but I believe that the people of the country generally are disposed to have it executed until it is repealed or greatly modified. But, sir, this is not the only measure that is connected with the Congressional scheme of compromise, and which we are now asked to indorse by the wholesale. There is, for instance, the bill respecting the settlement of the boundary of Texas, and for the establishment of territorial governments for Utah and New Mexico. There may be, and probably are, objections to these measures which none of us now fully perceive. And for that reason, perhaps, all of us are not now ready to approve of them, yet it is submitted to us as one entire question, whether we approve of them as a whole or not. I was addressing certain questions, as I have said, to the gentleman from Posey, and among other things I asked gentlemen of this Convention, how many of them had read this fugitive slave bill, to see what particular provisions it contained. I inquired how many delegates on this floor had examined closely the proceedings of Congress in relation to these measures; and I asked the gentleman from Posey in particular, to inform this Convention whether it was not true that a committee was appointed in the Senate of the United States, consisting of Southern men, and others who usually acted with them; and whether they had not agreed upon the boundary between Texas and New Mexico, commencing at the south-western corner of the Indian territory, in about latitude 34, and running to the Rio Grande, near El Paso, in about latitude 32, which was to be the permanent boundary between that State and Territory; and if this line had been agreed upon it would not have transferred the greater portion of the valley of the Puerco river to Texas, and have thus transferred

a territory as large as the State of Indiana from New Mexico to Texas?

But that the South, not satisfied with this, demanded still further concessions, and that thirty-six thousand more acres of free territory was, by this compromise measure, transferred to Texas, and the United States had to pay them ten million of dollars to induce them to take it. Are we prepared to say that they have done right? If they have not done so, it is true the act cannot be recalled; but I ask why should we be required to indorse their action? There are some things connected with those measures, that, had we been members of Congress, we might have voted for, and others we would have felt bound to oppose; but here we are called upon to indorse the whole of them together. Like young eaglets, we are to open our mouths and swallow down whatever our leaders may see proper to present to us. I, for one, am not prepared to indorse measures by wholesale. And I hold that this fugitive slave law ought not to be dragged in here for the purpose of obtaining an expression of our opinion upon it.

I now wish to call attention for a moment to some other points, which I hope will be carefully examined by the Convention before they indorse them. In the first place, sir, I wish to direct attention to the circumstance of free territory being taken from New Mexico and given to Texas to be made slave territory. Now I do not believe there is a man on this floor who will not say—at least I am satisfied that the gentleman from Posey himself, who has investigated this matter—will not pretend to say that there ever was a foot of country watered by the river Puerco, that was within the province of Texas. The country lying upon the Upper Rio Grande, including the valley of the Puerco, never was Texan territory, although the country below the mouth of the Pedidro, usually called the Lower Rio Grande, was. It was settled by the Spaniards long before any portion of the United States was settled. Yet the greater portion of the lower valley of the Puerco has been transferred to the Texas.

Mr. PEPPER of Ohio. I rise to a question of order. The question before the Convention is, I believe, on the amendment to the resolutions. The gentleman is certainly wandering very far from the question under consideration.

The PRESIDENT. The question is on the motion for indefinite postponement.

Mr. PEPPER did not press his point of order, and

Mr. BORDEN proceeded.

Now, sir, (said Mr. B.) I wish to state here what was said by Southern statesmen on this subject. I read, sir, from an address of Mr. Bailey, a distinguished member of Congress from Virginia, to his constituents, soon after the measures passed Congress which we are now asked to indorse. Speaking of the Texan boundary bill, he says:

"The bill converts forty-three thousand six hundred and thirty-seven square miles of free soil into slave territory, if the people residing upon it shall so decide when they form a constitution, preparatory to coming into the Union as a State. By the resolutions of annexation it is provided: 'New States of convenient size, not exceeding four in number, in addition to the said State of Texas, and having sufficient population, may hereafter, by consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal Constitution; and such States as may be formed out of that portion of said territory lying south of 36 deg. 30 min. of north latitude, commonly known as the Missouri Compromise line, shall be admitted into the Union *with or without slavery, as the people of each State asking admission may desire*; and in such State or States as shall be formed out of said territory north of said Missouri Compromise line, *slavery or involuntary servitude (except for crime) shall be prohibited.*' Most of the territory last referred to is included within the limits of New Mexico."

Now here, sir, it is expressly admitted that this bill has taken forty-three thousand square miles of free territory and transferred it to Texas, to be made slave territory. Are we prepared to say that is right? That after the South had fixed upon its ultimatum in regard to this matter, it is right to go north of the line and take territory and transfer it to a slave State? And is not that the operation of the measure? And are we prepared to indorse it?

Well, sir, there is another subject.

It will be recollected that some thirty years since, when Missouri was admitted, it was agreed that slavery should never extend beyond what was termed the Missouri Compromise line. That is to say, north of 36 deg. and 30 min. But it is now said that these compromise measures, adopted at a late session of Congress, rescinds this agreement. Listen a moment to what Mr. Bailey says upon this subject. He says:

"The act establishing a territorial government for New Mexico, provides, 'that when admitted as a State, the said territory, *or any portion of the same, shall be received into the Union, with or without slavery, as their Constitution may prescribe at the time of their admission.*' The absolute prohibition of slavery north of 36 deg. 30 min. is removed by this provision."

Now, sir, is this Convention prepared to say that in violating that compromise, our senators and representatives done their duty to the people of this State? For my own part, I can only say that if this be the true construction to be put upon that measure, it can never receive my assent. The measure being passed, it may not be expedient now to interfere with it, but I can see no necessity for our coming out and indors-

ing it; especially as I do not believe any gentleman upon this floor was sent here to do it.

Well, sir, this bill is understood by some to require the establishment of slavery in the territories. They so understand it themselves at the South; or, they say if it does not expressly establish slavery in New Mexico and Utah, it at least recognizes it as already existing there. I hope the Convention will indulge me in reading another extract from the same address: "But I shall not go into that question. In this case it is unnecessary; for the territorial bills and the fugitive slave bill each recognize the legality of slavery in the Territories. In the former it is enacted that—

"Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars, except only that in all cases involving title to slaves the said writs of error or appeals shall be allowed and decided by said supreme court without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States from the decision of said supreme court created by this act, or of any Judge thereof, upon any writ of habeas corpus involving the question of personal freedom."

It will be perceived that there are two classes of cases here provided for; the last, between the negro and his master, involving the question of his personal freedom; the first between other parties, involving title to slaves. This last clearly contemplates the existence of slavery in the territories."

It is contended by them, too, that slavery is recognized as already existing in the Territories of New Mexico and Utah, because one of these compromise measures which we are required to indorse, expressly says that slaves escaping from the Territories in the United States, shall be returned to their masters.

Mr. Baly says as follows:

"Besides this, the act providing for the recapture of fugitive slaves, throughout contemplates the escape of slaves from our Territories. It enacts: 'that when any person held to service or labor in any State or territory, or in the District of Columbia, shall escape,' &c. Slavery is prohibited in Minnesota and Oregon; and if it is also prohibited in Utah and New Mexico, our only other Territories, then there is no subject to which a part of that law can refer."

Now, sir, Minnesota is not slave territory. The ordinance applies there and applies to Oregon. What territory could they escape

from, if not from New Mexico and Utah; these four being the only existing Territories.

By turning to the bill organizing a territorial Government for New Mexico, it will be found that the persons who settle in that Territory, are guaranteed their right to property in it.

If, therefore, a slave holder goes there with his property, it is granted to him in that very bill, or at least this is the Southern construction of the law, that he shall hold his slaves there. It goes on and provides further, that in all cases arising between master and slave, such cases shall be determined by the court. If there be no slaves there how could there be any controversy between master and slave. I say, I fear this bill has indirectly transferred slavery there, yet we are asked here to gulp it down.

I have said, I am not disposed to interfere with these compromises. Let them go. Perhaps the only thing that can now be done is to modify the fugitive slave law. But when called upon to indorse them bodily, I say it is going too far. And it is for the reason that several of the members desired to hear the views of the gentleman from Posey, that I rose to make the inquiries that I was propounding to him yesterday previous to the adjournment, not for the purpose of trespassing upon the time of the House, nor from any unfriendliness to him, as the gentleman is well aware. I am not disposed now to occupy much of the time of the House. I repeat, sir, that I am as much devoted to the Union as those who make such great pretensions of it here.

Much has been said, sir, about a Union party here. I am for the Union, but I go into no new organization with any one. The platform of the democratic party is broad enough for me. I have this to say, that these propositions ought to have been permitted to remain on the table, or now to be indefinitely postponed; for if gentlemen will keep them here, and continue to agitate matters that do not belong to, or are not properly cognizable in, this body, I will say that, in my opinion, we have no right to sit here and employ our time in such a manner. For myself, I do not think that I ought to take my pay for the three days, time that we have thus foolishly spent in discussing this subject. We are not attending to the business for which we are sent here. I have done all I could to get rid of the question, and I now say to the Convention that I shall take the occasion, while they are squabbling on this miserable subject, to attend to some business matters, and when I shall hear that you have got through with this discussion, and are ready to return to the legitimate business of the Convention, I shall return to my seat, and assist in revising the Constitution, and not until then.

I desire to treat the Convention respectfully, but I must say that I look upon the whole proceeding as out of place.

SATURDAY, DEC. 7, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

The journal of yesterday was read and approved.

Mr. BORDEN moved that it be

Resolved, That the Secretary of the Convention be directed to address the Governor, and the Treasurer, and Auditor of State, and request them to procure some other room for the sitting of the Convention.

It will be observed, said Mr. B., by turning to the act authorizing the call of this Convention, that it is provided in that act, as follows:

[Mr. B. read from the act.]

I take the view that it is the duty of these officers to supply a place for the sitting of this Convention. I apprehend that it will be generally admitted that we shall be hardly able to get through with our business before the session of the Legislature commences, and I do not suppose that the Convention has any disposition to hold possession of this Hall, to the exclusion of the Legislature. I understand that the officers of State are anxious to commence sitting up this Hall for the accommodation of the Legislature, and that it is a work that will require some little time. There is now only about three weeks remaining, before the Legislature will meet, and perhaps it will require some little time for these officers to look around and select a suitable place for the accommodation of the Convention. I merely wish to call the attention of members to this subject. I am not strenuous as to whether the resolution which I have offered shall be adopted. The Convention may take any other course that they think proper.

Mr. WATTS moved to amend the resolution so that it would read "procure a place for the sittings of the House of Representatives."

They are, said Mr. Watts, a smaller body than this. We are very comfortably situated here, and if it is made the duty of these officers to provide a place for the Convention, they can just as easily provide a place elsewhere for the Legislature. We are the occupying claimants, and if they come on and have no place to meet in, let them look out for a place for themselves. ["Consent."]

Mr. KENT moved to strike out the words "some other room," and insert the words "Supreme Court Room."

It was, he said, a much better room than this.

Mr. MORRISON of Marion. I imagine that the gentleman from Dearborn is hardly in earnest in regard to our claiming the possession of this Hall under the occupying claimant law. And I am induced to come to this conclusion, sir, for the reason that they would also be compelled to provide another building for their sitting. They would necessarily be compelled to

have a room for the House of Representatives and another for the Senate, whilst the Senate chamber in this building would be lying idle. This body being an indivisible body, can occupy any room that may be selected, either the Supreme Court Room, or Concert Hall, or Masonic Hall, and I have no doubt we could get almost any of the Churches for the time being. I therefore think the original resolution would be the proper one to adopt, I hope the Convention will not undertake indirectly to disturb the representatives of the people, or prevent them from holding their sessions at the usual place, particularly as it would require two rooms for the accommodation of the General Assembly.

Mr. MURRAY. It seems to me that the amendment offered by the gentleman from Dearborn, if adopted, would occasion a good deal of inconvenience. The Senate and House of Representatives have frequent occasion to interchange messages, and they should be therefore at no great distance from each other; and I cannot but feel that it would be an act of usurpation that would not be very creditable to this body if we were to keep possession and exclude the Legislature from this Hall. I hope that if another place is to be provided it will be for the Convention and not for the Legislature.

Mr. STEVENSON. The amendment of the gentleman from Dearborn I think should not be adopted. At the time the act calling this Convention was passed, there is no doubt it was supposed that the Convention would be able to complete its labors before the time fixed for the meeting of the Legislature. I have some doubts, also, about the propriety of adopting the amendment of the gentleman from Floyd; at any rate I think it should not be adopted until we ascertain whether the court room will answer the purpose. There is another thing: I am inclined to believe that this body would be much less disturbed if we should be at a greater distance from the Legislature. There will be a constant disposition on the part of the members of one body to be present at the sittings of the other, whenever there is any question of interest debated. It will, therefore, be better for us, I think, to have a room at some distance from the Legislature, and I think it is time that we should be taking some steps to procure a suitable place. I should be sorry to see this Convention adjourn, as I have heard it suggested, to meet again after the Legislature shall have terminated its session, because it would have the effect of protracting the final close of our labors to altogether too late a period. I am in favor of finishing the work now while we are here. I trust that the resolution offered by the gentleman from Allen will be adopted.

Mr. GIBSON moved that the amendments be laid upon the table.

The motion was agreed to

Mr. KELSO. I wish barely to make an inquiry, and it is, whether we have a right to call upon these officers to furnish a place for the sitting of this Convention, when they have already discharged that duty. When we first came here we were advised of the inconveniences we would be subjected to if we were to occupy the Hall, and began casting about for a more suitable place for an accommodation. At that time we did not think of calling upon these officers to furnish a different place for us. We sent our own committee to make the arrangement. Why should we not do so again! It is a mere change of position. It is true we have the occupancy of this Hall at present, and I apprehend there is no legal power that could turn us out, yet I am for yielding to the House of Representatives on the ground that it would be incommoding the two bodies, the Senate as well as the House, if we retain possession of this Hall. For this reason I am decidedly in favor of surrendering up the Hall. But I would inquire why may not a committee of our own body select a room? They will take pains to make arrangements at the cheapest rate, and will supply us with conveniences equal to those we have here. I will move, therefore, to amend the resolution by striking out the officers named in it, and inserting "a committee of five."

Mr. BORDEN. Allow me, sir, to explain my views in relation to this matter. In the first place, one of the objects which I had in view was, to bring up the question in regard to adjournment. It has been talked of somewhat that the Convention might adjourn to meet again after the close of the session of the Legislature. If we are to adjourn and go home and return again, the sooner we determine it the better. I do not say that I am for adjournment. I only say that if we are to adjourn over the holidays, the adjournment should take place soon. At all events, we ought to determine whether we shall go on and complete our business, or have an intermission. If we are going to adjourn at all it ought to be done soon. And in reply to the gentleman from Switzerland I have only to say this, that the provision of the law which I have read declares that the Governor, Auditor, and Treasurer of State are authorized to provide suitable accommodations for this Convention. I think that the Legislature designed to put this matter into the hands of those officers. We have the right, I have no doubt, to provide a place for ourselves if we choose to do so. I am not strenuous about the matter, but I do not think that there is any disposition on the part of the Convention to hold this Hall to the exclusion of the Legislature. It would produce a bad state of feeling. And I doubt whether we could hold it. The law does not authorize the Legislature to meet any where else than in this Hall, and as arrangements must be made for our accommodation

elsewhere, I think it is time that the matter was decided. If the Convention choose to appoint a committee I have no objection.

Mr. GIBSON. I am in favor of the amendment of the gentleman from Switzerland, and I would remark to the Convention, as many gentlemen are, perhaps, not aware of the fact, that there is in this city a suitable room that may be had at a reasonable charge. I allude to Concert Hall. It is in a new building on Washington street. The Hall is 55 feet square, sufficiently large to accommodate 300 persons, giving to each 10 square feet. The room is well ventilated and well lighted. I think it is very well fitted for our purpose.

The question was taken on the amendment of the gentleman from Switzerland, and it was agreed to.

Mr. BORDEN. Inasmuch as the resolution has been altered, I do not wish to be considered responsible for it any longer.

The question was then taken on the adoption of the resolution as amended, and decided in the affirmative.

So the resolution as amended was adopted.

Mr. HELMER moved that the Convention adjourn *sine die* on the 8th day of January, 1851.

Mr. KELSO moved to amend the resolution by inserting, "Provided, we are through with our labors."

Mr. HARDIN moved that the amendment be laid on the table.

Mr. RARIDEN. I move to lay both the resolution and amendment on the table.

The PRESIDENT. The gentleman cannot make that motion.

The question being on laying the amendment on the table,

Mr. KENT demanded the yeas and nays, and they were ordered, and being taken were—yeas 42, nays 83—as follows:

YEAS.—Messrs. Badger, Bicknell, Blythe, Bowers, Bracken, Chandler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Conduit, Cookerly, Crawford, Davis of Parke, Duzan, Farrow, Gootee, Gordon, Hardin, Helm, Helmer, Huff, Kendall of Wabash, Logan, Mathew, May, McLean, Moore, Murray, Newman, Rariden, Read of Clark, Shannon, Smiley, Smith of Scott, Stevenson, Trimble, Watts, Wunderlich, Yocum, and Zenor—42.

NAYS.—Messrs. Alexander, Allen, Anthony, Beard, Berry, Biddle, Borden, Bourne, Brookbank, Bryant, Butler, Carr, Chapman, Colfax, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliott, Fisher, Foster, Garvin, Gibson, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Johnson, Jones, Kelso, Kent, Kendall of Warren, Lockhart, Maguire, March, McClelland, McFarland, Miller of Fulton, Miller of Fulton, Miller of Gibson, Milroy, Mooney,

Morgan, Morrison of Marion, Mowrer, Nave, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ristine, Ritchey, Robinson; Schoonover, Sherrod, Snook, Smith of Ripley, Spann, Steele, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Wallace, Walpole, Wheeler, Wiley, Wolfe, Work, and Mr. President—83.

Mr. COOKERLY. I think it is evidently time to think about adjourning. The Convention has been in session for nine weeks now, and I am fearful that if we do not adopt some rule in regard to the matter, we may be here ten weeks longer. For one, I must confess, that I am getting tired of being here, and I should like to see some system adopted by which we may proceed a little more regularly with our business than we have heretofore done. For that reason I will move to postpone this resolution for two weeks from this day.

Mr. GIBSON moved to lay the resolution and pending amendment on the table.

The motion was agreed to.

Mr. SMITH of Ripley offered a resolution in relation to the propriety of districting the State for judicial and representative purposes.

Mr. COOKERLY moved to strike out the word "judicial." There was no necessity whatever, he said, in his opinion, for the Convention troubling themselves about judicial circuits in this connection.

A VOICE. It is all right.

Mr. COOKERLY. I withdraw the motion.

Mr. KELSO suggested that it would be better to strike out "representative." If the State were districted for judicial purposes that was all the districting that was necessary.

Mr. SMITH of Ripley said he had no objection to modify his resolution.

Mr. PEPPER of Crawford. It is desirable to know, in the first place, how many judicial circuits we need, and until another committee make their report this cannot be ascertained. I move, therefore, that the resolution be laid on the table for the present.

Mr. PEPPER, at the request of Mr. Foster, withdrew his motion to lay on the table.

Mr. FOSTER. It seems to me that that part of the resolution that relates to forming judicial districts had better be left to the judiciary committee. And that part that relates to the representative districts to the committee on the apportionment of representation. I will here remark, as there seems to be some discrepancies of opinion in regard to the power of the Convention to prescribe the Senatorial and Representative districts, that it appears to me to be so plain a matter that I can hardly see how any gentleman can be opposed to it. It is clearly the duty of the Convention to form Senatorial and Representative districts. The presumption is, from the indications that we have had, that the elections hereafter to be held, if this Constitution should be adopted, will

not take place until October; and it is also to be presumed that the new Constitution will be submitted to the people anterior to that time. But if the Constitution should not be adopted, then the elections would go on as at present; but if adopted, and the elections ordered to be holden in October, how are the districts to be formed unless it is done by the Convention? It is the duty of the Convention to do it, and if we fail to do it, how are the people to know how many to elect? I make these remarks because some gentlemen have expressed doubts as to the propriety of our districting the State for representative purposes.

Mr. SMITH of Ripley. The object I had in view in offering the resolution, was to bring the attention of the Convention to the subject. I know it is held by a great many gentlemen here, that the Convention has nothing to do with the matter. But I have been unable, myself, to see how the provisions of the new Constitution are to be carried into effect without districting the State for judicial and representative purposes. I have thought this point worthy the attention of the Convention, and I offered the resolution for the purpose of bringing the question up. If I have not given the resolution the proper reference, if gentlemen think that it ought to go to a larger committee, one from each judicial circuit, I will modify it so that it shall be referred to a committee of thirteen, one from each judicial circuit.

Mr. PEPPER of Ohio. I wish to say, in respect to this subject, that it is one that did not enter into the contemplation of either my constituents or myself before the election. It was not expected by me, nor was it expected by any of my constituents as far as I know, that this Convention would enter into any arrangement of this kind. I am opposed to the Convention taking into its hands the districting of the State for senatorial, representative, or judicial purposes.

Mr. FOSTER. Who will do it?

Mr. PEPPER. The Legislature.

Mr. FOSTER. What Legislature?

Mr. PEPPER. The Legislature that will first meet after the adoption of the Constitution. I have not risen to make a speech on the subject, and shall content myself with voting against the proposition.

Mr. KELSO. I am decidedly in favor of the Convention taking upon its shoulders the responsibility of districting the State into judicial circuits. I want to see this Convention make as fair a division as they can of the State into judicial circuits, in which shall be held either two or three circuit courts in each year, and five judicial circuits, in each of which one supreme court judge shall be elected.

We cannot very well take the one division independently of the other. So far as districting the State for representative purposes is concerned, I am not going to make to that part

of the proposition at present any strenuous objection, it can do no harm to allow it to go to a select committee of thirteen, and let them consider it.

Mr. BORDEN. It strikes me that we are proposing to raise a select committee to whom shall be referred matters that properly belong to the committee on miscellaneous provisions, the committee of which the gentleman from Hancock is chairman. On looking over the Constitutions of the various States it will be found that each of these has attached to it a schedule or explanatory provisions as to the manner in which it shall be put in force. This schedule divides the State into districts for representative purposes, and also into districts for judicial purposes. It is not supposed of course that the Constitution is to do more than to fix and declare certain principles, and the provisions for carrying it into effect will be no part of the Constitution itself, but will be appended by way of schedule. I take it that the matter does not apply to the committee on apportionment, or to the committee on the legislative department, for they have nothing to do but to determine the number of the members of the Legislature. It should not go to a select committee, but to the committee on miscellaneous provisions. When the number of senators and representatives shall be fixed, and the number of judicial districts ascertained, then the committee on miscellaneous provisions can proceed to act upon this matter.

Mr. SMITH of Ripley. A single remark. We have the right, I believe, and certainly it is according to my own wish, to send this matter to a standing committee instead of a select committee. I prefer that it should remain as I first offered it. I will, therefore, take back my acceptance of the modification.

Mr. RITCHEY. The question of apportionment was spoken of during the canvass in my county, and it was presumed both by candidates and electors that it was necessary that the districting of the State should be done by the Convention. I think if gentlemen would reflect for a moment they would see that it is a matter of necessity that it should be done. The Legislature by a provision of the old Constitution will have to district the State this winter. It may be that the new Constitution will not be adopted. The Legislature will of necessity have to apportion the State, and if we say nothing about districting the State, and especially if we adjourn until after the next session of the Legislature is closed, they will not know how many districts we may agree upon. And it may become necessary to call a special session of the Legislature for the purpose of districting the State. You must either impose the duty upon the Governor of calling the Legislature together after we adjourn, for the purpose of districting the State, or you must require the Legislature that sits this winter to adopt an ap-

portionment for both the old and the new Constitution, and as their session is limited to six weeks, [a voice—"O no, they are not limited!"] Yes, sir, they are limited, because their per diem runs out at the expiration of six weeks, and that is tantamount to a limitation. Then they are under the necessity of forming an apportionment under the old and the new Constitution. It is, I think, better for us to do it. I look upon it as a work that is obligatory upon us. I care but little as to what committee has the consideration of this matter.

Mr. MORRISON of Marion said: The debate has been quite tedious, so many members having spoken to its merits on the question of postponement. On that occasion I desired to say a few words, but quietly waived my privilege for the accommodation of other members. As the resolution under consideration involves the same principles I will allude briefly to the position of the question as it now presents itself.

The Convention on yesterday, decided by a close vote, that the future ratio of representation should not exceed fifty senators, and one hundred representatives. This number is the same that now exists under the laws formed under the provisions of the old Constitution. With some reluctance I voted for even so great numbers as were formerly and are at present in our General Assembly. For all convenient and practical purposes I am of opinion, a less number would be preferable, but in obedience to a call upon our generosity not to disfranchise the smaller counties the members from Marion, with one voice gave them four votes, in favor of the then proposition of the small counties. They now attempt to push their claim farther, and to demand a greater number than one hundred representatives. Here I and my colleagues must pause.

I would say this to our friends with whom we acted on yesterday, that if they are still content and satisfied with the numbers as decided upon, we will still sustain them; but if they are determined to persist in demanding one hundred and sixteen, or one hundred and twenty representatives, and are desirous to establish the principle that territory, instead of population and taxation, shall constitute the basis of representation, that we, the delegation from Marion county, as well as other members, will recede from our former votes, and go for a less number than one hundred, before we will go for a greater number. In voting for fifty senators and one hundred representatives, we went fully as far as we believed our constituents would justify our action. We had added nothing, in this respect, to the former law and the old Constitution, therefore, we could urge in justification of our votes that we desired no county to be placed in a worse condition, as to representation, under the new Constitution than it was placed under the old one. [A voice—

"is that a threat.]" No, this is no threat, but the plain truth, spoken after due deliberation, but in no unkind spirit. Thus far will we go but no farther, and gentlemen may make their calculations knowingly upon that ground. If we have to go forward or to reduce, we must and will recede—or in other words go for a smaller number.

I would also state, that if the ratio be maintained as it now is, there will be no necessity of referring the matter to a committee for the purpose of apportioning the State for representative purposes. It is easily avoided by letting the districts remain as they now are, until they be changed by a General Assembly, which shall be brought together under the new Constitution. The Legislature now about to meet will find no necessity to change them, except it may be to do justice where a change has been found in the increase or decrease of population. If we attempt to district the State, and to apportion senators and representatives, we make our work, the new Constitution, liable to all the objections which those counties will feel and urge, where their representation has been lessened. All that we have to do, is to provide that the existing ratio shall exist until changed by a subsequent Legislature.

I may hereafter reply to some of the arguments that have been made to extend the members, but as this resolution does not properly afford the best occasion, I may take another opportunity. But this much I will now say, that if members from small counties do persist in the attempt to take a rightful power from the larger counties, or to establish any other basis of representation than population and taxation, they must expect the delegations from the large counties to interpose their power to prevent such sheer injustice to the people whom they represent. For myself there are two radical principles which I think are well settled, and which I must adhere to, viz: That population and incidentally taxation are the only true basis for representation in a republican government.

Mr. MURRAY. Mr. PRESIDENT: I have listened with great attention to the arguments which have been advanced upon this question, and feel convinced that we should base representation principally upon territory.

The object of nearly all legislation is to unfold the resources that are buried in the soil—to develop minerals, and bring into operation water power—to give suitable aid and protection to mechanical skill, and by equitable laws, to encourage all industrial pursuits.

Now, whenever even a small community are organized into a separate county, they necessarily require the various mechanic arts to supply their natural wants; they must also have among them a portion of the mercantile interest; and the agricultural interest, to the fullest extent, requires the especial care of the Legislature, to

open highways and provide for their imports and exports. They have a portion of independent sovereignty, and have, in many cases, a separate and distinct interest, which requires to be represented in the halls of legislation. For instance: if an important State road, or plank road, or railroad is to be granted in the direction of their county, it may be greatly their interest, and, perhaps, their *just right*, that it should pass through their county. It may be also very important to them to have this public improvement enter and depart their county lines at particular points. This cannot be done by local legislation; State works are emphatically legislative duties. It is in vain to say that these works should look only to the public good, and that the counties through which they pass should have no voice in it; for, although this may be sound in principle, every one who has the least experience in legislation, knows that the points of commencement and termination, as well as intermediate points, are settled by compromises and agreements, before the bill passes for their execution.

From this, *all* will see that the interest of any county, *not* having a representative on the floor to claim her particular rights, may, and will most likely, have her rights neglected.

It is also a truth, that small communities, having the various arts, trades, and agricultural pursuits among them, require laws for their protection and encouragement, the same as large communities. A law protects five thousand as easily as it does fifty. In another point of view—and it seems to me to be a forcible one—is this: that if a member represents three counties, he is often compelled, from their conflicting interest, to displease his constituents in two of them, by which the interest of two counties are not represented; and, of course, the representative must fall under the displeasure of two-thirds of his constituents. Is it right, Mr. President, that gentlemen—particularly those in the prime of life, looking forward to honorable promotion—is it right, sir, to place men between cross-fires in this manner, by which they must fall, and their laudable aspirations be blighted in the bud? And, beyond and above this, is it right that a part of his district should be unrepresented? I feel clearly convinced that territory should principally influence us in providing the basis of representation, and that every county should have one representative. Upon this principle, there will be left, under the ratio proposed, ten members, to be apportioned among the larger counties; and they have this for their consolation, also, that the new counties will soon have a population that will entitle them to what they now ask as a favor.

Mr. CLARK of Tippecanoe. I do not think it is proper to bring up again the question that was discussed so fully yesterday. But I think the observations of the gentleman from Marion

are entitled to consideration. I concur with him, that we ought not to undertake to apportion the State for county representation; and I do so, chiefly, because I do not think that we have time to do it, and also because I think there is no necessity for it.

The gentleman from Morgan has said that the Legislature must, of necessity, make an apportionment this winter—that they are bound by the old Constitution to do so, and that we cannot exercise any control over them. Why, sir, it is easy for us to provide that the first apportionment under the new Constitution shall be that which may be made by the Legislature under the old. I see no difficulty in doing this. But if we undertake to make an apportionment, we shall have the same difficulty upon our hands that the Legislature would have; the same local and conflicting interests to reconcile. Now, I want to keep local and political questions out of the Convention altogether. Every gentleman who has been in the Legislature must be aware that it will take two weeks, at least, to district the State; and we shall gain nothing by doing it, because the Legislature is about to perform the same work.

And I do not conceive that we should divide the State into judicial districts. We can direct that they shall continue as now provided by law, or as may hereafter be provided by law. I do not think we ought to prescribe the precise size of these districts. I think that we ought, by all means, to keep these extrinsic questions out of the Convention.

Mr. MAGUIRE moved to strike out from the resolution so much as related to districting the State for representative purposes.

The motion was agreed to.

The question being upon the adoption of the resolution as amended,

Mr. WATTS. I am opposed, sir, to the adoption of this proposition at this time. It appears to me that it is altogether out of place. If we district the State at all for representative or judicial purposes, it should be the last act of the Convention. I do not know what the number of representative districts ought to be.

The PRESIDENT. All that relates to representative districts has been stricken out.

Mr. WATTS. Well, sir, I do not know what should be the number of judicial districts. I do not know what number of judges the Convention may decide that there shall be on the supreme bench. All these things should be settled before we district the State, if we district it at all. I therefore hope that the same disposition will be made of this proposition, without any further debate, in order that we may first ascertain what is necessary to be done, and if no other gentleman wishes to see the resolution any longer above the table, I will move that it be laid upon the table.

The motion was agreed to.

APPORTIONMENT OF REPRESENTATION.

Mr. CARR of Jackson, offered the following resolution:

Resolved, That the Convention will now take up the orders of the day.

The resolution was adopted.

The Convention then resumed the consideration of the second section of No. 12—the pending question being a motion of the gentleman from Floyd (Mr. Kent) to lay an amendment offered by the gentleman from St. Joseph (Mr. Colfax) on the 5th instant, to an amendment offered by the gentleman from Union, (Mr. Brookbank,) on the same day, upon the table.

The question was put, and decided in the affirmative.

So the amendment of the gentleman from St. Joseph (Mr. Colfax) was laid upon the table.

The question then recurring upon the adoption of the amendment offered by the gentleman from Union (Mr. Brookbank)—

Mr. B. said: In order to give a friend of mine the opportunity of introducing an amendment, I will withdraw the one I have offered proposing to introduce it again if the one he introduces shall be rejected.

The PRESIDENT. The Chair is of opinion that the gentleman from Union cannot now withdraw his amendment.

Mr. CLARK of Tippecanoe. In order to get the amendment out of the gentleman's way, I move to lay it on the table.

Mr. HOWE moved to amend the original section, by inserting the proviso "that each county shall be entitled to at least one Representative."

Mr. H. said, I agree with the gentlemen who support this section, that, as a general proposition, the smaller the number of Representatives the better; provided, however, at the same time, you give a just representation to all.

At first, sir, I was in favor of fixing the number of Representatives in the House at 75; but upon hearing the arguments of gentlemen in the course of this debate, and consulting with friends in regard to the matter, I have come to the conclusion that that position is wrong, and that the adoption of such a proposition will prevent the just representation of counties below or equal to an average. All the counties cannot have each a Representative with that number, and we must, therefore, adopt such a number as to give one Representative to nearly all. It will be utterly impossible, with seventy-five Representatives, to give a just representation to all. I therefore adhere to my original rule, to adopt the smallest number practicable, that will furnish a just representation.

It is true, my proposition is liable to some objections, for instance, that it interferes with the rule that representation is based upon pop-

ulation. But it is impossible in carrying out this idea practically, to arrive at mathematical accuracy. It is but an approximation to abstract justice. But I think this proposition carries out both of these ideas as far as practicable in just representation and a minimum number of legislators. It gives the smallest number practicable, and at the same time carries out the idea of just representation as far as it can be carried out. Obviously there are some objections to it, but it is less obnoxious than any proposition I have yet heard. If this proposition does not carry, I am ready to introduce another—the next best in order; that each county having two-thirds of the requisite number of males shall be entitled to one Representative. If that does not carry, I have another proposition to introduce, providing that each county having two-thirds of the requisite number of polls, shall be entitled to a Representative; and if that does not carry, I am willing to adhere to the original proposition of the committee, to fix the number of Representatives in the House at seventy-five. I am consistent, sir, in these views. Seventy-five is a smaller number, and practically, is enough to carry out the purposes designed. The only reason presented against its adoption is, that it conflicts with just representation.

If, however, the counties of the average or smallest size, are not to be secured in the privilege of a Representative each, they will be as well represented, and as little, perhaps less obnoxious, to want of proper representation, with the total number of seventy-five than of one hundred. The smaller counties are in justice entitled to considerable allowance in fixing the ratio of representation, because the greater number of them will increase very much between the periods of districting the State for representative purposes, while the older and larger counties will be stationary, and will possibly decrease.

Mr. GARVIN moved further to amend by adding the following:

"*Provided*, after the year 1860, upon the petition of the qualified voters of any county in this State, the Legislature shall cause a vote to be taken at a general election held for the purpose of electing State officers, and if it shall appear that a majority of all the votes cast at said election shall be in favor of an additional ratio of representatives, then it shall be the duty of the Legislature to make such additional ratio of representation as shall be necessary: *Provided, also*, That it shall never exceed one hundred and twenty."

Mr. SMITH of Ripley. It occurs to me, that the argument of the gentleman from Lagrange amounts to something like this: If he cannot do a great deal of good he is determined to do a great deal of harm. If he cannot get a Representative for each of the counties in the State, he is for reducing the number of

Representatives. I concede to the gentleman that he states his views with a great deal of frankness, but I am one of those who believe that in fixing our representation, we should decide upon a consistent and correct system by which it will be diffused as far as possible over every section of the State. I stand upon the old platform, sir, that population is the correct basis upon which to predicate representation. That is a rule that has been long established; a common sense and just rule, and I would adhere to it were it not for the purpose of accommodating the sparsely settled portions of the State, and the weaker counties. I do not know, sir, but I may be tempted to adopt the two-thirds ratio. But, sir, I am determined to do justice as far as I can in this matter, as my votes have already indicated. The county I represent, sir, is not one that is likely to be affected by any system of ratio that is likely to be adopted. There are nearly three thousand polls in my county, so that we shall always most probably be entitled to a Representative.

If gentlemen will fix the votes upon the basis of population, they will find that in a few years this matter will come right. Population in the progress of time will diffuse itself equally over the State. Because, sir, this is an agricultural State and all portions of it have a good soil calculated to invite population; and those counties which are the weakest in the State at present will become the strongest in a few years. The progress of population in the State, if gentlemen will take population as the basis of representation, will give the necessary number of representatives to represent the State fairly. The proper mean to strike upon, I think, is one hundred, and when the population of the State is more dense that number will be ample to represent it correctly. The correct number of representatives I conceive to be fifty to the Senate and one hundred to the House, and the increase of population in the progress of time will, remedy any inequalities which may exist at present under this arrangement.

Mr. CLARK of Tippecanoe. MR. PRESIDENT, I come from a large county, yet I have been voting to give to each of the small counties, as far as possible, a representative as they do not seem to be desirous of having the number reduced.

But, sir, I cannot vote for the proposition of the gentleman from Lagrange (Mr. Howe). My county which has three thousand two hundred and forty-eight polls lies alongside of the county of Benton which has two hundred and fifty-six polls, and adjoining that county is the county of Jasper with six hundred and forty-five polls. If I give to each of these counties a representative they, with one quarter of the population in my own county, will be entitled to twice as many representatives, and I cannot consent to such injustice. I do not think the principle is at all correct.

A gentleman over the way, sir, has stated that territory and not population is the true basis of representation. Now we have a vast desert prairie on the Western border of the organized States of the Union devoid almost entirely of population; does any gentleman say that that desert should be represented in Congress without population. Why should that desert be represented independently of population? There is no fairness, sir, nor justice in such a system of representation. I am willing to share the number of representatives, fixed at one hundred, so as to accommodate the smaller counties as much as possible; but when I am asked to sacrifice the rights of my constituents in order to accommodate the interests of other portions of the State I think it is asking too much. I cannot go so far, it is an unequal and unfair proposition.

Mr. HELM moved to lay the amendment to the amendment, offered by the gentleman from Kosciusko (Mr. Garvin), on the table.

A division being called for the question was taken and decided in the affirmative—yes fifty-two, noes not counted.

So the amendment to the amendment was laid on the table.

Mr. STEVENSON. As I think members have made up their minds definitely on this matter I call for the previous question.

The PRESIDENT. The question is, will the Convention second the demand for the previous question?

The demand was seconded.

The PRESIDENT. The question is, shall the main question be now put?

It was so ordered by consent.

The PRESIDENT. The question will now be taken upon the adoption of the amendment offered by the gentleman from Lagrange (Mr. Howe).

Upon this question Mr. BORDEN demanded the yeas and nays, and they were ordered and taken with the following result—yeas 48, nays 76:

Those voting in the affirmative were,

Messrs. Alexander, Allen, Anthony, Bicknell, Borden, Brookbank, Chandler, Crumbacker, Dick, Dunn of Perry, Edmonston, Foster, Garvin, Gootee, Graham of Miami, Harbolt, Hogin, Howe, Huff, Kelso, Kendall of Wabash, Kendall of Warren, Lockhart, March, May, McClelland, Miller of Fulton, Miller of Gibson, Milroy, Moore, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Robinson, Sherrod, Smiley, Smith of Scott, Steele, Tague, Tannehill, Taylor, Trimble, Walpole, Wheeler, Work, Wunderlich, Mr. President—48.

Those voting in the negative were,

Messrs. Badger, Barbour, Beard, Berry, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Davis

of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Elliott, Farrow, Fisher, Gibson, Gordon, Haddon, Hall, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Johnson, Jones, Kent, Logan, Maguire, Mather, McFarland, McLean, Mooney, Morgan, Morrison of Marion, Nave, Newman, Niles, Owen, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Thomas, Thornton, Todd, Wallace, Watts, Wiley, Wolfe, Yocum, and Zenor—76.

So the amendment was rejected.

The question then recurring upon the adoption of the amendment of the gentleman from Decatur (Mr. Foley) to the amendment of the gentleman from Jennings (Mr. Prather), submitted on the fifth instant—

Mr. ROBINSON asked for the yeas and nays on the question.

The yeas and nays were ordered, and taken with the following result—yeas 56, nays 65:

Those voting in the affirmative were,

Messrs. Badger, Barbour, Beard, Borden, Bourne, Butler, Coats, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Fisher, Foster, Gibson, Gordon, Haddon, Helmer, Holman, Howe, Huff, Kelso, Logan, March, McClelland, McLean, Morgan, Nave, Newman, Pepper of Ohio, Rariden, Read of Clark, Ristine, Robinson, Schoonover, Shannon, Sherrod, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimble, Walpole, Watts, Wolfe, Work, Yocum, Zenor, and Mr. President—56.

Those voting in the negative were,

Messrs. Alexander, Allen, Anthony, Berry, Bicknell, Blythe, Bowers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Dobson, Edmonston, Elliott, Garvin, Gootee, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hitt, Hogin, Hovey, Jones, Kent, Kendall of Wabash, Kendall of White, Lockhart, Maguire, Mather, May, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Niles, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Wallace, Wheeler, Wiley, and Wunderlich—65.

So the amendment to the amendment was rejected.

The question then being upon the adoption of the amendment of the gentleman from Jennings (Mr. Prather)—

The yeas and nays were demanded, and being ordered were taken with the following result—yeas 64, nays 58.

Those voting in the affirmative were:

Messrs. Allen, Badger, Beard, Berry, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Chap-

man, Chenowith, Conduit, Crawford, Davis of Madison, Davis of Parke, Dick, Dunn of Jefferson, Duzan, Farrow, Hall, Hamilton, Helm, Hendricks, Holman, Hovey, Huff, Johson, Kelso, Lockhart, Logan, Maguire, May, McClelland, McLean, Miller of Gibson, Milroy, Moore, Morrison of Marion, Nave, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Monroe, Robinson, Schoonover, Shannon, Smiley, Snook, Steele, Stevenson, Tague, Todd, Trimby, Elliott, Wallace, Walpole, Watts, Wiley, Zenor, and Mr. President—64.

Those voting in the negative were,

Messrs. Alexander, Anthony, Barbour, Bicknell, Borden, Brookbank, Carr, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dobson, Dunn of Perry, Edmonston, Fisher, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Harbolt, Hardin, Helmer, Hitt, Hogin, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, March, Mather, Miller of Fulton, Mooney, Morgan, Niles, Read of Clark, Ristine, Ritchey, Sherrod, Smith of Ripley, Smith of Scott, Spann, Tannehill, Taylor, Thomas, Thornton, Wheeler, Wolfe, Work, Wunderlich, and Yocum—58.

So the amendment was adopted.

The question then being, shall the section as amended, be engrossed for a third reading. The yeas and nays were demanded and being ordered, were taken with the following result—yeas 73, nays 51:

Those voting in the affirmative were,

Messrs. Alexander, Allen, Anthony, Badger, Beard, Berry, Bicknell, Blythe, Borden, Bowers, Bracken, Brookbank, Bryant, Butler, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Edmonston, Farrow, Graham of Miami, Hall, Hamilton, Harbolt, Helm, Hendricks, Hitt, Hovey, Jones, Kelso, Kent, Kendall of Wabash, Lockhart, Maguire, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Monroe, Ritchey, Snook, Smith of Ripley, Smith of Scott, Steele, Thornton, Todd, Elliott, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Zenor—73.

Those voting in the negative were,

Messrs. Barbour, Bourne, Carr, Coats, Conduit, Cookerly, Crawford, Dunn of Jefferson, Dunn of Perry, Duzan, Fiser, Foley, Foster, Garvin, Gibson, Gootee, Haddon, Hardin, Helmer, Hogin, Holman, Howe, Huff, Johnson, Kendall of Warren, Logan, March, Mather, McLean, Milroy, Morgan, Nave, Pepper of Ohio, Read of Clark, Ristine, Robinson, Schoonover, Shannon, Sherrod, Smiley, Spann, Stevenson, Tague,

Tannehill, Taylor, Thomas, Trimby, Walpole, Watts, Yocum, and Mr. President—51.

So the section was ordered to be engrossed for a third reading.

ADJOURNMENT.

Mr. McFARLAND moved that the Convention adjourn until Monday morning nine o'clock.

Upon a division, the motion was not agreed to—yeas 49 nays 52.

Mr. HARDIN moved that the Convention adjourn until two o'clock P. M.

The motion was not agreed to.

The third section of No. 12 was then taken up for consideration, on its second reading. It is as follows:

“Senatorial and Representative districts—where more than one county shall constitute a district—shall be composed of contiguous counties; and no county for representative purposes, shall ever be divided.”

Mr. RITCHEY said, as I do not suppose the members of the Convention are desirous of having a speech inflicted upon them at this late hour of the morning session, I move that the Convention do now adjourn.

Mr. KELSO moved to amend the motion of the gentleman from Johnson, (Mr. Ritchey,) by adding the words “until Monday morning, eight o'clock.

Mr. GRAHAM of Warrick, asked for the yeas and nays upon the question, and

The yeas and nays were then ordered and taken, with the following result—yeas 39, nays 67.

Those voting in the affirmative were,

Messrs. Allen, Barbour, Berry, Bourne, Bryant, Carr, Chapman, Conduit, Cookerly, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Elliott, Gibson, Graham of Miami, Hendricks, Hitt, Kelso, March, May, McFarland, Milroy, Niles, Pepper of Ohio, Prather, Rariden, Read of Monroe, Robinson, Smith of Scott, Spann, Steele, Taylor, Thornton, Walpole, Wheeler, Wiley and Mr. President—39.

Those voting in the negative were,

Messrs. Alexander, Anthony, Badger, Beard, Blythe, Borden, Bowers, Brookbank, Butler, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Crawford, Crumbacker, Davis of Parke, Dunn of Jefferson, Farrow, Fisher, Foster, Garvin, Gootee, Haddon, Hall, Hamilton, Hardin, Helmer, Hogin, Holman, Howe, Huff, Johnson, Kendall of Wabash, Kendall of Warren, Lockhart, Logan, Maguire, Mather, McClelland, McLean, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morgan, Nave, Newman, Pepper of Crawford, Ritchey, Schoonover, Shannon, Sherrod, Smiley, Snook, Stevenson, Tague, Tannehill, Thomas, Trimby, Wallace, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—67.

So the amendment was rejected.

Mr. RITCHEY moved a call of the Convention.

The motion was agreed to.

The roll having been called through by the Secretary

Mr. NAVE moved to dispense with further proceedings under the call.

Upon this question a division was asked for, and it resulted as follows—ayes 45, noes 45; and the President voting in the affirmative, the call was dispensed with.

The question then recurring on the motion of Mr. Richey to adjourn, it was decided in the affirmative.

And the Convention adjourned until two o'clock.

AFTERNOON SESSION.

The Convention proceeded to the consideration of the third section of the report from the committee on the Legislative department, as follows:

"Senatorial and representative districts (where more than one county shall constitute a district) shall be composed of contiguous counties, and no county, for representative purposes, shall ever be divided."

Mr. DUNN. I move to amend the section by inserting the words "or senatorial," before the word "representative," in the last line, so as to make it read "and no county, for senatorial or representative purposes, shall ever be divided." I would beg leave to say a single word in explanation of this amendment. It will be seen by reference to the section, that it provides that no county shall be divided for representative purposes. The word "representative" is used to apply exclusively to the lower House. I think the words "senatorial or," should be added so as to prevent the Legislature from ever dividing a county either for representative or senatorial purposes.

The question was then taken on the amendment, and it was adopted.

Mr. STEVENSON. I move to amend the section by striking out all after the word "districts" in the 11th line, and inserting what I send to the Secretary's desk. The section as I propose to amend it, would read, "Senatorial and representative districts shall be single, such districts to be bounded by county, precinct, or ward lines, to consist of contiguous territory, and be in as compact a form as practicable. Provided that parts of different counties shall not be attached in the formation of said districts."

Mr. KENT moved to lay the amendment on the table, but at the request of Mr. Stevenson he withdrew the motion.

Mr. STEVENTON. I trust that this amendment will not be disposed of hastily, for I look upon it as one of considerable importance. It provides that representative districts shall be single. When a county is entitled to two or

more representatives it shall be divided into as many districts, each electing a representative.

It is only by single districts that a just accountability can be secured from the representative to the constituent. A few populous townships in a county, a large town, or a few active managing politicians but two frequently control the election of all the representatives of the county; and the representatives consequently feel themselves accountable to those who elect them. But to show more clearly that a just accountability can only be secured by single districts, let us suppose that the county of Marion and Hendrix were united for representative purposes, and that the two counties jointly were to elect two or more representatives. Now, Marion being the largest county could, and probably would, elect all the representatives. The representatives consequently would feel themselves accountable to the people of Marion county; and Hendricks would be deprived of her just influence in the Legislature, to the neglect of all the just interests of the county. Now, sir, the case is precisely the same in the large counties where they elect more than one representative without being 'districted into single districts, a few townships are apt to control the elections to the injury of the smaller townships. But the elections are still more apt to be controlled by the county seats, where a few men reside who make politics a trade, and the representatives feel themselves accountable always to those by whom they are elected. Now, sir, I hold that it is just to the different portions of the large counties, that they should be divided into "single representative districts." It is due to a just and proper accountability of the representative to his constituents, that the counties should be divided into "single representative districts" whenever they may be entitled to more than one representative.

In the election of representatives to Congress, the single district system is acknowledged to be correct, and the old plan of electing by States is universally discarded; single districts obtain in the election of Senators to the State Legislature. The principle is correct and should be adopted; there can be no objection to it; there is nothing wrong about it. It has been adopted by several of the States as a constitutional provision. The following is the provision of the Constitution of Wisconsin:

"The members of the Assembly shall be chosen annually by single districts, on the Tuesday succeeding the first Monday in November, by the qualified electors of the several districts, such districts to be bounded by county, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable."

In the amendment that I have offered, it is provided that parts of counties shall not be attached in the formation of representative districts.

But Wisconsin is not the only State that has adopted a similar provision. New York has done the same; here is their Constitutional provision on the subject :

"The members of the Assembly shall be apportioned among the several counties of the State by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens and persons of color not taxed, and shall be chosen by single districts."

This proposition is not new. It has been adopted by other States, and is one of the improvements of the times; and I trust gentlemen will not hastily dispose of it, but give it that consideration that it deserves.

This, sir, is an age of improvement, not only in the arts and sciences, but in government also. It is to meet the improvements or advances of the age that has called this Convention. The improvements in the science of government does not consist of the number of restrictions that may be placed on the people, but in removing them, and enabling the people the better to govern themselves. The improvements, in my opinion, that we are mainly called upon to make, are to be found in the three great divisions of the power of government—the Legislative, the Executive, and the Judicial. As you improve these you better enable a free people to govern themselves. Great reforms are contemplated in the judicial department and I trust they will be carried out. Judges hereafter are to be elected by the people, and other very important reforms are contemplated in the practice in courts of justice. The executive department is also being improved. This Convention has already determined that all executive officers shall be elected by the people and that they shall serve but short periods.

The Legislative department should also be to the improvement of the age. The people should be enabled to elect, directly their own representatives, and they should be held directly accountable to the district that elect them. Under the plan proposed by the committee, this will not be done, and can in no other way be so well effected as by single districts.

Mr. WOLFE would ask the gentleman from Putnam (Mr. Stevenson) whether he proposed to divide counties into districts where a county sent more than one member?

Mr. STEVENSON. Certainly.

Mr. BORDEN. If I understood this proposition, it is that where a county sends two or three members to the House of Representatives, the Legislature may cause such county to be divided into so many districts, as there are members to be elected—that they may either divide it themselves, or cause the county board to divide it. I think the principle is a correct one, and I should be glad to see it adopted. If the Convention is not prepared to say that it shall be so, we might at least leave it with the

Legislature to adopt such a principle if they should think it advisable to do so. Then the person elected to a seat in the Legislature will be accountable to the people of the immediate district for which he is elected.

Mr. NAVE. So far from agreeing with this proposition, I must say that the idea of dividing counties for representative purposes seems to me to be proposterous. It would create a division in each county that has more than one representative. I believe, sir, that the only way to obtain a fair representation in reference to territory, is that each county should send one member, at least, to the Legislature. This would supercede all the difficulty which gentlemen seem to apprehend in those counties which send more than one representative. I am decidedly opposed to representation in the Legislature being based on mere territory; but if gentlemen desire to have the representation confined to certain limits, and that the State should be represented by certain designated territories, the true policy, in that case, would be to let every county in the State have a representative. The proposition of the gentleman from Putnam (Mr. Stevenson) can never effect what he designs to effect by it. It can never have any other effect than to create county factions and county difficulties which must be forever entailed upon the counties of Putnam, Monroe and others, sending more than one representative to the Legislature. I am, therefore, opposed to the amendment.

Cries of "question, question."

Mr. STEVENSON. The amendment I have proposed is precisely the provision which is found both in the Constitution of New York and that of Wisconsin, with this exception, that I have added a provision that parts of counties shall not be added to each other in forming districts. With that exception, I have copied verbatim, the same provision which exists in the Constitutions of both the States I have mentioned.

Mr. JOHNSON moved to lay the amendment on the table; and upon a division—ayes 43; noes 39—the motion was agreed to.

Mr. ROBINSON moved to amend the section by adding the following proviso: "Provided that each county shall be entitled to one representative."

Mr. BORDEN. I move to amend the amendment by striking out all after the word "provided," and inserting the following:

"That any county having two-thirds or more, of the ratio of representation, shall be entitled to elect one member of the House of Representatives."

Mr. STEVENSON. I move to lay the amendment and the amendment to the amendment on the table.

Mr. BORDEN. Then I will ask the yeas and nays.

The yeas and nays were ordered and taken as follows:

AYES.—Messrs. Badger, Beard, Berry, Bourne, Bowers, Bracken, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Duzan, Elliott, Farrow, Fisher, Haddon, Hardin, Hogen, Holman, Hovey, Johnson, Jones, Kent, Logan, Maguire, McLean, Mooney, Morgan, Morrison of Marion, Nave, Newman, Niles, Rariden, Read of Clark, Ritchey, Schoonover, Shannon, Snook, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, Wolfe, and Mr. President.—56.

NAYS.—Messrs. Alexander, Anthony, Bicknell, Blythe, Borden, Brookbank, Bryant, Butler, Carr, Chandler, Colfax, Dick, Dobson, Edmonston, Foster, Garvin, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Helm, Helmer, Hendricks, Hitt, Howe, Huff, Kelso, Kendall of Wabash, Kendall of Warren, Lockhart, March, Mather, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Pepper of Crawford, Read of Monroe, Robinson, Sherrod, Smiley, Smith of Ripley, Smith of Scott, Spann, Steele, Tague, Trimble, Walpole, Wheeler, Work, Wunderlich, Yocum, and Zenor.—55.

So the amendment and the amendment to the amendment were laid on the table.

MR. STEVENSON. I move to strike out the words "or representative;" and that will leave the matter discretionary with the legislature hereafter, whether they will divide the counties or not.

THE PRESIDENT. The Chair would inform the gentleman from Putnam that his amendment is not in order, these words being part of the words which the Convention, a few minutes ago, refused to strike out.

MR. LOCKHART offered the following proviso, to be added at the end of the section:

"Provided that any county having two-thirds or more of the ratio of representation, shall be entitled to a Representative."

SEVERAL MEMBERS. That has been voted down already.

The question being taken on the amendment, it was adopted—ayes 55, nays 46.

MR. KELSO. I move further to amend the section by adding the following proviso:

"Provided, further, that the Legislature shall have the power to transfer the residuum due in large counties, to small counties adjoining, for purposes of representation."

I am requested to explain what I intend by this proviso. It is this: Supposing that, by the time we will have the present Constitution adopted by the people—if that should ever happen—there should be in the State, two hundred thousand voters, for a hundred Representatives; that would give two thousand polls to each Representative, or for the ratio. Now, take two

counties adjoining each other, and say that one of them has two thousand five hundred voters, and that the next county may lack one, two, or three hundred of coming up to the ratio. What, I ask is, that the Legislature shall have the power to transfer the benefit of the overplus of the ratio in the large county to the smaller one, so as to entitle it to a Representative.

MR. MILLER. I move to lay the amendment on the table.

The motion was agreed to.

MR. DUNN of Jefferson. Is it in order, now, Mr. President, to move to strike out the whole section?

THE PRESIDENT. It is.

MR. DUNN. Then I move to strike out the section as amended, and insert in lieu thereof, a section, which I will send to the Clerk's table, which is, in effect, the same as the one originally reported by the committee. I make this motion for the reason that, after we had voted down, by yeas and nays, the proposition to allow a Representative to every county having two-thirds of the ratio of representation, the same proposition is suddenly sprung upon us in another form, and carried. The yeas and nays were not called on the second vote, and I must believe that the question was not understood by the Convention. Now, sir, I feel that it is desirable that every county in the State, should, as far as practicable, have a Representative in the popular branch of the Legislature. I shall, therefore, when the section providing that the Senate shall not consist of less than fifty members, and the House of not less than one hundred members, comes up on its third reading, move to refer it back to the committee which reported it, with instructions to report a section, providing that the Senate shall consist of not more than thirty-five members, and the House of Representatives of not more than one hundred and fifteen members; by that means giving a greater number of counties each a Representative in the lower branch of the General Assembly. I hold it to be the true democratic doctrine, that the people are to be represented in the General Assembly, and not territory. Suppose the ratio of representation is so fixed that every fifteen hundred voters shall be entitled to a Representative; then, under the two-thirds rule, a county having a thousand voters, would be entitled to a Representative, while another county, having fifteen hundred voters would be only entitled to one Representative. Is this fair? We all enjoy the protection of the same laws,—we share alike the burdens of taxation; then let us all stand upon the broad basis of equality, and share equally in the legislation of the State.

MR. KELSO. The gentleman from Jefferson, (Mr. Dunn,) is very liberal in his professions of liberality to the smaller counties. I wish he were equally as liberal in his acts and votes.

He is perfectly willing to do all that he can to give them a representation, provided that they do not get it. [Laughter.] That is just the length that he goes, and there he stops, and I am sorry to say that there are too many gentlemen on this floor who are like him.

Now, sir, the large counties with a small population, are entitled to more consideration in this Convention, than they seem likely to receive. You take a county north, with perhaps six, eight, or ten hundred voters in it at the present time, and with from four to five hundred square miles of territory, with every possible inducement for people to settle there, and I believe that, within a very short time, the population will double its present number; and yet you so arrange it that, under the new Constitution, they cannot get their fair share of the representation. There is not a single question that arises in the Legislature, which gives rise to more vexatious discussion than this question of apportioning the State for representative purposes; and of the truth of this assertion I know that I may appeal to the President for his testimony. Now, if we could have it as it is now, that there should be a Representative from each county, we would save all that difficulty, and the immense expense, and trouble, and vexation that has, every five years, occurred in the Legislature, ever since we had a government. I say that there is no good or substantial reason that can be urged, why a county with three thousand voters, is any better entitled to two Representatives, than one with fifteen hundred voters. If we were going to continue the old mode of legislation, as I once before remarked, that every county, and perhaps every township, should have its separate laws, and that there should not be in two counties, on the same side of a creek, two laws alike, in regard to the regulation of county business, then there would be some propriety in contending for a large number of Representatives in each county. But as the matter is now, as it is the intention of the Convention to place a barrier between the Legislature and the people, so that there shall not be this special and local legislation, that has distracted the State for years, and heaped upon us burdens of taxation for no good purpose; then, sir, the argument fails, and the reason of that provision has ceased, and the force of it has ceased. One man can represent a county with three thousand voters, just as well as he can represent a hundred men. Where, then, is the use of contending for a large number? There is one single reason, and that is just such a one as every member on this floor has taken great pains not to mention: In the election of United States Senator—for beyond that it cannot go, if we adopt the principle that the people shall elect all the officers of the State—in the election of United States Senator, while the mode of election continues as it is now, there might be some reason for contending for it. If

Wayne county should continue to send four whig Representatives, she would have four whig votes; and if Marion county should retain her three Representatives, she would give three democratic votes. Upon that score there may be some reason to contend for a large number of Representatives; but even in that matter it is by no means unfair to say that each county should have one vote. Some gentlemen appear to be extremely wedded to the people just now. Everything must be measured by the population. Now let us see if we have not a precedent on this subject, somewhat different from the principle here contended for. In the organization of the General Government, they have based one side on the representation of the population, and the other side upon territory. The little State of Rhode Island, with as much territory as would make a tolerable potato-patch, has her two Senators, while the great State of New York, with ten times more territory, and population too, has only the same number of Senators. Thus, then, we see that one branch of the General Government is regulated by territory, while the other is based upon population. Now, will any man deny that that is a wholesome foundation on which to base representation? No, sir; long experience has furnished too strong testimony in favor of that principle. Now can there be any danger in changing that mode, so as to fix the basis of the apportionment for the Senate of Indiana, on the population, and that of the House of Representatives on territory? If that be a good organization of government, and one that has been found to work well for three-quarters of a century, to base one portion of the National Government on territory and the other on population, why may not the same thing answer in the State of Indiana, only reversing the difference between the Senate and the House of Representatives?

Now there is a plan which occurs to me that has not yet been proposed, and which, so far as I can judge, is better than any that has yet been offered. It does not originate with me, but I will mention it; and that is, that the State should be divided into fifteen Senatorial districts, based on population; or, if gentlemen are determined to have fifty Senators, then say twenty-five Senatorial districts, based upon population as nearly equal as possible without dividing the counties, and in each district let two Senators be elected. Then if there be contending local interests, you will have each fairly represented. By that means you would secure the Senate in such a way as many gentlemen contend for. Then let each county have one Representative, fixing the ratio, if you please, at two thousand votes, and let the surplus over that amount go to the small counties. That kind of plan would be more just. Whether it will succeed here or not, I am not prepared to say; but, as the matter stands now, I contend that it is a nearer approach to justice than

any plan which has yet been proposed to this body.

The gentleman from Jefferson (Mr. Dunn) has complained that this question has been sprung upon the Convention again after it has once been voted down; but he will find that, so far from this being a just matter of complaint, it is the result of calm and deliberate reflection, and a righteous determination to do that which is right in the eyes of all the people.

Mr. DUNN of Jefferson. I always regret, Mr. President, to be under the necessity of addressing the Convention. We have so much to do, and as yet have accomplished so little, that I feel disposed to contribute at least my *silence* to the dispatch of business. But the gentlemen from Allen and Switzerland have alluded to me so directly in their remarks, that I must crave the indulgence of the Convention for a few words in reply. Before gentlemen are so very liberal in their imputations of interested motives to others, it might, perhaps, be quite as well for them to turn the glass the other way, and examine their own hearts to ascertain whether they are totally disinterested in urging the claims of the small counties in this State to such peculiar and important privileges. I have advocated the propriety of basing your representation upon population and not upon territory, not because I happen to be a delegate from one of the most populous counties of the State, but because I believe that to be the only fast and firm basis of representation. I hold that a man should be a man in any county of the State, and in no county the mere fraction of a man. I can see no justice in allowing two men in one county the same influence in the Legislature of the State as three men in another. I have no interested motives in this matter whatever. I know very well that many of the counties in this State which are now but sparsely inhabited, will soon be occupied by a large population, and were I to regard exclusively the interest of that part of the State in which I live, I should vote exactly the reverse of the vote I intend to give. I know that the southern part of Indiana is not increasing in population as rapidly as the northern, and that, in a few years the portion of the State that will control its destiny will not be the centre and the south, but the great north; and as I have said on a former occasion, I care not how soon the north obtains that control, provided she obtains it on that basis which places every voter in the State on an equality as to his political rights.

The gentleman from Switzerland (Mr. Kelso) says, that in a county which has four members in the General Assembly, one voter counts as much as four voters in a county having but one representative. That is not the case; or if it is, I should like to have explained the rule of arithmetic by which it is found. It is true, five thousand voters in the county of Wayne may have five representatives in the Legislature, but

the same number of voters in any other part of the State have the same number of representatives. Four counties having a thousand voters each, may separately elect their four representatives, and their representatives thus elected have the same influence in the Legislature, so far as their votes are concerned, as the four representatives elected by the same number of voters in the county of Wayne. According to the multiplication table I learned, four times one counted just as much as one time four. Even at the two-thirds ratio, many of the counties in the State will not be entitled to a separate representation. We cannot establish any ratio of representation that will suit exactly the division of our population by county lines. There will be fractions above as well as below the ratio, and where they are not large they should be disregarded in both cases. Where, however, it is impossible for us to arrive at the exact line of equality, it is our duty to approximate it as nearly as possible. I have been surprised that gentlemen on this floor should so pertinaciously insist that every county, without regard to population, should have a separate representation. Such a provision, unless the number of representatives is increased beyond any number yet suggested, would give to such a county as Benton, having but two hundred voters, the same power in the legislation of the State as a county with ten times her population. Such a system of apportionment would be as detestable as the rotten-borough system of England.

Some gentleman has referred to Sir Robert Peel's borough of Savren, which sent two members of Parliament to represent an empty pig-pen, and I think, sir, we shall entitle ourselves to a place in a pig-pen whenever we adopt so unjust and unfair a system of representation as that which has been so earnestly advocated by the gentleman from Switzerland and others.

Sir, I understand it to be the true democratic doctrine that the will of the majority, under such constitutional restraints as may be reasonably imposed, should be the controlling will in a State. And when I speak of a majority I refer to men, citizens of the State, and not to acres of land, whether they be acres of wood land, prairie land, or "land covered with water." Under any other system, to say nothing of ordinary legislation, in the election of a United States Senator the acres might triumph over the men of the State. I trust, sir, that no basis of representation will be adopted that does not regard the people as the source of all power.

Mr. DOBSON. I had no anticipation that this question would have been agitated this afternoon; but as it is up, I will say a single word. I am not willing to depart far from the well-established rule of "taxation and representation;" yet, as we cannot possibly arrive at

exact justice, I have always been willing that a county having two-thirds of the ratio of representation should be entitled to a representative in the Legislature. There are, however, some counties with but a small number of voters; and it would be unfair to give them a voice in the Legislature, when, by so doing, you would deprive some of the large counties of two-thirds of their representation. I think the section is as good as it can be; and I hope it will be allowed to remain as it is.

Mr. MORRISON of Marion. I supposed, this morning, when we passed the section providing for fifty senators and one hundred representatives, that we had established a great and important principle, alike permanent and proper. But, from the many attempts to disturb that decision, and the success which has seemingly attended the effort, even to carrying an amendment directly in collision with our previous action, I am now doubtful as to what is the real sense and intention of the Convention. The gentleman from Switzerland (Mr. Kelso) is not content with the vote which ordered the section to be engrossed, but still presses his attempts to effect a change. By perseverance, or accident, or inattention, together with a thin attendance of the members, he is in a fair way to succeed with his proposition. This proposition I consider as injurious to the people of the State. It violates every well-settled and correct rule of legislation—every republican right. If the small counties be permitted to have the same voice in the halls of legislation as the large counties, you directly establish the principle that the minority shall govern the majority.

That, sir, is the practical effect of the proposition of the gentleman from Switzerland. There are ninety organized counties in the State, and the number of representatives will probably be one hundred, such yet being the decision of the Convention. Suppose each county gets a representative, thus; ninety of the hundred would be disposed of, and ten representatives would remain to be distributed among the whole number of counties in the State. What would be the operation under this rule? There are in Indiana fifty-two counties containing over two thousand polls, and thirty-eight counties containing less than two thousand polls. Now, let me inquire which of the fifty-two large counties are to be permitted to take an additional representative out of the ten which remains after giving one to each of the several counties, large and small? Which of the forty-two large counties are to have but one representative? How can this ratio be made to work equitably? How can you satisfy the people of the counties that get but one member of the correctness of such a division. Ten members are to be divided into fifty-two counties. What a field for contention—for arrangement—for trade and barter—if even corruption be

avoided. A general scramble must decide the result, and the ten members be set apart by chance, or some other equally uncertain mode. Wayne and Marion, and possibly Jefferson counties, would probably get two representatives and a senator each; but the balance of the counties would have to contend in a sort of general scramble for the other seven or eight members.

The gentleman from Switzerland county has instanced the organization of the Senate of the United States, as being based upon territory regardless of population. I look upon the Senate of the United States as being organized upon a very different principle, affording no parallel case, and therefore an unfortunate illustration. I hold, that, in the structure of the Government of the United States, the Senate was created as the power peculiarly fitted and requisite to guard and protect the sovereignty of the several States, they being, in all respects, equal, so far as the attribute of sovereignty is concerned. The Senate of the United States is endowed with diversified powers; these powers go far beyond a mere legislative power. In one sense, the Senate may be considered as partially executive, so far as it controls executive appointments, or advises and consents to the diplomacy of the Government, and in the sanction of executive action and the ratification of treaties. They are an entirely different body from the representative body, and that difference is so apparent, that I consider it unnecessary to go into further comparison, or to pursue that branch of the subject at greater length. I would in reply ask the question: Upon what basis is the House of Representatives of the General Government established? Certainly upon population, and not upon territory. The representatives of that population are there to protect and guard the special interests of their local constituency, as well as to legislate for the general welfare. They relieve the Senate from the detail of local business, and afford senators more opportunity for studying and acting upon objects of a more national character. But enough on this head; for it must be apparent, that the basis of representation in the Government of the United States is population instead of territory.

By the report of the Auditor of State, we see that the number of polls in the State is a little short of one hundred and eighty-seven thousand. If we adopt, as a ratio, four thousand polls for a senator, and two thousand polls for a representative, it will give forty-six senators and ninety-four representatives. It is probable that the real number of votes within the State proper very nearly to two hundred thousand, because the poll list exempts all persons over fifty years of age. Should this estimate be correct, then the number of fifty senators and one hundred representatives will be a very appropriate number, predicated on the ratio above

suggested—four and two thousand. As counties increase in population, their relative weight in representation will increase. Those which have wild lands and good soil will settle densely, and at each State census take their position in the legislative halls; but I cannot assent to the idea that forests and swamps, mountains and cliffs, trees and stumps, an unimproved country in a state of nature, shall claim and have the same amount of representation in the Legislature, that is given to a county containing a dense agricultural and commercial community, having great interests in the mechanical, agricultural, and commercial way to foster, watch over, and direct. We legislate for the people, not for the hills and the valleys, the stocks and the stones. The great interests of the people are to be guarded from all improper contingencies and influences. It is not right to give to a small county an equal voice with a large county in levying taxes, in controlling property, or in electing a United States' Senator. Every man should have an equal voice in the councils of the State. This proposition gives to a man in White county, or in any other small county, a greater weight of influence than it gives to a voter in any one of the larger class of counties. By its operation, two men, in the counties having a population of two-thirds of the regular ratio, are to be made equal to three men in the large counties. The large counties will certainly consider this an unjust division of power. They will not relish a law that discriminates so much to their disadvantage. It is manifestly unequal; and my doctrine is, that we should look to the old rule of equal taxation and equal representation.

I have already expressed my belief that even a smaller number of senators and representatives would conduce to the public benefit; and I here give notice, that, if I can find an opportunity of probable success, I am quite ready to go for a reduction of the Senate, so that it shall not consist of more than thirty-five members.

Mr. MURRAY said, that it appeared to him that it was necessary that the various interests of men should be represented, rather than their mere number. The same law that would protect ten men of any class of society, would equally protect a hundred. If there were ten merchants or a hundred merchants, the same law that would protect the ten would protect the whole. It would seem to him that any county having all the various interests of a county to represent, should be entitled to one representative. It appeared to him also that in giving so many representatives to the large counties and none at all to the others, there was a manifest injustice in many points of view, and especially in regard to the election of a United States Senator.

However, he had not risen to speak upon the subject, but rather to make an apology to his

colleague for having spoken in a manner, in the early part of the day, in which on calmer reflection, he felt he ought not to have done. He hoped the apology would be accepted.

Mr. READ of Monroe. It is now a settled point—settled against my convictions as to what is best—that we are to have one hundred and fifty men to constitute the General Assembly; and the only question which now remains is, how this body of men shall be divided so as to accommodate the large counties and the small counties, and so as to make the best possible General Assembly, in order to secure wise and good Legislation.

It is my opinion if we make the House of Representatives to consist of one hundred and fifteen members, and the Senate of thirty-five, we shall thereby best secure the interests of the small counties without injury to the large ones; and to those gentlemen who represent small counties, I pledge myself, whenever the gentleman from Jefferson (Mr. Dunn) moves to re-commit the section, I shall vote for its re-commitment. What do we accomplish by the arrangement he proposes? Why almost every county in the State will be represented. And what else do we accomplish? While we shall have every locality in the State represented, we shall also have a conservative body in the Senate, consisting of thirty-five men, who will represent larger districts of the State, and I may here remark that this is the division which obtains in all the States. I mean that the proportion between the two bodies is much greater than exists under the present Constitution in the State of Indiana. It is known that in the State of Massachusetts, where there are six hundred members in the House of Representatives there are but forty in the Senate; and in the State of New York the Senate consists but of thirty-two members, while the House of Representatives consists of one hundred and twenty-eight. In the State of Ohio, it is proposed to increase the House of Representatives which heretofore has consisted of seventy-two members only, and to diminish the Senate. In that plan of apportionment which was sent to our table from the Ohio Convention, and which has been regarded as one of the best plans ever prepared in the United States, it is proposed that the Senate shall consist of but thirty members; and I believe that by adopting a division of Houses somewhat similar, as we shall do by accepting the proposition of the gentleman from Jefferson, we shall best meet the views and wishes of the people of Indiana, and have a far better General Assembly than could be constituted by the numbers of fifty in the Senate and one hundred in the House. Look at the Senate of the United States. There are but sixty members in that body, while the House of Representatives consists of two hundred and thirty. It seems to be a settled principle in constituting the different Legislatures.

of the United States, that the Senate should be a comparatively small body, while the House should consist of such a number as should represent the local interests of the various portions of the State.

The very reason why we have had so much local legislation in Indiana, is found in the fact that both Houses represent small districts, and in many cases the very same constituencies.

Mr. NAVE. I have sat here and listened very patiently, while gentlemen propounded their reasons on which they predicated their notions of representation. Some have gone so far as to state that their notions are founded, not upon population but upon the representation of territory without population. I have always understood that the rule and the only reason given for representation as connected with taxation, was population, and that where there was no population to represent and no people to pay taxes, there was no need of representation, because there was nobody to be represented. But, sir, we have heard a different doctrine advocated on this floor. We have heard it urged that, although there may be no persons living in a certain territory, although there are no persons there to pay taxes, yet that that territory shall be entitled to a representation in the Legislature of the State of Indiana. Sir, such a proposition seems to me to be in direct opposition to the very first principles of government. I, for one, rise to inform this Convention that I cannot sit still and suffer my constituents to be taxed to pay for a representative in a different county in the State. It would be unjust that a county having eighteen hundred votes should have a larger portion of them transferred to another county with a less number, and that the constituency I represent on this floor should be compelled to contribute to the per diem pay of such a representative.

Sir, let me ask, is there any principle of justice in this? None whatever; and I hope that the gentlemen who have been standing on this floor voting for an increase of representatives equal to that which we had under the old Constitution, have now seen that they have burned their fingers, and carried their project too far; and that if they will come back and stand up with their humble servant we can bring the rest back in short order; we can at least reduce the number of the Senate to thirty, and thereby save the State several thousand dollars annually. If gentlemen will only come up we can establish the principle that we wish to represent MEN and not TREES and PRAIRIES. No, sir, if they will but consider this matter they will soon see the difficulty into which they have thrown themselves. I am therefore in favor of the proposition of the gentleman from Jefferson, to strike out his proposition and insert the original.

Mr. READ of Clark. This subject has created a great deal of excitement, and when I look around the Convention and perceive that

there are only some seventy or eighty members present, I think this is hardly the time to pass a section on which may depend many votes in regard to the adoption or rejection of the revised Constitution. We ought therefore to endeavor to act with coolness, and to reconcile conflicting interests, and adopt some article on the subject that will be satisfactory to the people. As we are hardly, therefore, in a condition to do this to-day, I will move to lay the article and the amendment on the table for the present.

The motion to lay the resolution and amendment on the table was not agreed to.

Pending the question on the motion of the gentleman from Jefferson (Mr. Dunn) to strike out the section as amended and insert it as originally reported by the committee.

On motion, the Convention adjourned.

MONDAY, DEC. 9, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BABB.

The journal of yesterday was read and approved.

Mr. MAGUIRE. There was a resolution adopted on Saturday, calling upon the Auditor of State for certain information. I move that the vote by which that resolution was adopted be re-considered. I will remark that all the information that was desired by gentlemen was furnished last winter to the Legislature, and published.

The question being upon the motion to reconsider,

Mr. MILLER of Gibson opposed the reconsideration. It appeared to him that it was time that some steps were taken to provide the means of paying off the State debt. The interest upon it was fast accumulating, and he thought some system of taxation should be devised by which the amount might be gradually reduced. The information, at all events, that was asked for by the resolution, ought to be obtained and laid before the public.

Mr. MAGUIRE remarked that the information had been procured and published already. His only object in making the motion was to save trouble, the Auditor's time being fully occupied with other matters. But if the Convention demanded that it should be again furnished he would offer no opposition.

The motion to re-consider was agreed to.

On motion, by Mr. WATTS,

The resolution was laid on the table.

On motion, by Mr. LOCKHART,

The communication from the Warden of the State Prison was taken up and referred to a select committee of one from each judicial circuit, with instructions to consider the proprie-

ty of providing for a House of Refuge for juvenile offenders, &c.

Mr. THORNTON, from the select committee appointed to communicate to the family of the late Col. R. M. Johnson, the condolences of this Convention, reported that the committee had performed that duty; and had received from the Rev. J. T. Johnson, brother of the Hon. Richard M. Johnson, the following letter in reply:

GEORGETOWN, Dec. 4, 1850.

Messrs. Thornton, Pepper, and Rariden:

GENTLEMEN—Your esteemed letter of condolence and sympathy, communicating the resolutions of the Constitutional Convention of the State of Indiana, in reference to the death of my beloved brother, R. M. Johnson, came to hand this morning. I cannot give utterance to the feelings inspired by so touching an incident—a proceeding so honoring to one to whom I owe so much of the little education with which I am blessed, and the influence I enjoy amongst my fellow-citizens.

The deep fountains of the heart have been broken up, by remembrances like yours, from every quarter of our beloved country; and the gushings of the heart afford us relief. He was greatly beloved by us all, and he was made doubly dear, by his continual anxiety and efforts to render his relations honorable, and to make them a blessing to our race.

Inasmuch as you have selected me as the honored medium of communicating these resolutions, so highly prized, to the relatives of the deceased, permit me, in their name, to make a return of their profound gratitude. They receive it as a movement more enduring than marble, and the richest reward that a nation can bestow.

The friends of the deceased, wherever found, will be pleased to accept this, as the best tribute of grateful hearts.

Accept for yourselves, and for the distinguished Convention of which you are the honored organs, the most grateful emotions of your friend and fellow-citizen,

J. T. JOHNSON,

*Elder of the Christian Church,
Georgetown, Ky.*

On motion, by Mr. THORNTON, the letter was ordered to be spread upon the journals of the Convention.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day, the first business in order being the fixing the number of Senators and Representatives, on its third reading.

Mr. DUNN of Jefferson moved to re-commit the section, with instructions to amend so that the Senate shall consist of not exceeding thirty-five members, and the House of Representatives not exceeding one hundred and fifteen.

Mr. SMITH of Scott moved to amend the instructions so as to make the members 34 in the Senate and 116 in the House to be proportioned according to population.

Mr. SMITH of Ripley moved to lay the instructions upon the table.

A DELEGATE. That will carry the section to the table, also.

Mr. SMITH withdrew the motion.

Mr. KELSO. Is it in order to move to amend the last instructions?

The PRESIDENT. The last instructions are moved as an amendment to the former.

Mr. KELSO. Well, let us understand how this is.

Mr. SMITH of Scott. I believe I have a claim to the floor, sir.

Mr. KELSO [continuing]. The first instructions, according to my idea, stand as an original proposition subject to amendment, and that amendment is also subject to be amended.

Mr. PETTIT. I rise to a question of order. The gentleman from Switzerland is out of order. The gentleman on my right is entitled to the floor.

The PRESIDENT. Does the gentleman from Scott claim the floor?

Mr. SMITH. Yes, sir.

Mr. KELSO. The gentleman from Tippecanoe is mistaken. I had the floor and gave way for a motion to amend.

I wish now to move to amend the instructions proposed by the gentleman from Scott, by striking out his proviso; and I do it for the purpose of making it as acceptable as possible to members of the Convention. As the proposition stands at present, it is to give thirty-four members to the Senate and one hundred and sixteen to the House. So far I am willing to go for it. But there is appended to it this additional proposition:

"That if any county have a certain number of votes, she shall have a representative."

Now there is not enough gained by this to make me go in favor of that which is not acceptable to a large portion of the delegates to this Convention.

Mr. PETTIT. I suppose the gentleman from Scott is now entitled to the floor?

The PRESIDENT. The gentleman from Scott.

Mr. SMITH. I have offered this amendment as a kind of compromise between the two extremes; and I cannot for my life see why it is that gentlemen should be so averse to the proposition that I have offered. It is asking only that which belongs to every organized body in the State. Now I hold that it is a principle that ought not to be disregarded; that every county that has to submit to the law should have a voice in framing the law. I hold it to be a principle that is indisputable, that where one man represents three or four counties, the voice of each county is not represented dis-

tingly, as it ought to be. Why it is that gentlemen of this Convention are so strenuous in opposition to this proposition, I cannot understand. There are other States having laws as wholesome and efficient as those of Indiana. Look at the Southern States. They have laws that have conferred blessings upon the people who have been governed by them, equal to those that have been enjoyed by the citizens of Indiana, and their representation has not been curtailed. Turn to Massachusetts, we find there that even a township containing less than one hundred and fifty voters is represented. Every township is entitled to a representative without regard to the number of inhabitants it contains. Have any ill consequences flowed from this system! None, sir. Why is it that they have adopted the system? It is that the interests of each section may have due consideration. Now when we come to our own State, here are ninety-one counties, each having a local interest, an interest applicable to itself alone; and each county, I contend, should have a voice in the shaping the laws that are to govern the county.

I have offered this as a compromise. According to the principle by which we have been governed, that of merging the small counties into the larger ones, the smaller counties never can be heard. I ask that they shall have a separate and distinct voice in legislation. I ask it as a matter of sheer justice to the smaller counties. Why should gentlemen count so particularly upon numbers, regardless of the interest of the smaller counties? I hope that the amendment will be adopted.

Mr. PETTIT. If I understand the section, it provides that there shall be fifty senators and one hundred representatives.

The PRESIDENT. There shall be not exceeding that number.

Mr. PETTIT. Well, that is just as well. The Legislature will be sure to keep it up to that number; for that proposition I shall vote, and therefore, I shall vote against recommitting the section with instructions to amend. Not, but that I am convinced that thirty senators and sixty representatives would do the business of the State just as well, and probably better, in a legislative capacity, but because this is the number that we have had for a long time, and because it is a number that will be more likely to meet the approbation of the Convention, and of the people, than any number that we might substitute for it, I shall go for it. First, however, let me say, that I think a smaller number would answer all purposes, and I do not believe it is necessary to represent all the small counties separately. The basis of representation should be people, not acres of land, whether cultivated or uncultivated. Sir, I am contemplating the practice that has prevailed in this respect, under the old Constitution. I grant you that the argument of the gentleman from

Scott, would be well-timed, and have its force so that argument might extend to townships and neighborhoods upon the same principle. Under the old practice, you will recollect local legislation was the order of the day—local legislation for counties, and, indeed, down to townships. If they did not directly legislate for townships, they did indirectly. They would pass a law in reference to the sale of ardent spirits for instance, and make that law applicable to as many townships as choose to adopt it, by vote of a majority of the voters in said townships. Now, the inhabitants of this State, are but one people, from Lake Michigan to the Ohio River, and from the boundary of the State of Ohio to Illinois, and they are for putting restrictions upon this sort of legislation, and requiring the Legislature to make but one uniform law, for all sections and divisions of the State. Let it not be said that the Indian who travels from one part of the State to the other, shall be subject to half a dozen different laws in the course of his travel—laws that he may not know the existence of, when he leaves home—but that the same laws shall govern him in all parts of the State. That he shall have the security of the protection of the laws wherever he may go [consent]. I insist that there is no necessity for local legislation, and consequently no necessity for local representation. If your laws are to be uniform, the representatives of Marion county, may just as well represent Tippecanoe and St. Joseph, provided they are of equal intelligence. And, I suppose, looking at the delegates from those counties, they will not suffer by comparison. Well, what do you propose to do. You say that you will have only general legislation; that is, all railroads, plank roads, bridges, &c., shall be made under general laws. You say that county and township business shall be done in a uniform manner, not by commissioners in one, and Justices of the Peace in another. That there shall be one uniform mode of summoning Grand Juries and of transacting all other county business; that the system of taxation shall be uniform throughout the State; that the laws shall be the same, the principle the same, the application of them the same. If we go upon that principle, sir, we might, in my judgment, with all propriety, reduce the number of senators and representatives, were it not that we were attached to the old customs and policy. I shall go for the section as it stands. I hope it will not be re-committed, but that we shall pass it as it stands.

Mr. WATTS. I am in favor of this proposition, and my views accord to some extent, with those of the gentleman from Tippecanoe; but I go for re-committing the section, while he goes against it. I go for re-committing it, because I wish the number of Senators and Representatives reduced. I believe that one hundred men can represent this State as well as five hundred, and my constituents expect a

reduction to be made, If the logic of the gentleman from Scott is correct in regard to having a representative from each county, the principle will hold good in regard to our representation in Congress. If his argument is correct, we are not sufficiently represented in Congress, because the representative in Congress cannot represent a county in which he does not reside. It appears to me that population is the correct basis for representation. I therefore, shall vote against laying the instructions on the table, and shall vote to instruct the committee to report fifty Senators and one hundred Representatives.

Mr. PETTIT. Well, that is precisely what the section is now.

Mr. RITCHEY. I hope Mr. President, that the motion of my friend from Wayne, (Mr. Newman,) to re-commit will not be sustained. I am opposed to re-committing this section, because it has already been fully discussed and we have taken votes enough upon it to show that the majority of the Convention is in favor of the section as it stands reported.

There is another objection to re-committing, and that is, if the number be reduced as he proposes, it subjects us to the absolute necessity of either districting the State ourselves, for the next five or ten years, or of requiring the Legislature to assemble this month to district the State, both for the old and the new Constitutions. I think that, sir, is a consideration that ought to weigh with every member of the Convention. If we sustain the present number of representatives, fifty in the Senate and one hundred in the House, the same Legislature that districts the State under the old Constitution this winter can do it also for the new Constitution, so that there will be no necessity for our wasting several weeks in the extra labor of apportioning Senators and Representatives among the several counties in the State.

Some gentlemen appear to be very anxious for the reduction of the number of Senators and very willing to increase the number of Representatives in the House. I see no reason, sir, for a small Senate and a large House of Representatives.

I do think as my friend from Owen (Mr. Dobson) on yesterday attempted to prove, that in reducing the Senate to thirty-three or four members, that it will make that body an aristocratic branch which the democratic republican branch of the House could never control. Some gentlemen appear to lay great stress on the fact that New York and other States have a small number of senators. Now, sir, for myself I care not what number of senators the State of New York may have fixed upon. I am not governed in regard to this point by the number of senators they may choose to select. I choose to be governed by my own sense of propriety. And let me say to those gentlemen who look so much to New York, Ohio, and

other States of the Union, for guidance in the discharge of their duty here in regard to this subject, that there are many very good reasons as regards this State why we should not have a small number of senators. There are but fifty-six counties in New York, while we have ninety-one counties; and if the doctrine contended for by gentlemen be true, that each county has separate and distinct interests, there is a manifest propriety in the State of New York having a less number of senators than would be appropriate in this State. But can any gentleman say that Ohio county should be represented as fully in the Legislature with its hundreds of polls as Wayne county with its thousands? That the county of Ohio should be entitled to the same influence in the deliberations of our government as the county of Wayne? I deem these reasons sufficient, sir, to explain my position, and hope that the section will be passed, as it has been engrossed, and that no motion will prevail for referring it to a committee with instructions.

Mr. HADDEN moved to lay the amendment to the amendment on the table.

The motion was agreed to.

Mr. EDMONSTON. Is it in order, Mr. President, to move a series of instructions as a substitute for the instructions already pending?

The PRESIDENT. That depends upon whether the author of the instructions already pending, will accept them or not.

Mr. EDMONSTON. I move, then, as an amendment to the amendment, that the Senate shall consist of fifty, and the House of one hundred members; provided that, after the year 1860, the House may be increased so as not to exceed one hundred and twenty in number.

It must be evident to every member of the Convention, that, upon this question, there must be concession. Every gentleman must concede something. Now I, for one, represent a small county, and I would be glad if the proposition of the gentleman from Lagrange, (Mr. Howe,) giving each county a Representative, would be adopted; but I fear, if his system of a large representation of both branches, be adopted, we shall have a strong vote from the larger counties, against the adoption of the new Constitution. Again, if we adopt the reduced system of representation, you would virtually deprive the small counties of Representatives, as they would have to be attached to large counties for Representative and Senatorial districts. Thus they would be deprived of a voice in the councils of the State. When you come to them and ask them to adopt this Constitution, with such a provision in it, they will scoff at you, and say that nothing would induce them to adopt a measure that would deprive them of the privilege of representation, which they have hitherto enjoyed.

I have offered this proposition, also, with the expectation of meeting the increase of population in the newly settled counties, and for the purpose of making a compromise between the smaller and the larger counties. We may not district the State again in ten years, and in the course of that time, the northern part of the State will have more than doubled its population; and then, under the reduced system, the southern portion will be largely in the minority.

Mr. PETTIT. That is what the north has hitherto been suffering under, viz.: the majority composed of the southern portion of the State.

Mr. EDMONSTON. The south have suffered something, too, in regard to this matter. The southern counties have been tied up in knots, as it were, for the purpose of representation. So the north has not been the only sufferer. I ask it, then, as a matter of compromise from the strong counties, that they leave it in the hands of the Legislature to district the Representatives throughout the State. Unless we do that we shall get into difficulty. The discontented portion of the counties of the State will come up and poll a strong vote against the new Constitution.

Will any gentleman say that one hundred Representatives are too many to represent a million of souls? I think not, with any degree of fairness. I noticed that the gentleman from Hendricks, (Mr. Nave,) who advocated the reduction principle, appeared to speak as if the whole State rested upon his shoulders—he said that the people of Indiana demanded the reduction. Where, I would ask, did the gentleman get his information from? Has he visited every portion of the State, and inquired what was the will of the people on the subject? The amount of it is, he takes the broad ground that Hendricks county reflects the will of every county in the State. I could take the position, sir, following his example, that the gentlemen does not reflect the will of his own county;—but I will not take that ground, although I could take it as fairly as the gentleman takes the position he has assumed. To prove his position, he reads an extract from a message, delivered by Governor Wallace, in 1840, in which the Governor recommended a reduction of the number of Representatives. But what does this extract prove? It proves directly the reverse of the position of the man from gentleHendricks, as any gentleman can readily perceive. For that was the time when economy was very strictly regarded and exercised. We all recollect that that was just after the great crash of the internal improvement system, when the people were staggering under the enormous debt which they had incurred, and surely, if there was any period when a saving could have been made, it was at this time. But what was the result of the recommendation, which I, have no doubt, was honestly and patriotically made by Governor Wallace, at that time? Why, the Legislature

refused to adopt the recommendation. Did the gentleman ever see those members who voted against the reduction called in question for their votes by the people? No, sir; the people held the right of representation in greater estimation than any other right, and were willing to pay for it. Governor Wallace, as I have said, honestly entertained the opinions in his message at that period. But time and experience have doubtless charged them. I do not believe any gentleman is desirous of holding him to an accountability for those opinions. And I further believe that, if the gentleman himself is interrogated in regard to the opinions he holds now on the subject, they will be found to differ considerably from those he entertained in 1840.

The people, sir, have not desired, nor do they desire, a reduction of representation. They say they want a voice in the body sent here to make laws for them:—and the expense of that representation is with them, as mere dust in the balance. The right which is held most sacred in the estimation of a free people, is the right of representation.

I am willing, sir, as a matter of compromise, to let the representation stand as it does at present, at fifty members in the Senate, and one hundred in the House; leaving it discretionary with the Legislature hereafter, in accordance with the wishes of their constituents, to increase the number in the House to one hundred and twenty. It must be evident to every gentleman, that we must have a compromise in this matter, and it appears to me that the measure I have proposed is the most feasible one that can be adopted.

Mr. RARIDEN. I have not taken part in the discussion of this subject hitherto, although I had thought a good deal about it before I came here.

The first inquiry that presents itself to mind is, what is the cause of the vicious legislation we have been compelled to endure for the last eight or ten years? The gentleman from Tippecanoe (Mr. Pettit) attributes it very justly to local legislation; but what has induced that legislation? It arises from the number of Representatives here, who individually have felt that they were charged with local interest which it was their duty to take care of and advance in every possible way. This has been the cause of so much vicious legislation, the representation of local interests in the Legislature. Although there is nothing in the present Constitution to justify it, yet it follows local representation as a consequence. We have no occasion to make special provision in the Constitution in order to put a stop to the evil; we need only to change the character of the representation here. We should reduce the number so that members cannot represent local interests, and it ceases. I propose, then, to make a proposition which I think will remedy the evil; and

which, it appears to me, has nothing selfish in it.

I propose a ratio so large as to break up every Senatorial district in the State—the district of Wayne among the rest. And I further propose that the ratio of population for the Representatives in the House be about one-third of that for the Senate.

In regard to the necessity of every county having a representative: I deny that it is the case generally that such a system would redound to the interests of Indiana. I see, sir, no representation of any local interest on this floor. We come here as representatives of the general interests of the State of Indiana. We represent the entire population of the State, and no measure should be adopted to advance the interests of any local portion of the population. This being the case, we should endeavor, in all matters of difficult settlement, to agree to a compromise, so as to render the measures we may adopt acceptable to all the people of the State.

I conscientiously believe if local interests had not been so powerfully represented at the time of the adoption of the system of internal improvements, the debt incurred by the State would not have been one-half as great. Each county pressed its claims for a portion of improvement, and in many cases where it would be of no possible utility. What gentlemen are desiring to maintain here, or at least a large number of them, I am aiming to break up. Wayne county, sir, has no interest adverse to the general interests of the State of Indiana. If it had it should never be countenanced.

The gentleman from Hendricks (Mr. Nave) inquired of the gentleman from Tippecanoe (Mr. Pettit) whether corporations and associations organized with a view to carrying on internal improvements in the county ought not to have representatives in the Legislature? I answer no, they ought not. If a work set on foot by corporations cannot sufficiently entitle itself to the general affection of the people of Indiana from its utility, it is clearly evident that it ought not to be continued. Special representatives would endanger their interests much more than if they leave them in the hands of the people generally.

Now, sir, suppose we make a ratio of one Senator to every six thousand polls in the State. This would break up every Senatorial district in Indiana, so that it would be almost impossible that a Senator could be the representative of any special local interest. And that is my object—to do away with the representation of local interests.

By this ratio every part of the State would be treated alike, and nobody would have any cause to complain. The ratio of the House could then be fixed at fair representation, say for two thousand polls, and this would give us nearly a hundred representatives. The people

then have the representation entirely in their own hands, and all interests would be treated fairly.

The evil of vicious legislation under which we are now suffering, as I said before, has arisen from local legislation. Heretofore a representative could not make himself acceptable to the people of the county he represented, unless he had some local measure in which they were interested passed.

This has brought disrepute on the State, and produced confusion in our whole jurisprudence. There is scarcely a county in the State living under the same universal and uniform code of laws. All are living under codes of laws that in some points are different.

It is my desire to break up this system of legislation, and with it the log-rolling by which it was ever sustained; and I think the proposition I have presented will have this effect. Because, sir, combinations of local interests, which have heretofore been made, cannot, under this arrangement, be entered into with any degree of success.

I move then, sir, to strike out the whole of this section and insert the following in lieu thereof:

“The representatives for the Senate shall be fixed upon a ratio of six thousand polls, and for the House of Representatives upon a ratio of two thousand polls.”

The PRESIDENT. The amendment of the gentleman from Wayne is out of order at present.

Mr. PEPPER of Ohio. Mr. PRESIDENT: This subject has been under consideration for several days. I have listened attentively and said nothing. I need not say that I have fears that justice will not be done to the district I represent. I live in a small county, but have the honor to represent in part a respectably large county; between these two counties there is now a good understanding, and my particular wish is (if the counties shall determine to district the State, to which I am opposed) that my district may remain as it is. It strikes my mind that there is a manifest propriety in the doctrine that each county should have a representative in the popular branch of the General Assembly. I have heard no argument to change this opinion. It has been stated, sir, that taxation and representation should go hand in hand. Well that is an axiom which no one will dispute; but does this proposition mean that property or people shall be represented in proportion to quantity, or number? I take it neither; but that organized counties or States, under the control of the legislation of a power claiming authority to tax them, ought to be represented in the body which sets up and exercises this authority. Sir, this was the doctrine set up and maintained by our revolutionary fathers. Was it right? And if it were then right, is it not just and proper now? But the

gentleman from Wayne (Mr. Rariden) thinks that one senator can represent six thousand taxable polls, as well as two or three. I hope that in view of this fact gentlemen living in large counties will show their generosity towards the smaller counties. This they ought to do, unless they assume the position that they possess more capacity to legislate for the small counties, than those counties do to legislate for themselves. This I leave for gentlemen to decide who have the power to decide it. The other day when the gentleman from Wayne introduced resolutions approving of the compromise measures of the last session of Congress, he supported them boldly and ably, and voted for them; but at least two of the representatives from the same county voted on the other side. Now they could not all represent the people of Wayne county, undoubtedly not. Sir, it is true that a representative before he takes his seat in either branch of the Legislature, solemnly swears that he will support the Constitution of the United States, and of this State, and discharge the duties of a representative of the State of Indiana. Not a word in the obligation about counties or local interests. This is the business of a representative beyond all manner of doubt. But who will deny that there are always local interests in the several counties requiring and deserving the special attention of one who may know from personal observation their merits. Although by our action here we may relieve the General Assembly of much legislation, in respect to local matters, yet we cannot dispense with it entirely. And in conclusion permit me to repeat that I hope Switzerland and Ohio counties may not be separated in the formation of senatorial districts.

Mr. KENDALL of White. Hitherto, Mr. President, I have refrained entirely from taking part in the discussions that have taken place in this body, having been a silent, though not inattentive member of it, and I experience considerable diffidence in deviating as I now do, from my usual course.

This, sir, is a question in which my constituents take a deep interest. There is no topic perhaps that is brought forward in the new counties for consideration that excites more feeling, or gives rise to more discussion than the right of representation. They look upon it as the only evidence of their political importance and consideration. During this discussion the inquiry has been made again and again why one person may not be as capable of representing two, three, and four counties, as well as of representing one, and it is asserted by some gentlemen that two or more counties can have their interests as well cared for by one representative as though each county had a representative. This assertion does not agree with my own limited experience and observation on this subject. Take for example

my own representative district which is composed of four counties, and see how they are represented in the Legislature. The arrangement these counties have entered into in regard to representation is this: One county sends a representative one year, another the next year, and so on, each having a representative once in four years. A necessary consequence growing out of this is that the representation upon all local questions that arise, will represent the wishes and will of the people of his resident county, regardless of the opposing interests of the residue of the district, and the result is that these counties are no more represented in your Legislature three years out of the four, than if they were a part of the Commonwealth of Kentucky.

An increase of the number of representatives is objected to on the score of economy, but I think as the gentleman from Wayne (Mr. Rariden) has correctly stated, that the people would rather economize in any other particular, than by reducing their representation. As citizens have no higher privilege than that of suffrage, so counties have no higher privilege than that of representation and participating in the State councils. I think further that it would be much more reasonable to assert that the large counties of Marion and Wayne, for instance, could be effectually and sufficiently represented by one representative, than that four counties could be so represented; for in the latter case, there is often a conflict of interests, each county having a separate and distinct interest from all other counties, whilst in the large and populous county there is a unity of interest. I hope, therefore, that this fact will be borne in mind by those delegates representing the larger counties of the State that have two or more representatives, and that they will not exact too much from the new counties which are rapidly increasing in population, but will be disposed to give them a fair and indeed liberal share, in the representation of the State. It is asserted that representation and taxation should go together, but this principle bears heavily upon the new counties. We have a burdensome State debt which these new counties had no agency in creating, and yet they, unrepresented in the creation of it, are to share in the taxation necessary to discharge the interest on an indebtedness from which they have derived no benefit. I trust that a liberal system of representation will be settled upon, so far as the new and weaker counties are concerned. Representation in these new counties has hitherto been kept at a great distance as it were from the people, and I am persuaded that they are possessed of no right which this Convention might be disposed to abridge that would excite among them as much angry resentment as this right of representation. I am satisfied that nothing will do so much to prejudice the success of any Constitution that may be submitted

to them, as the diminution of their political importance. However wholesome otherwise its provisions may be, however advantageous some, if not all of its amendments, the feeling proper for its favorable consideration will not be conciliated, if this reduction be insisted on. They will prefer to retain their present position under the old Constitution to any promised advantages, coupled with such sacrifice. I hope, therefore, that if no greater rights of representation are extended to them that their situation will not be rendered less desirable, and that the provisions of the present Constitution, if more liberal terms cannot be granted, may be allowed to remain in force.

Mr. STEELE. Perhaps it is necessary, after the various votes that have been taken upon this subject, that I should give the reasons for the manner in which I have voted. I first voted to reduce the number of representatives and in favor of sustaining the section reported by the committee, because I believed that a reduced number could perform all requisite legislation. I found, however, that the Convention did not intend to sustain that system, and I then went on and voted for a section providing for a continuance of the present number of representatives in the Legislature. I refer to the section now before us. No argument, sir, has as yet convinced me that it is my duty to vote for the instructions to this section, the amendment to the instructions, or for the re-commitment of the section. I believe, that, to consider either of these propositions is but a waste of the time of this body, and that it will be going over ground we have already traveled over. It appears to me it will not be very much to our credit, and that our action will appear very trifling, so far, if we do not sustain what we have already agreed upon without any reference.

I can say, sir, with the gentleman from Tippecanoe, (Mr. Pettit,) and the gentleman from Wayne, (Mr. Rariden,) that I believe representation ought to be based upon numbers. That has been my opinion all along. But, while I thus believe, I would state that I think this section, providing for fifty senators and one hundred representatives, will meet with the approval of the people probably more fully than any other that can be presented. As far as the question of reduction of representation is concerned, the people take but little interest in it, if any. When we take into consideration the small reduction proposed to be made by this motion to re-commit—only fifteen Senators—and that the actual expense will not amount to three thousand dollars in two years—as we are to have biennial sessions—it appears to me to be a very small item to waste our time in discussing.

Mr. SMITH of Scott called for the previous question, but withdrew his motion at the request of

Mr. KELSO, who said: I desire to say a word or two in reference to this matter, before it is finally disposed of. I would first inquire of the gentleman from Jefferson, (Mr. Dunn,) whether he will not modify his amendment—which, being to the original section, has not yet been acted upon—so as to fix the number of senators at thirty-five, and the number of representatives at one hundred and sixteen, instead of one hundred and fifteen.

Mr. DUNN of Jefferson. Certainly; the difference is in no wise material.

Mr. KELSO. It is understood, then, that the gentleman from Jefferson has modified his amendment as I suggested. I desire to say a few words with reference to his proposition as it now stands.

And first, sir, with reference to the amendment offered by the gentleman from Dubois, (Mr. Edmonston,) proposing fifty senators and one hundred representatives, and after 1860 to increase the number in the House to one hundred and twenty, if necessary.

Now, sir, that kind of amendment is but of little or no use whatever. The smaller counties would be benefited but little by a two-third or three-quarter ratio. The county from which I come would suffer nothing until you get above twenty-five hundred polls. The county of Ohio, taxed for representative purposes, would not be benefited if you reduced her ratio to one-half.

Now, sir, the question is: What sort of compromise shall be made? It is very certain; if we are to be governed entirely in both branches of the Legislature by any basis of representation, that population is the proper basis. I have already, sir, appealed to the Convention to make population a basis of representation; but that appeal has been disregarded, and I shall not attempt to bring it forward again. I have only to say, that, if we fix upon any basis, population is the true basis. But I have only to say that one hundred and sixteen representatives and thirty-four senators is about as good a system of representation as we can fix upon. The counties must be attached for representative purposes, and the State must, therefore, be districted by this Convention; or if not, it becomes the duty of the Legislature to district the State.

There are three leading interests in this State—agricultural, commercial, and manufacturing. Each county has at least one of these interests within its limits, some, two of them, and a few, all three. But these interests do not necessarily come in conflict with each other; and there will be no difficulty in attaching counties for representative purposes, provided care be taken to attach counties for representative purposes whose interests run in the same channel, as far as practicable. I would prefer, even to this, the proposition of the gentleman from Wayne, (Mr. Rariden,) to

take, as a basis for senators, six thousand polls, and for representatives, two thousand polls; if, for the only reason, that it would indirectly reduce the number of senators. But if we are to take the number as it now stands, in the aggregate of one hundred and fifty members, I think it would certainly be more even-handed justice to take the proposition of the gentleman from Jefferson, of thirty-four senators and one hundred and sixteen representatives—thus making the total of one hundred and fifty, for which so many gentlemen strenuously contend.

Gentlemen suppose that nothing but fifty Senators and one hundred Representatives will satisfy the people. Sir, any number will satisfy the people. Thirty Senators and sixty Representatives will satisfy the people better than fifty Senators and one hundred Representatives; and, sir, if even that proposition was submitted to the people, they would as certainly reduce as they lived to vote. It is not the feeling of the people that we bring here with us. The Legislature that fixed the present number of Representatives in both branches at one hundred and fifty members, did not represent the feelings of the people. And, sir, we, as members of the Convention, by fixing the representation at as large a number as is practicable, stand a fair chance of getting into the Legislature, those of us who have not been there, and those who have, of getting there again. I, who have never had anything short of a hard race to get into the Legislature at all, am willing to fix upon six thousand polls as a basis of representation for Senators, and two thousand for Representatives. Or I am willing to reduce the number of Senators to thirty, and the number of Representatives to sixty or ninety. I will run the risk, and I apprehend that other members ought to be willing to do the same thing.

I argue, sir, that to reduce the Senate would be one of the most popular steps this Convention could take. I am satisfied that the people can be made to understand what is to their interest, and that, too, with but little trouble. The large counties will suffer nothing by such an arrangement as regards the Senate, and I am sure they will have equal influence in the House.

My friend from Johnson (Mr. Ritchey) asserts that a small Senate will become an aristocratic body. I ask him how a body of thirty men, in the discharge of these duties as Senators, will become more aristocratic than fifty men? What is there to induce such a result? They come here as Representatives of the people; and with a higher degree of personal responsibility than a body of fifty men would have—and the more responsibility rests upon them the greater the care they will take to discharge their duties faithfully and honestly.

If population, sir, is to be the basis of representation, let us fix upon the smallest possible number, so that as population increases, the number of Representatives may also increase. This is the true policy to adopt.

I concur with the gentleman from Tippecanoe (Mr. Pettit) in one thing, and that is if we are to be governed by general laws, as is proposed, that local interests should not be suffered to interfere in the action of our Legislature; that an individual from the county of Marion can as well represent the interests of the county of Vigo, as a resident of the county. One man can as well represent two thousand people as one thousand. Their interests, if not entirely the same, can be represented by the will of the majority. Besides, I apprehend there are honest men enough out of the county of Vigo to represent her interests fairly.

In common justice, sir, to all parts of the State, I do not think we should fix upon the number of representatives in both branches of the Legislature we need at once, and not make provision for their further increase. If we fix the number of Representatives at one hundred, the northern portion of the State will—as its population is rapidly increasing—soon be in advance of the southern and eastern portions of the State—so that they will deprive us of the equality which belongs to us now. I therefore maintain, sir, that territory is the proper basis of representation for the House, and population for the Senate. This is only reversing the system which has been adopted by the General Government. They take territory for their Senate, and population for the House. To be sure, this system would not do exactly strict justice to the small and newly settled counties; but the population of those counties will soon be swelled to the size of the largest counties that are now in the State. Those counties which are now small in size, and which have been long settled, and which cannot reasonably expect an increase of population, will be greatly the sufferers, for they must unquestionably lose the small share of representation which they now enjoy.

I do insist, sir, that if we would allow to each county a Representative, and apportion the Senate upon the basis of population, much nearer even-handed justice would be done. The Senate is but a mere conservative body, calculated to act as a wholesome check upon the more popular branch of the Legislature, to prevent over hasty and improvident legislation; it also has a salutary influence over the executive branch of our State Government. Then why require fifty members to constitute that body, when one half that number would answer every possible purpose that the fifty members could do. By such an arrangement, those small counties would always have a voice in one branch of the Legislature subject to be checked by the Senate, provided they should go astray.

I should be glad to see the representation thus arranged.

There is no good reason, none can be offered against such an arrangement, with the single exception that I made the other day, and that is where the election of a United States Senator comes on once in four years; in that case the small counties would each have a vote, and the larger counties would have less votes in proportion for that office.

And now, sir, I ask, is that question of sufficient importance to drive the Convention to an arrangement of this matter, that must and will do great injustice? Is it necessary to disfranchise the smaller counties, that the large ones may choose a United States Senator, because, forsooth, there are more people in a large county than a small one? I cannot so regard it. I do not think, sir, that the bare fact that once in four years, and then in two years—or in other words, twice in every six years—an election of a United States Senator will come on before the Legislature, is of itself a sufficient reason to so arrange our representation as to eventually deprive the smaller counties of a representative voice in either branch of the Legislature.

I cannot and I do not believe the people of Indiana wish to see any such system of inequality established among them. But on the contrary, I am of opinion that if the question was left to the people themselves they would be decidedly more liberal in their disposition of it.

I hope, sir, the section will be re-committed—as much untrammelled as possible, with instructions—and let it be so arranged as to do common justice as near as can be done.

Mr. COOKERLY. I represent a county, sir, that stands first in population and the number of polls it contains, among the counties of the State; and the people of that county are unanimously in favor of a reduction in the number of State Senators. This is the sentiment of the people in the county I represent; and I believe it is also the sentiment of a large majority of the people of Indiana. I have voted, sir, in accordance with that sentiment. And now, sir, when we come to consider the proposition and learn the number of representatives as it now stands, I am ready to go with gentlemen in distributing the number of representatives as much as possible amongst the people of Indiana. I go then for the proposition of the gentleman from Jefferson, (Mr. Dunn,) to fix the number of Senators at thirty-four, and the number of Representatives at one hundred and sixteen: this will give every county containing two thousand inhabitants a representative. This I consider right and proper, and when we come to vote upon the proposition of the gentleman from Jefferson, (Mr. Dunn,) I shall vote for it with a hearty good will.

Mr. RITCHEY. The gentleman from Switzerland (Mr. Kelso) inquires how the Senate is more aristocratic with thirty, than with

fifty members. The gentleman from Owen (Mr. Dobson) made it plain enough the other day, without my having to explain it. There are some thirty large cities and towns growing rapidly in wealth and influence at different points in the State. If we have a Senate of only thirty members, sixteen making a majority, these cities will control this majority and thus make it an aristocratic body. But, sir, if the number of Senators is kept up to fifty, there are not twenty-five towns that have sufficient power to control a majority of that body.

While up I would make another remark in favor of continuing the present number of Senators and Representatives. I would be willing to vote for the proposition of the gentleman from Dubois, (Mr. Edmonston,) but I fear it could not be carried. I am willing then to stand to the proposition for fifty Senators and one hundred Representatives in this way—because I believe it takes away the agitation excited in the different counties whenever an apportionment of the State takes place. Whenever this occurs, demagogues in the different counties of the State get up and advocate reduction of representation, and therefore I wish to fix upon a certain number of Representatives for both branches, and that the number be permanent. By the section before us, it is provided that the Senate shall not exceed fifty, and the House one hundred members, but I trust it may be so modified as that it shall provide there shall be fifty Senators and one hundred Representatives. If this is fixed, one stimulant to constant political excitement will be done away with entirely.

Mr. DUNN of Jefferson. Some gentlemen have said that the proposition contained in the amendment I have submitted, has already been voted down, and that its further consideration ought not to be pressed upon the Convention. In this statement they are mistaken. We are now for the first time about to vote upon a proposition which, while it gives to the two branches of the Legislature one hundred and fifty members, reduces the Senate and increases the House, so as to make the former consist of less than a third of the number of members in the latter body. I have proposed this change for two reasons: First, that every county in the State, so far as the same is practicable with a due regard to the proper basis of representation, may have a separate representative in the popular branch of the General Assembly. Secondly, that by making a greater disparity of members in the two Houses, we may give to the Senate a more conservative character than it will possess under the section adopted by the Convention. I should be glad, if it were possible, that we could secure to every county in the State a representative in the General Assembly, but it must be apparent to every one that such a provision is impossible in this State now, without an utter disregard of population as the basis of

representation. When our population becomes more equally distributed throughout the State, such a provision will be both practicable and proper. But, sir, I consider it a matter of the first importance that the Senate should be reduced in numbers. We have now, I believe, a larger Senate than any other State in the Union—larger by eighteen members than the great State of New York; larger by seventeen than the maximum provided for the Senate of Pennsylvania, and by fourteen than the maximum of the Ohio Senate. Certainly the example of these great States is worthy of our consideration. I take it for an established fact that the two Houses of the General Assembly will not reduce the numbers of their respective bodies below the maximum allowed in the Constitution, and therefore, that for all practical purposes we might as well say that the Senate shall consist of fifty members, and the House of one hundred, as to say that they shall consist of not exceeding these numbers respectively. I do not recollect an instance where such bodies ever consented to a reduction of their numbers.

My amendment virtually proposes that the Senate shall consist of thirty-five members and the House of one hundred and fifteen. Some gentlemen have repeated that the Senate should be placed at thirty-four members, and the House at one hundred and sixteen. I have no objection to that modification, and will cheerfully consent to it to accommodate the views of those who desire to make the change. Estimating the number of Senators at thirty-four, each Senator would represent, in round numbers, six thousand voters; and giving to the House one hundred and sixteen members, each member would represent one thousand seven hundred voters. No one county in the State would have a Senator under this apportionment, and that is precisely what I desire. I wish, as far as practicable, to prevent any Senator from having the same constituency as any member of the House. Let two or more counties unite in the election of a Senator, and then his action, instead of being governed by a single county, will be controlled by the wishes of the majority in his district. My object is to make the Senate in part, what the theory of our Government is, as it should be, a conservative body.

It has been stated here, that, if you reduce the Senate to the number proposed, you will make it an aristocracy. This argument, in my mind, is simply absurd. That body an aristocracy which receives all its power from the people, and has every four years to lay down its power at the feet of the people! That body an aristocracy which can enact no law without the consent of the members of the House, who are elected every two years! The Senate has no positive power without the corporation of the House. It has a negative upon the action

of the House. It may say that such and such laws shall not be passed, but it cannot say that such and such laws shall be passed. And let me ask you, sir, what is the great evil in our legislation? Is it that we have too much or too little? The great complaint is that we have too much legislation—that our laws are subjected to too many changes. Reduce the Senate, and your Senators will be selected for their age, their experience, and their general information. They will have time to consider deliberately those propositions which large bodies are apt to act upon hastily and inconsiderately. Every Senator will act under high responsibility; he will have to regard the interests of a larger section of country, and a more numerous constituency than any member in the House of Representatives.

Mr. TAYLOR remarked that he felt considerable interest in relation to this question. The gentleman who had just set down, had stated that it mattered but little about the number in the Senate, if there was a large body of Representatives in the House. Now he (Mr. T.) considered that as no measure could be passed without the co-operation of the Senate, that it was as important that the Senate should be kept pure and guarded against improper extraneous influences, as it was that the House should be thus preserved from corrupting influences. If the number of Senators was reduced so that a majority of sixteen could control the Senate, there was no doubt, in his opinion, that three or four influential men would direct its entire proceedings. The less the number of Senators to act upon, the greater would be the influence of a few able men upon the body. When men of talent were placed in a body of fifty men, they were far less likely to exercise a controlling influence than in a smaller body; there were too many to listen to them, and too many to hold consultations with. It must be evident to every one, that a man of capacity could control a few men easier than a large number. For one, he greatly preferred increasing the number of Representatives in the House than reducing the Senate, because, to retain the present number of Senators, would make the Senate a purer body, and place it beyond the power of in-door or out-door influence to control it. There were times of popular excitement upon great questions, when, under the influence of which, a small body might be overawed, whilst a large body, if firm and united, could withstand all extraneous influences. He preferred, then, that the Senate should be composed of fifty members, and the House of one hundred.

If the proposed reduction was to be made merely on the score of economy, why not come down to ten Senators and thirty-five Representatives? If economy was to be the rule, such a system of representation would far better accord with it. He was opposed to any reduction.

Mr. DOBSON remarked that he was opposed to any reduction in the Senate. The gentleman from Jefferson (Mr. Dunn) had presented a proposition which reduces the Senate fifteen and adds that number to the House, which would make the Senate to consist of thirty-five and the House of one hundred and fifteen. I do not accuse the gentleman of improper motives, yet it looks very much like a *bid* for the small counties. Now, if gentlemen from the small counties will look at the thing right, they will see that what they gain in one branch, they loose in the other, so it amounts to nothing at all.

Another gentleman had remarked that the Senate could pass no law. This was true, and neither could the House by itself pass a law. That is to say, it required the co-operative action of both Senate and House to pass a law, and then if the Executive did not approve it, it would be no law. The Senate might refuse to pass a bill that had gone through the House—but if the House and the Executive concurred as to the propriety of its adoption, it could not pass without the aid of the Senate. When the House and the Executive wanted to pass a law, certain interests might control a small Senate, and thereby defeat the just expectations of a majority of the people of the State. I prefer keeping the Senate as it now stands numerically.

Again the gentleman from Jefferson said that he preferred having three or four counties in one Senatorial district, than to have two, the object being to prevent the larger county from swallowing up the smaller one. He thought that it was just as probable that one larger county might swallow up two or three small counties as one—its influence might preponderate over the united effort of the smaller counties.

The gentleman from Tippecanoe (Mr. Pettit) and other gentlemen had remarked that they were going to do away with local laws and legislation—a small number of Representatives would subserve the interests of the people as well, and that a gentleman from one county could as well represent the interests of one or more counties as not. To this argument he demurred. When it was examined carefully, it would be found to be an incorrect principle. The true object of this government was not to destroy the power to correct local legislation, but to place it in other hands, take it away from the Legislature and give it to the county boards. Each county generally, had different interests which would be greatly affected by legislation, and therefore they should be represented as fully as practicable. The people of the county of Laporte came mostly from the Eastern States, and were used, for instance, in the land from which they emigrated, to keep their live stock confined within certain limits. Having lived under that kind of law, they naturally wished to enact similar laws where they

reside. The very nature, too, of the country, (timber being scarce) would demand such a law to prevent stock running at large. But if it is desired to pass a similar law, to go into operation all over the State, it would materially affect the stock raising interests of the State in the South, where there are wide tracts of land, on which stock is permitted to run at large. Thus it would be seen that general laws could not always protect local interests; local legislation must be resorted to. The object of all gentleman should be to provide laws for the protection of every individual living under it, though not at the expense or injury of others. Different laws were required for the different parts of the State. He hoped the section would be passed, providing for the continuance of the present system of representation. The system of floats, however, he did not approve of.

Mr. WOLFE said, that when this proposition first came up there was a strong manifestation on the part of a majority of the Convention to push it right through, about as it now stood. He then went for a reduction in both branches, but found himself in the minority, so that finally on the engrossment of the present section he voted for it, for the reason that this left the question open, so that the people, through their representatives, could hereafter make a reduction in either branch or both branches. The next vote would have been on the proposition of the gentleman from Owen, (Mr. Dobson,) which would have fixed the number certain at fifty in the Senate and one hundred in the House. He was anxious for a reduction, but was unwilling to reduce the Senate and raise the number in the House. He would in no case vote for more than one hundred in the House; and if the present number had to be retained, for one, he would go for the proposition as it now stood, not to exceed fifty in the Senate and one hundred in the House. He hoped to see gentlemen come up and aid in the passage of this section as it now stood.

Mr. KELSO moved to lay the amendment and the amendment to the amendment on the table.

Upon this motion the yeas and nays were demanded, and being ordered were taken with the following result—yeas 95, nays 24:

Those voting in the affirmative were,

Messrs. Allen, Anthony, Barbour, Beard, Berry, Bourne, Bowers, Brookbank, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Fisher, Foster, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Logan, Maguire, Mather, McLean, Miller of Clinton,

Milroy, Moore, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimble, Wallace, Walpole, Watts, Wheeler, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—95.

Those voting in the negative were, Messrs. Alexander, Bicknell, Blythe, Borden, Bracken, Bryant, Carr, Edmonston, Garvin, Hogin, Howe, Johnson, Lockhart, March, May, McClelland, McFarland, Miller of Fulton, Moon-ey, Ritchey, Smith of Scott, Spann, Wiley, and Work—24.

So the pending amendments were laid on the table.

Mr. PRATHER. As I believe the minds of members are fully made up in regard to this subject, I call for the previous question.

The demand for the previous question was seconded by the Convention.

Mr. BORDEN said that he had labored under a misapprehension in the vote he had just given, and he would, therefore, move a re-consideration of the vote seconding the previous question.

Upon this motion, a division having been called for, it was decided in the negative.

So the vote was not re-considered.

The PRESIDENT. The question is, Shall the main question be now put?

It was so ordered by consent.

The PRESIDENT. The question now is, Shall the second section of number twelve pass?

Upon this question the yeas and nays were taken, under the rules, and the Secretary reported the following result—yeas 73, nays 47:

Those voting in the affirmative were,

Messrs. Alexander, Allen, Anthony, Beard, Berry, Bicknell, Blythe, Bowers, Bracken, Brookbank, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Edmonston, Farrow, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hogin, Holman, Huff, Johnson, Jones, Kent, Kendall of Wabash, Lockhart, Maguire, Mather, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Moore, Morrison of Marion, Newman, Niles, Owen, Pepper of Crawford, Pettit, Prather, Read of Monroe, Ritchey, Robinson, Shannon, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tannehill, Taylor, Thornton, Wallace, Wheeler, Wiley, Wolfe, and Zenor—73.

Those voting in the negative were,

Messrs. Barbour, Borden, Bourne, Bryant, Carr, Coats, Cookerly, Dunn of Jefferson, Dunn of Perry, Fisher, Foster, Garvin, Gibson, Gootee, Gordon, Haddon, Helmer, Hitt, Howe,

Kelso, Kendall of White, Logan, March, May, McLean, Milroy, Mooney, Morgan, Murray, Nave, Pepper of Ohio, Rariden, Read of Clark, Ristine, Schoonover, Sherrod, Smiley, Smith of Scott, Tague, Thomas, Trimble, Walpole, Watts, Work, Wunderlich, Yocum, and Mr. President—47.

So the second section of number twelve passed, and was referred to the committee on revision, arrangement, and phraseology.

On motion of Mr. PETTIT—

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the section providing that Senatorial and Representative Districts shall be composed of contiguous counties, (where more than one county shall constitute a district,) and no county shall ever be divided for senatorial or representative purposes; provided that a county having a two-thirds ratio shall be entitled to a representative.

The amendment offered by Mr. DUNN of Jefferson, at the last adjournment, was declared to be out of order.

Mr. STEVENSON proposed to amend by striking out the section as it now stood, and inserting the section as reported by the committee, with an addition, providing that the Legislature might authorize the county boards of counties entitled to send two or more representatives to the Legislature to divide such counties into as many districts as they were entitled to send representatives; provided that no township or ward should be divided in forming such districts. Mr. S. said: the amendment I have offered, it will be perceived, is, in part, the section as reported by the committee. I offered an amendment the other day providing that large counties entitled to more than one representative should be divided into districts. The amendment which I now offer differs from that one, inasmuch as it provides that the Legislature shall have the power to authorize counties entitled to more than one representative, to divide these counties by authorizing the county boards to divide them into representative districts. It only gives the power to the Legislature to do this if they shall deem it advisable. It does not render it an imperative duty to be performed by them. Now the original section prohibits the Legislature from doing this even if under circumstances which we cannot foresee it should become ever so desirable. I would like to have the yeas and nays on the amendment.

After some conversation between Mr. BORDEN and Mr. STEVENSON, the latter withdrew his amendment.

The question then was on ordering the section, as amended, to be engrossed for a third reading.

Mr. PETTIT. I hope we may have the section read again; I must confess that I do not understand it.

The section was accordingly read by the Secretary.

Mr. PETTIT. I shall be opposed to the entire section if that amendment is added to it. I repeat that I am in favor of the "people" basis, and not "two-thirds" of the people, thus giving one county an advantage over another. I do not care whether there are three counties or half a county together; I should prefer single representative districts.

Sir, I will give, in a very few words, my reasons for this opposition. I am opposed to a man having four votes for two representatives, and thereby having four times the influence in the legislative part of the government which another man has. How does it stand? Wayne county, for instance, has four or five representatives, and one man in Wayne county votes for four or five members in the law-making division of the government, while a man in a sparsely settled county has but one vote, and consequently there is no political equality between the people of the different sections of the State. I am therefore in favor of single representative and senatorial districts, giving to each voter the same power and influence in the legislative department of the government wherever he may live. There is neither reason nor justice in saying that a man residing in Wayne county, or Tippecanoe county, or Marion county, or in any of the large counties, should have four times the legislative influence in the government of the State of Indiana, than a man has who lives in Brown, or Jasper, or Benton, or White, or any of the sparsely settled counties. No matter how sparsely settled the county may be; he is a citizen of Indiana, and he has as much interest in being protected by the Legislature as a citizen who lives in a city or populous county. I favored the proposed amendment which has just been withdrawn by the gentleman from Putnam, for I think it would be much better than the section as it now is. I have said upon this floor, that whenever you shall propose a measure to me that will procure precise political equality, then I am for that measure. That when you show me a measure, however specious it may be, through which I can see political inequality, I am opposed to it; and the section, as it now stands amended, savors of political inequality, and not of political equality. Sir, you will disfranchise, in some counties, one-third as many men as you will give votes to in other counties. Wherever the two-third ratio is adopted, you will make two men in one place equal to three men in another place. Now, sir, I contend that there is no political equality in that. Let us have such a basis as shall compel the Legislature to make an equal division of the State. I care not whether counties are divided or not for the purposes of representation. It is so many people that I want represented, and not fields, and fences, and hedges, and ditches, and

mountains, and valleys. I shall be compelled to vote directly against the proposition, and I hope that those who think as I do will help me to vote it down.

Mr. COLFAX. So far as the question of single districts is concerned, I agree entirely with the gentleman from Tippecanoe, (Mr. Pettit,) who has just taken his seat, and I shall therefore move to strike out the restriction which prohibits the division of counties for representative purposes. For one, I shall vote against the section which contains it, under any and all circumstances whatever. It violates the true spirit of republicanism. It ties up the hands of the Legislature, even if the whole people desired that representatives should be elected by single and separate districts. In large counties, entitled to three or four representatives, it gives to comparatively a few active, interested politicians, the selection, virtually, of the whole delegation. And I shall move and vote to strike it out, believing that in all cases, without exception, from County Commissioner up to Supreme Judge, public officers should be chosen by single districts; and especially that the Representative—the framer of the law—should be brought as near as possible to his constituents.

Experience elsewhere teaches us the benefit of this provision. In the State of New York single districts were for some time resisted, especially by the city, which, under the old system, elected thirteen representatives to the Legislature by general ticket—all nominated by one nominating convention—every voter voting for all. But the change was made. Single districts were at last authorized and established. Every district since has elected its own immediate representative; and those most opposed to that system at the time of its adoption, are now as warmly in its favor as those whose exertions secured it.

Gentlemen must remember, too, that it is not many years since Congressmen were elected in many States by general ticket—all the voters of the State voting for all the members to which she was entitled. At last Congress passed a law that thereafter members should be chosen from single districts, to be composed of contiguous territory, and as nearly equal population as possible. That law was resisted for some time by New Hampshire, Missouri, and Mississippi, but it is now complied with by every State, and is cordially acquiesced in by the whole people. It is not saying too much to declare that it is now the settled policy of the country, and that a departure from it hereafter would not be tolerated. And I would just as soon go back to the old Congressional system, and provide that Congressmen from Indiana shall all be elected on a general ticket, and that every voter shall vote for all ten of them, breaking up our present system of each district

having its own immediate representative, as to vote for the present section as it now stands.

I move, therefore, Mr. President, to strike out that sentence of the section which prohibits the Legislature from creating single districts, and insert in lieu thereof the following :

"Counties entitled to more than one representative, may, under the provisions of a general law, be divided into representative districts."

Mr. BORDEN. It strikes me that my friend from St. Joseph is in error in this matter. I do not understand by this section that we cannot divide a county within itself. The provision is that we shall never take a part of one county and attach it to another either for senatorial or representative purposes.

Mr. COLFAX. I am not a very good grammarian, but it seems to me that the plain inference is, that no county shall ever be divided. I desire to strike that out, so that the Legislature may divide if they think fit for single districts.

Mr. MAGUIRE. I think the object of the gentleman from St. Joseph will be better accomplished by striking out the words "for representatives." That will leave it so that counties may be divided hereafter into single districts. I have no objection to the object of the amendment. I am in favor of it, for I think the principle contained in it is correct.

Mr. COLFAX. I will modify the amendment in this way : To strike out the remainder of a sentence after the word "counties" in the twelfth line, and insert :

"And counties entitled to more than one representative may, under the provisions of a general law, be divided into representative districts."

Mr. KENT. I move to lay the amendment on the table.

Mr. COLFAX. I ask for the yeas and nays on that motion.

The yeas and nays were ordered and taken, any resulted as follows :

YEAS.—Messrs. Barbour, Beard, Berry, Carr, Chapman, Chenowith, Coats, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, Fisher, Foster, Gordon, Graham of Miami, Haddon, Hardin, Hendricks, Hogin, Holman, Howe, Johnson, Kent, Kendall of Wabash, Logan, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Nave, Newman, Pepper of Ohio, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Sherrod, Smiley, Smith of Ripley, Smith of Scott, Tannehill, Todd, Wiley, Wolfe, Zenor, and Mr. President—51.

NAYS.—Messrs. Alexander, Anthony, Badger, Bicknell, Blythe, Borden, Bowers, Bright, Brookbank, Bryant, Chandler, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Jefferson, Duzan, Edmonston, Farrow, Garvin,

Gootee, Hall, Hamilton, Helm, Helmer, Hitt, Huff, Kendall of White, Lockhart, Maguire, Mather, McClelland, McFarland, Miller of Fulton, Moore, Morgan, Murray, Owen, Pepper of Crawford, Pettit, Prather, Shannon, Snook, Spann, Steele, Stevenson, Taylor, Thomas, Thornton, Trimble, Walpole, Watts, Wheeler, Work, Wunderlich, and Yocum—60.

So the motion to lay the amendment on the table did not prevail.

The PRESIDENT. The question now is on the amendment as amended.

Mr. PETTIT desired that the section, as amended, should be read.

The Secretary read the amended section as follows :

"Senatorial and representative districts, where more than one county shall constitute a district, shall be composed of contiguous counties; and counties entitled to more than two representatives, may, under the provisions of a general law, be divided into representative districts : *Provided*, If any county at an apportionment shall have two-thirds or more of the ratio of representation, it shall be entitled to one representative."

Mr. PETTIT. I thought that the amendment was to strike out that proviso.

Mr. STEVENSON. I move to re-commit the section with the pending amendment to the committee on the legislative department.

The question was taken on the motion to re-commit, and the division being called for, it was decided in the affirmative—yes 56, noes 46.

The PRESIDENT. The next thing in the order of the day is the following section :

TERM OF SERVICE OF SENATORS AND REPRESENTATIVES.

The Secretary read the section, as follows :

"Senators shall be chosen for the term of four years, and Representatives for the term of two years from the day next after their general election—except that the term of service of one-half the Senators first elected under this Constitution (or if the whole number be an uneven one, then the term of service of one less than half) shall expire at the end of two years. And for the purpose of ascertaining whose term of service shall first expire, the Senators elect, at the first meeting of the General Assembly under this Constitution, shall be divided by lot into two equal classes, (as near as may be,) and the seats of the Senators of the first class shall be vacated at the expiration of two years, and of the second class at the expiration of four years, so that one half, as near as possible, shall be chosen biennially forever thereafter. And in case of increase of the number of Senators at any time, they shall be so annexed by lot to one or the other of the two classes, as to keep them as nearly equal as practicable."

Mr. PETTIT moved to strike out the last clause, from the word "and" in the twenty-fourth

line to the conclusion. It will be seen that this section is drawn in reference to the second section reported by the same committee, in which they contemplated that neither the House of Representatives nor the Senate should consist of more nor less than a given number. This was drawn with reference to an increase. But the Convention has this morning fixed the number at one hundred for the House of Representatives and fifty for the Senate. [Cries of "no, no, no."]

Well, gentlemen, you may have it "no, no, no," if you please, but I am only telling you what has transpired. These are the numbers already fixed upon. The people may put them at less, but their representatives never will. I may therefore say, practically, that it is settled by this Convention, that the House shall consist of one hundred members and the Senate of fifty members. This latter clause therefore is of no earthly use, and will only incur the Constitution if it be allowed to remain.

Mr. DOBSON. It is very possible that the gentleman is right, when he says that there is no use in this clause. If, however, there is no use in it, it will certainly do no harm. It is not unlikely that before we conclude our labors here, we may provide the manner in which this Constitution shall be amended at some future day; and among other things, it may be provided that the Legislature shall have power to propose amendments. I will not say how we will do it, but keeping that contingency in view it may be possible that this clause may be useful. If, on the other hand, before we conclude these labors, we should find that the clause is useless, the committee on revision and phraseology can recommend that it shall be taken away. It is perfectly harmless as it is, and there is a possibility that it may be necessary. Under such circumstances, therefore, I am in favor of its remaining.

Mr. SMITH of Ripley. I think I can propose an amendment to the section that will both shorten and beautify it very much. I propose in the first line to strike out the word "four" and insert the word "two," and in the sixteenth line to strike out the remainder of the section after the word "election." That will save a great deal of unnecessary verbiage and make the Constitution much better.

The PRESIDENT. The amendment of the gentleman from Ripley is not in order. There is already an amendment pending, and the gentleman does not propose to amend the amendment.

The question was then taken on the motion of Mr. Pettit to strike out the latter clause of the section, and it was rejected.

Mr. SMITH of Ripley. Mr. President, I now insist upon my amendment.

The PRESIDENT. The gentleman from Ripley may insist upon his amendment, but the gentleman from St. Joseph has the floor.

Mr. COLFAX. I move to strike out the whole section and insert "Senators and Representatives shall be chosen for the term of two years from the day next after their general election." I ask the yeas and nays on that motion.

The yeas and nays were ordered and taken, with the following result—yeas 37, nays 86:

YEAS.—Messrs. Allen, Anthony, Beard, Bicknell, Bourne, Bowers, Brookbank, Clark of Hamilton, Colfax, Crumbacker, Davis of Parke, Dunn of Perry, &c., Duzan, Graham of Miami, Haddon, Hardin, Kendall of Wabash, Kendall of White, Kinley, Maguire, March, McClelland, Miller of Fulton, Milroy, Murray, Nave, Niles, Pepper of Ohio, Prather, Read of Clark, Smith of Ripley, Spann, Tague, Tannehill, Taylor, and Wolfe—37.

NAYS.—Messrs. Alexander, Badger, Barbour, Berry, Blythe, Borden, Bracken, Bright, Bryant, Carr, Chandler, Chapman, Chenoweth, Clark of Tippecanoe, Coats, Cole, Cookerly, Crawford, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foster, Garvin, Gibson, Gootee, Gordon, Hall, Hamilton, Harbolt, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Howe, Huff, Johnson, Jones, Kelso, Kent, Lockhart, Logan, Mather, May, McLean, Miller of Clinton, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Newman, Owen, Pepper of Crawford, Pettit, Rariden, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Steele, Stevenson, Thomas, Thornton, Todd, Trimby, Elliott, Walpole, Watts, Wheeler, Wiley, Work, Wundelich, Yooum, Zenor, and Mr. President—86.

So the amendment was not adopted.

Mr. BADGER. I propose to amend the section by striking out in the eighteenth and nineteenth lines the words "and for the purpose of ascertaining whose term of service shall first expire." These words appears to me to be a redundancy. The following part of the section is sufficiently explicit without them.

The amendment was agreed to by consent. The section was then ordered to be engrossed for a third reading.

QUALIFICATIONS OF SENATORS AND REPRESENTATIVES.

The PRESIDENT. The Convention will now proceed to the consideration of the next section.

The Secretary read the section, as follows:

"No person shall be a Senator or Representative who at the time of his election is not a citizen of the United States, and been an inhabitant of the State for two years next preceding his election and the last year thereof of the county or district for which he may be chosen Senator, shall be at least twenty-five, and Representative twenty one years of age."

Mr. WALPOLE. I move to amend the section by striking out the words "a citizen of the United States and been;" the section will then read, "no person shall be a Senator or Representative who at the time of his election is not an inhabitant," &c.; and also to add at the end of the section, after the word "age" the words "and a qualified elector at the time of his election." My object is to confer upon any elector the right to enjoy office.

Mr. TAGUE. I move to amend the amendment by striking out all after the words "at least" and inserting "thirty and Representative twenty-five years of age." My object is to provide that Senators shall be of the age of thirty years and Representatives of the age of twenty-five years.

The question was taken on Mr. Tague's amendment, and it was rejected.

Mr. BORDEN said, that on examining the Constitutions of various States of the Union, he discovered that a provision similar to that recommended by the gentleman from Hancock, (Mr. Walpole,) was incorporated, and he knew of no reason why it should not be adopted in the Constitution of the State of Indiana. One word in regard to the persons whom the provisions would admit into the Legislature. He believed that before persons not citizens of the United States should be entitled to vote, they should have declared their intentions to become such, and should have resided in the county for a certain time; and he trusted that if they had so declared their intentions, and had so resided in the county, the Convention would permit them—or at least would throw no objection in the way of their taking a seat in the Legislature, provided their fellow citizens should elect them to perform such a duty. He was well aware that objections were urged against aliens taking part in the legislation of the country, and even against their being admitted to the enjoyment of certain privileges; and he regretted to hear gentlemen say upon that floor, that negroes were as well qualified to perform political duties as the Germans and Irish. This assertion he thought was exceedingly illiberal. He could see no reason why, when a person was admitted to the privilege of a voter, he should not be permitted to hold office if his fellow citizens shall deem him worthy of the honor. The Convention had already adopted a provision in the constitution, conferring the privilege of voting for county and township officers upon aliens who have resided a certain time within a county; and if they are qualified to vote at your elections, why were they not as well qualified to serve their county in the Halls of the Legislature, as to discharge the duties of any inferior office? He could see no reason why this distinction should be drawn. And he hoped that the amendment proposed by the gentleman from Hancock (Mr. Walpole) would prevail.

The question was then taken on the amendment, and a division being called for, there were for the amendment—ayes 48, noes 52.

So the amendment was not adopted.

Mr. KELSO. I move to amend the section by striking out the word "twenty-five," as fixing the age at which men shall be eligible to be a senator, and inserting the word "twenty-one." [Loud cries of "No! no! no!"]

I can't see any reason why a man is not as fit in the Senate chamber at the age of twenty-one years, as he is to sit in the House of Representatives at that age.

The amendment was rejected.

Mr. WALPOLE. I have an amendment to offer. It is to re-commit this section to the committee on the legislative department, with instructions to strike out the words "who, at the time of his election, is not a citizen of the United States," and insert the words "unless he possess the qualifications of an elector."

Mr. COOKERLY called for a division of the question.

Mr. BORDEN demanded the yeas and nays, and they were ordered.

The PRESIDENT. The question is first on the motion to re-commit.

The question being taken on the motion, by yeas and nays, resulted as follows:

YEAS.—Messrs. Alexander, Anthony, Blythe, Borden, Bryant, Chapman, Crumbacker, Dick, Dunn of Perry, &c., Duzan, Edmonston, Gordon, Graham of Miami, Hamilton, Hitt, Hovey, Johnson, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Morrison of Marion, Murray, Nave, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Ritchey, Smiley, Smith of Ripley, Spann, Taylor, Trimby, Walpole, Wheeler, Work, and Wunderlich—48.

NAYS.—Messrs. Allen, Badger, Barbour, Beard, Berry, Bicknell, Biddle, Bourne, Bowers, Bracken, Bright, Brookbank, Carr, Chandler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Foster, Garvin, Haddon, Hall, Harbolt, Hardin, Helm, Helmer, Hendricks, Hugin, Holman, Huff, Jones, Kendall of White, Logan, Mather, McLean, Miller of Clinton, Mooney, Moore, Morgan, Newman, Niles, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Snook, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—74.

So the motion to re-commit did not prevail.

Mr. WALPOLE. Mr. PRESIDENT: I have another amendment to offer. It is to re-commit the section with the following instructions:

"To amend said section, so that white male inhabitants of the State, of foreign birth, that

have *bona fide* resided in this State two years immediately preceding this election, and made a declaration to become citizens of the United States, paid a State and county tax, and possessing all the qualifications required by this Constitution—other than being a citizen of the United States—shall be eligible to an election to the General Assembly."

The PRESIDENT. The Chair would remind the gentleman from Hancock that his amendment is not in order, the Convention having just voted down an amendment substantially the same as the one now proposed.

Mr. WALPOLE. I beg to differ with the Chair; the instructions which I have offered are widely different.

Mr. BERRY. Mr. President—

The PRESIDENT. The gentleman from Franklin.

Mr. BERRY. I move the previous question. [Loud cries of "No! no! no!"]

Mr. WALPOLE. I rise to a point of order.

The PRESIDENT. The gentleman will please to send his point of order to the Chair in writing.

Mr. WALPOLE. I desire to be heard, sir. My point of order is, that I had the floor—that I had not yielded it.

The PRESIDENT. The gentleman from Hancock will please to send his point of order to the Chair in writing.

Mr. WALPOLE. I will immediately.

The PRESIDENT. The Chair would remark to the gentleman from Hancock, that he was not in order in offering an amendment substantially the same as that which had just been voted down by the Convention. Being out of order, he was not entitled to the floor. The gentleman from Franklin will proceed.

Mr. WALPOLE. When I yield the floor, the Chair can hear the gentleman from Franklin. I presume that members are not to be muzzled here at the will of the Chair.

The PRESIDENT. The Chair undertakes to regulate itself, the wisdom of the gentleman from Hancock to the contrary notwithstanding. If the gentleman is not satisfied with the decision of the Chair, he can appeal to the Convention.

Mr. WALPOLE. The Chair having intimated that it will in future regulate itself to good order, under that promise, I yield the floor without further objection.

The question was then taken on the call for the previous question, and it was seconded.

The question being: "Shall the main question be now put?" it was ordered by consent.

The question then was: "Shall the section be ordered to be engrossed for its third reading?" and it was decided in the affirmative.

The PRESIDENT. The Convention will now proceed to the consideration of the next section.

The Secretary read the section, as follows:

"No person holding any lucrative office under the United States, or this State, shall be eligible to a seat in either branch of the General Assembly: *Provided*, That offices in the militia, to which there is attached no annual salary, and the office of postmaster, when the compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative."

Mr. HOLMAN moved to amend the section by striking out the words "and the office of postmaster, when the compensation does not exceed five hundred dollars per annum." This would make the section provide that all persons holding lucrative offices should be ineligible to a seat in either branch of the General Assembly, the only exception being that of offices in the militia.

Mr. DOBSON. The object of this amendment is to prevent postmasters who hold offices not exceeding five hundred dollars per annum from being eligible to a seat in either branch of the General Assembly. I cannot see any good reason why this discrimination should be made in favor of persons holding offices under the General Government. The section stipulates that no person holding any lucrative office under the United States, or this State, shall be eligible to a seat in either branch of the General Assembly, making an exception in favor of militia officers and postmasters whose amount of compensation does not exceed five hundred dollars per annum. By the section, as it now stands, any person holding an office under this State, no matter how small the compensation may be, is precluded from serving his fellow-citizens in the capacity of a legislator. Now, if an individual holding an office under the General Government, worth from four hundred to five hundred dollars a year, is eligible to a seat in the Legislature, why not permit county and State officers to be eligible also? If they are to be eligible in the one instance, they ought to be so in the other. But I object to the principle. I say, no matter what the amount of a man's salary may be, let him be content with the one office.

Mr. BORDEN. I understand that, heretofore, persons have been elected who have held small offices under the post office department, and no objection has been made. I suppose the object of the committee was, to render persons holding situations under that department, worth five hundred dollars a year, or more, ineligible to a seat in either branch of the Legislature. Now there appears to be something wrong in this. We provide that if a man holds the paltry office of a justice of the peace, he shall not serve in the capacity of a legislator, unless he resigns that office. I should propose at any rate that justices of the peace should not be included.

Mr. BRIGHT. The old Constitution provides that no person holding any office under the authority of the President of the U. S., or of the

State, militia officers excepted, shall be eligible to a seat in either branch of the General Assembly, unless he resigns his office previous to the election. It will be seen by this, that the militia officers are excepted. Under this Constitution the question arose, whether postmasters held their offices under the authority of the United States, and so were excluded from occupying a seat in the State Legislature. It was decided in this State that they were not officers. The committee decided that offices in the militia, to which no annual salary was affixed, were not lucrative; and that neither was the office of postmaster, unless it exceeded the amount of five hundred dollars per year. If that amount is too large, let the Convention reduce it; but we all know that there are hundreds of petty post offices throughout the country filled by individuals for the mere convenience of the public, without much compensation attached to such offices. Many of these offices are selected more for the convenience of their location, than in reference to any compensation which they yield; and it has been held that these offices are not within the meaning of the old Constitution. The design of the committee was not to exclude those men holding these little offices from occupying a seat in the Legislature; but to leave the door open, inasmuch as many of them were established and kept up more for public convenience than from any profit which they yield.

Mr. DOBSON. I move to amend the amendment in the following way:

Insert after the word "office" in the 35th line the words, "or appointment."

Mr. MILLER of Gibson. This will prohibit trustees in townships from serving as members of the General Assembly. That is carrying the thing too far.

Mr. DOBSON. My doctrine is, that one individual should not hold more than one office at a time.

A MEMBER. That's the right doctrine.

Mr. MORRISON of Marion. I think there is no good reason why we should make a difference between officers of the General Government and officers of the State Government. If any gentleman holds the office of postmaster, and desires to come to the Legislature, he can resign his office as postmaster. We have a Quarter Master General and an Adjutant General, and we disqualify them, although neither office amounts to more than a hundred and fifty dollars per year. I think that if we reject officers of the State Government in all cases, we ought also to reject officers of the General Government.

The question was then taken on the amendment to the amendment, and it was adopted—ayes 47, noes 29.

The question then recurred on adopting the amendment as amended, and it was agreed to.

Mr. WALPOLE moved to amend the section

by inserting in the 30th line after the word "State," the words, "nor any person who is or may have been within one year immediately preceding his election either president, director, secretary, or attorney, or other officer or agent of any bank, banking, insurance, or railroad company."

Mr. NEWMAN. I move to amend the amendment by adding the words, "or attorney-at-law." [Laughter.]

Mr. WALPOLE said he would accept the amendment with great pleasure. The gentleman from Wayne, who had a great regard for the legal profession, would doubtless reap much benefit from the amendment, and he (Mr. W.) did not apprehend there would be any difficulty in obtaining his vote for the amendment as thus amended by himself.

Upon the question immediately before the House he had a word or two to say. He would appeal to the gentleman who had acted with him in the Senate as to the probable effect of the exclusion of those persons from the General Assembly. There were railroad companies now chartered for the construction of lines of road which would cost over twenty millions of dollars, of which from five to ten millions were now invested. There were other corporations which had invested about a million more, in addition to insurance companies with a large amount of capital. His object in offering this amendment was, to keep the legislative department pure; that no influence acting upon individuals, independently of the influence of the masses, should be felt within the Legislative Halls of the State.

During the last year, a bill had passed the House of Representatives conferring upon all the railroad companies then incorporated, the power, to incorporate themselves under one general charter, with the liberty to adopt any one charter or parts of charters granted either in the State of Indiana or in other States with which those lines were connected. That bill passed the House of Representatives and went to the Senate; and but for the gentleman from Gibson (Mr. Miller) it would have passed that body also.

At that time every railroad influence was brought to bear upon the proposition before the Senate. The "out-of-door" influence was almost irresistible, and only by three votes was that most injurious measure lost—the Legislature at their adjournment having come well nigh passing it.

He did not mean to impugn the motives of Senators, but every man in every office on these lines in the State of Indiana, brought his influence to bear upon the Senate, and it was almost impossible for them not to yield to that influence.

His object, as he had already stated, was to keep the representation of the State pure from such influences; that the masses should be rep-

resented, and not the combined influence of railroad companies. The present charter of the State Bank excluded the president, treasurer, directors, secretaries, and attorneys of that corporation from holding seats in the General Assembly; and the same law ought to apply to insurance companies and other corporations. As it regarded insurance companies, there were no institutions in the State which realized more profit than they did. Those profits ranged from fifty to a hundred per cent.; and there was scarcely a winter in which they did not attempt more or less to influence the Legislature in their favor. If, therefore, a man chose to go into the Legislature, let him throw off every influence of office, and attend to that only which is calculated to promote the public good. If he prefers to remain in office, let him confine himself to that, and let others who can go into the councils of the State untrammelled by any interest save that of the people at large, perform the duties of legislators.

When it was found that the new Constitution provided that all corporations in the State should be under one general law, they could imagine thirty banks in the State of Indiana with their united influence obtaining just such legislation as they pleased. And when to that was added the fact that the whole railroad system was to be under one general law, with a capital of twenty-five millions of dollars, it would be seen that they would break down all influence, unless they had Senators and Representatives who knew no rights or interests except those of the public.

The gentleman from Wayne (Mr. Newman) had suggested that attorneys-at-law should also be excluded. I accept his modification, and I tell him frankly that I have the manliness to vote for the exclusion of myself, and I ask him to say if he will do the same? It is right that attorneys should not sit in the Legislature. He has had some experience in legislation, and that experience undoubtedly has taught him that it is wrong. I say with him that it is wrong, and I hope he will carry out his opinion by his vote upon this question.

If I can obtain a sufficient number of gentlemen to sustain me in the call for the yeas and nays on this amendment, I desire that they should be taken.

MR. NEWMAN. I have only a single word to say. The gentleman from Hancock (Mr. Walpole) says that I have had some experience in legislation, and that undoubtedly that experience has taught me the impropriety of lawyers being in the General Assembly. I served in the Legislature during one session, some sixteen years ago, and I am inclined to think that that is all the experience I ever shall have. Let the amendment pass, or otherwise, it will have very little effect upon me, so far as regards this office. As a member of the bar, and keeping an eye to the profits of the profession, I

would prefer that no gentleman of the bar should ever be a member of the General Assembly. That is all I have to say on the subject.

MR. KENT. When the proper time arrives I will offer the following as an amendment to the amendment of the gentleman from Hancock:

"That the persons described in the amendment shall not be permitted to visit Indianapolis during the sittings of the Legislature." [Laughter.]

MR. BORDEN. I think the gentleman from Hancock is coming rather a "gum game" over us. I hope the anti-bank party will vote against the amendment.

MR. KELSO. I am decidedly in favor of the gentleman's amendment, for the reason that if we can only get a prohibition in the Constitution now against banks, there will be little danger of our getting banks [laughter] hereafter.

MR. CLARK of Tippecanoe. I offer the following amendment to the amendment to come in after the word "attorneys,"—

"Nor any odd fellows or free masons." [Laughter and applause.]

MR. STEVENSON moved the previous question, which was sustained.

MR. CLARK. I wish to withdraw my amendment, if I may have the liberty to do so.

THE PRESIDENT. The gentleman is too late. The previous question applies to it.

The main question being ordered to be now put,

THE PRESIDENT. The first question is on the amendment of the gentleman from Tippecanoe (Mr. Clark).

MR. CLARK. I would like to withdraw that amendment.

THE PRESIDENT. It can only be done by unanimous consent. Will the Convention give the gentleman from Tippecanoe leave to withdraw his amendment? [Loud cries of "Consent, consent, consent."]

The amendment was accordingly withdrawn.

The question was then taken on the amendment offered by the gentleman from Hancock, by yeas and nays, with the following result:

YEAS.—Messrs. Alexander, Allen, Beard, Berry, Bicknell, Borden, Bowers, Bracken, Chandler, Chenoweth, Clark of Hamilton, Coats, Cookerly, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Foster, Gibson, Gootee, Gordon, Haddon, Hamilton, Harbottle, Hardin, Hugin, Holman, Johnson, Jones, Kelso, Lockhart, Logan, March, May, McClelland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Murray, Nave, Prather, Schoonover, Sherrod, Smiley, Spann, Tague, Taylor, Wallace, Walpole, Wiley, Wolfe, Work, and Wunderlich—58.

NAYS.—Messrs. Anthony, Badger, Barbour, Biddle, Blythe, Bourne, Bright, Brookbank, Bryant, Carr, Chapman, Clark of Tippecanoe, Cole,

Colfax, Crawford, Crumbacker, Davis of Vermillion, Dunn of Jefferson, Farrow, Fisher, Garvin, Graham of Miami, Hall, Helm, Helmer, Hendricks, Hitt, Hovey, Howe, Huff, Kent, Kendall of Wabash, Kendall of White, Kinley, Maguire, Mather, McFarland, McLean, Miller of Clinton, Morgan, Newman, Niles, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Trimble, Watts, Wheeler, Yocum, Zenor, and Mr. President—67.

So the amendment was rejected.

The section was then ordered to be engrossed for a third reading, after which,

The Convention adjourned.

TUESDAY, Dec. 10, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MYERS.

The journal of yesterday was read and approved.

The PRESIDENT laid before the Convention a communication from the Auditor of State, containing an estimate of the amount of interest paid on the public debt, and the salaries and contingent expenses of the State agents, &c.

The Communication having been read, on motion by

Mr. SMITH of Ripley, it was laid on the table and ordered to be printed.

Mr. THORNTON, from the select committee to which had been referred the resolution directing an inquiry into the best mode of enforcing the payment of taxes on delinquent lands, and giving validity to tax-titles, reported the following, to be inserted in the new Constitution:

SEC. —. Hereafter no purchaser of any land or town lot at any sale of lands or town lots for taxes due to this State, or any county or any incorporated town or city within the same; or at any sale for taxes, levies, or assessments authorized by the laws of this State, or any ordinance or by-law of any town or municipal corporation therein, shall be entitled to a deed for any land or town lot so purchased, until he or she shall have complied with the following condition, to-wit: Such purchaser shall cause to be served by the sheriff, or other proper officer, a written notice of such purchase on every person in possession or occupancy of such land or town lot, at least three months before the expiration of the time of redemption on such sale, in which notice he shall distinctly set forth when he purchased such land or town lot, a particular description thereof, so as to clearly identify the same, the amount of the tax, per centum, and costs necessary to redeem the same, and when the time of such redemption will expire. And

in like manner shall cause to be served on the person or persons in whose name or names such land or town lot shall have been listed for taxation, a similar written notice, if such person or persons shall reside in the county where such land or town lot is situate; and if such person or persons do not reside therein, then such purchaser shall cause such notice to be published in some newspaper printed in such county, and if no newspaper be published therein, then in the newspaper published in this State nearest to the county in which such land or town lot is situated, which notice shall be published for three weeks successively, the last of which shall be at least three months previous to the expiration of the time of redemption; in which notice such purchaser shall furthermore state, that unless the same shall be redeemed within the time limited for the redemption thereof, or for other good cause shown to the contrary, he will make a motion to the Circuit Court of the county in which such land or town lot is situate at the next ensuing term thereof, for an order directing the proper officer to execute to him a deed for such land or town lot, according to the provisions of the statute in such case made and provided. Such purchaser, before he shall be entitled to an order for a deed in such case, shall adduce to such court satisfactory proof of his having become the purchaser of such land or town lot for the taxes due thereon, and at the same time shall produce and file his certificate of purchase, together with proof of his having given the notice and complied with the preliminary conditions herein before prescribed, and shall moreover file his affidavit to the same effect, of all of which several matters the court shall cause a record to be made in the order book of such court, and shall also cause the same to be filed among the records of said court, to be carefully preserved by the clerk thereof; and thereupon, unless good cause be shown to the contrary, cause an order to be made, directing the proper officer to execute to such purchaser a deed accordingly for such land or town lot, which shall have the effect thenceforth to vest the said purchaser with a good, valid, and indefeasible legal title to such land or town lot. And it shall be the further duty of such court, upon awarding a deed to such purchaser as aforesaid, to enter upon an order or decree directing such purchaser to pay into the clerk's office of said court, on or before the first day of the next term of said court, a sum which shall be equal to twenty per cent. on the amount of the value of the land or lot so purchased, to be ascertained by recurrence to the assessment of the same, when last listed for taxation, which order or decree shall, from the date thereof, operate as a lien on the said land or town lot, as against the said purchaser or any alienee until satisfied, and if not paid as ordered, may be enforced by execution against said land or town lot, whosoever's lands or possession the same may be; which

money, when collected, shall be applied to common schools within the township wherein the said land or town lot is situated: *Provided*, however, that both the said purchaser, as well as the original owner of said land or town lot, or any person having an interest therein, shall be at liberty to take an appeal, or sue out a writ of error to the Supreme Court, for the purpose of reversing the order of the Circuit Court in awarding a deed in such case.

The section was read a first time and passed to a second reading.

Mr. NAVE dissented from the report of the majority, and desired permission to state his reasons for dissenting. The reasons were first, he said, because he considered it a matter for legislative action.

The PRESIDENT. Does the gentleman propose to make a minority report?

Mr. NAVE. I wish merely to state the reasons verbally, why I dissent from the report.

The PRESIDENT. It is not in order for the gentleman to do so.

Mr. NAVE. Then I will submit the following as a minority report:

Mr. PRESIDENT: The undersigned, a member of the select committee to whom was referred the subject just reported to the Convention, by the chairman, (Mr. Thornton,) begs leave to make a counter-report, dissenting from the report of the majority of the committee, for the following reasons: 1st. The subject referred to the committee belongs to the legislative department of the State, and is not properly within the province and action of this Convention. 2d. The several provisions contained in the section reported by the committee, may require amendment, or repeal, hereafter, and, being in the organic law, will, therefore, be beyond the reach and control of legislation; and 3d. It is an assumption of power not within the objects for which this Convention was called into existence, and therefore, a power which the Convention can only limit and circumscribe, in the action of the legislative branch of the Government.

C. C. NAVE.

ORDERS OF THE DAY.

The Convention proceeded to the consideration of the orders of the day, the first thing in order being the section in relation to the term of service of Senators and Representatives.

Mr. TODD. I desire to offer a substitute for that section.

The PRESIDENT. It is not now in order. The gentleman should have offered his substitute on the second reading of the section.

The question being, Shall the section pass?

The yeas and nays were taken and resulted—yeas 116, nays 6—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers,

Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenoweth, Clark of Tippecanoe, Coats, Cole, Crawford, Crumbacker, Davis of Madison; Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foster, Garvin, Gordon, Graham of Miami, Haddon, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mather, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mower, Murray, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Taylor, Thomas, Thornton, Todd, Trimble, Elliott, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—116.

NAYS.—Messrs. Clark of Hamilton, Colfax, Gootee, Nave, Tannehill, and Walpole—6.

The next section was then read by the Secretary.

It provides that, "No person shall be a Senator or Representative who, at the time of his election, is not a citizen of the United States, and been an inhabitant of this State for the two years next preceding his election, and the last year thereof of the county or district for which he may be chosen. Senators shall be at least twenty-five, and Representatives twenty-one years of age."

Mr. WALPOLE moved to re-commit the section with instructions to amend by providing that "white persons of foreign birth, who have made a declaration of their intention to become citizens of the United States, and who possess the other qualifications contained in the section, shall not be disqualified from holding a seat in either branch of the Legislature."

Mr. WALPOLE. On yesterday, sir, I proposed to incorporate this amendment in the section that is now under consideration. At that time I did not deem it necessary to say anything in support of the proposition, inasmuch as a few days since I made a motion to amend a section, embracing in the amendment the substance of this, viz.: That persons of foreign birth who have made a declaration of intention to become citizens of the United States, and who possess the other qualification specified in the section, shall not be disqualified from holding a county office.

That amendment was adopted by the Convention without a count. By that provision, which has been made a part of the Constitution, it is declared that the offices of sheriff, clerk, auditor, treasurer, recorder, coroner and all other county offices may be held

by persons of foreign birth, who have resided in the State for two years previous to their election, and who have filed their declaration of intention to become citizens. It will be recollected that the committee on the elective privilege have reported a section conferring the elective franchise upon persons of foreign birth, who have resided for two years in the State. In looking over the history of the early organization of Indiana, from the time of the establishment of the territorial Government up to the adoption of the present Constitution in 1816, foreigners, persons who were not naturalized citizens of the United States, were not only permitted to exercise the elective franchise, but were actually entitled to hold and enjoy office, and many were elected to and engaged office. At that time there was a large foreign population in Indiana, a great proportion of whom never became naturalized citizens of the United States. Why it was that the framers of the Constitution of 1816 excluded so large and meritorious a class of the inhabitants of Indiana, from this privilege, I cannot perceive. There is no reason why a man of foreign birth should be excluded, if he is a bona fide resident of the State, and has made his declaration of intention to become a citizen. The reason which exists why a man should become a naturalized citizen, to entitle him to hold office under the United States does not apply to our offices under a State government. The Government of the United States has the power to declare war, to grant letters of reprisal, and to make treaties. But a State government has no such power. The citizen of the United States stands in the same relation to a State government, as the citizen of our State stands in relation to the government of another State.

A man born in Ohio owes no more allegiance to the State Government of Indiana than the man who was born in Germany. He owes no more allegiance to your institutions than a man of a foreign birth. Yet you confer upon the native of Ohio what you refuse to the native of Germany; yet there exist no real cause, other than the spirit of Native Americanism. I hold that it is contrary to good policy to exclude any portion of the white inhabitants of the State from becoming electors.

Foreigners have the right of representation that is contemplated here, and yet you say, though we give you the right to vote, we will not give you the right to hold and enjoy office. Sir, it is a direct attack upon the intelligence and patriotism of the electors of Indiana, to say that they would select a man for office who is not identified with their interests. There is no danger in conferring power upon a foreigner who has made his declaration of intention to become a citizen. I repose entire confidence in the intelligence of the people of this State, so far, at all events, as to allow them to elect whom they please to represent them.

You may be assured that they will elect only such as are intelligent, and worthy of the trust reposed in them. There are now upon this floor four gentlemen of foreign birth—men of high standing. Do you suppose that the State of Indiana is any dearer to them from the fact of their having an oath than if they had not taken it? Certainly not. Men are governed by higher impulses. The law of honor and of conscience is more efficacious than if you swear a man ten times over to support the Constitution of the United States. From that oath the patriotic feeling that governs him does not emanate but from a love for the institutions of the country of his adoption.

I hope, sir, that the section will be re-committed with instructions to extend to foreigners the right to enjoy and hold office—not to transient persons, but to bona fide residents, and you need be under no apprehension that the citizens of this State will send to the Legislature any who are not identified in feeling and interest with themselves. I desire that my position on this subject shall be known, and if I can meet with the sanction of nine gentlemen I should like to have the yeas and nays upon the proposition.

Mr. BERRY demanded the previous question.

Mr. WALPOLE. Will the previous question cut off the motion to re-commit with instructions?

The PRESIDENT, Yes, sir.

The demand for the previous question was upon a division, seconded—ayes 45, noes 35.

The main question was ordered to be now put.

The question being, shall the section pass?—the yeas and nays were taken and resulted, yeas 103, nays 19—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Biddle, Blythe, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Elliott, Farrow, Fisher, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Jones, Kent, Kendall of Wabash, Kendall of White, Lockhart, Logan, March, May, McClelland, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Mowrer, Murray, Newman, Niles, Owen, Pepper of Ohio, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Taylor, Thomas, Thornton, Todd, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—103.

NAYS.—Messrs. Borden, Chapman, Dick, Dunn of Perry, &c., Edmonston, Holman, Johnson, Kelso, Kinley, Maguire, Miller of Fulton, Morrison of Marion, Nave, Pepper of Crawford, Prather, Smiley, Tague, Trimble, and Walpole—19.

The following section, on its third reading, was then taken up:

"No person holding any lucrative office under the United States or this State, shall be eligible to a seat in either branch of the General Assembly: *Provided* that offices in the militia, to which there is attached no annual salary, shall not be deemed lucrative."

Mr. WALPOLE moved to re-commit the section with instructions to amend so as to exclude the President, Directors, or other officers of railroad and banking companies from seats in the Legislature.

A VOICE. Include lawyers also.

Mr. WILEY demanded the previous question.

A division being called for on seconding the demand for the previous question, there were yeas 51, nays 47.

So the previous question was seconded.

The main question was ordered to be put.

The question being, Shall the section pass?

The yeas and nays were taken, and resulted—yeas 108, nays 11—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Bryant, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foster, Garvin, Gootee, Graham of Miami, Haddon, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hevey, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Newman, Niles, Owen, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Elliott, Walpole, Watts, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—108.

NAYS.—Messrs. Carr, Chapman, Crumbacker, Dunn of Perry, &c., Gordon, Kelso, Miller of Fulton, Nave, Pepper of Crawford, Ristine, and Wolfe—11.

Mr. OWEN. I move a re-consideration of the vote taken. I am not in the habit, sir, of making such a motion, and I make it now, for one reason only, and that is, the call of the previous question cut off all opportunity to amend.

Now, I concur in the present section as it stands so far as I believe it was the intention of the Convention to pass it; but I believe it has passed in a shape in which they did not intend that it should pass. The section reads thus:

"No person holding any lucrative office or appointment under the United States or this State, shall be eligible to a seat in either branch of the General Assembly: *Provided*, That offices in the militia shall not be deemed lucrative."

That will exclude persons who may receive any the most petty appointment, the emoluments of which might not exceed five or ten dollars in the course of the year. I think the section was not intended to have such application. It was designed to extend to postmasters, and that may be well enough. As for offices in the militia, I never heard of any man who mistook them for lucrative. The proviso in the section, therefore, is unnecessary.

I have moved to re-consider the vote for the purpose of offering this substitute:

"No person holding any lucrative office under the United States or this State, shall be eligible to a seat in either branch of the General Assembly: *Provided*, That the office of deputy postmaster shall be deemed a lucrative office."

Mr. KELSO. Allow me to make an inquiry. Suppose the vote be re-considered, we shall still be tied down by the previous question, so that the gentleman will gain nothing by his motion.

Mr. OWEN. I suggest whether the matters that I have stated occurred to the minds of gentlemen who voted for the previous question. I believe they would vote to re-consider the previous question also.

Mr. STEVENSON. I will suggest that the gentleman can accomplish everything that he desires by moving a separate section.

Mr. WALPOLE. I do not believe that there is any necessity for re-considering the vote. I have listened to the argument of the gentleman from Posey, and I think there is really nothing in it. The objections that he has raised have no weight with me whatever. The provision is, that no person shall be elected to a seat in the Legislature who holds an appointment under the State Government or under the General Government. He says that the trustees of a seminary would be excluded. Such an appointment is not derived either from the State Government or the General Government, but from a corporation. So that objection falls to the ground. It has nothing in it, so far as regards the holding of office under the General Government or the State Government is concerned. I believe that the section is right, and the example that the gentleman has cited satisfies me the more of its correctness. He says that the Government may appoint an agent to transact business which will occupy but two days, and hence such officer should not be excluded. But

suppose there is no provision of law to compensate the agent for the service; suppose the State appoint an attorney to transact business for which no specific compensation is fixed, and the Legislature be applied to to determine upon the compensation, would it be right that this agent should go into the Legislature and participate in its action in regard to his own compensation? The gentleman states an instance of the trustees of the State University. They derive their pay from the State. The amount is subject to be increased or decreased at the will of the Legislature. I ask you whether a gentleman holding such an appointment ought to be sent to the Legislature of Indiana? We should not multiply offices in the hands of one man. I shall oppose the re-consideration.

Mr. READ of Clark. I would suggest to the gentleman from Posey that he can accomplish his object to-morrow when the section comes up on its final passage.

The PRESIDENT. The Chair would inform the gentleman that the section has finally passed already.

Mr. READ of Monroe. I would be one of the last to pile office upon office on the same individual. That is radically wrong, and ought not to be allowed under the Constitution. But persons accepting small appointments—not offices—under the State or United States Government, mainly of an honorary character, but to which there may be attached some pay which will meet expenses, and in some degree loss of time, ought not surely to be disfranchised, so far as holding a seat in the Legislature is concerned. That is running the thing quite into the ground.

Suppose the case of trustee in the Smithsonian Institute—ought the holding of such a post to exclude a man from the Legislature?

Once in my life I had the high honor of holding an appointment from the United States Government. I traveled some three hundred miles in order to fulfill its duties, and back the same distance. When I came to receive my pay it amounted, all told, to \$84. I had expended, besides loss of time, between \$120 and \$130. Ought the holding of such a lucrative appointment to have excluded me from a seat in the Legislature?

As for the exclusion of Professors in Colleges, to that I assure gentlemen I make no objections.

Mr. DOBSON. I think that the section is, perhaps, just about as the majority of the body want it to be, and just about as it ought to be. There should be, perhaps, some definite expression as to what sort of appointment should disqualify a man for being elected to the Legislature. But the idea that I wish to see carried out is that when a man comes into the Legislature he shall come with no other papers in his pocket than his certificate of election. If he has got a little appointment let him resign it

before he presents himself for election. I object to a man's holding two appointments at the same time, because the duties imposed upon him by one appointment are very apt to interfere with those of the others. And I would go a step further, and prohibit the Governor from appointing a member of the Legislature to an office under the State government. I want to keep the stream of legislation as pure as possible, as free from all extraneous influences as practicable. There are individuals enough in the State who do not hold office, to supply representatives in the Legislature. I want, as far as possible, to disconnect the legislation of the country from all extraneous influences whatever. I could go still further, and prohibit members of the Legislature from filling offices created during their term of service in the Legislature. I would be glad to see the proposition of the gentleman from Hancock ingrafted in the Constitution. But as the section is passed I hope the vote will not be re-considered.

Mr. WATTS. It appears to me that we are simmering down this thing to a very low ebb, when we say that if a man is entrusted with office it shall disqualify him from filling a seat in the Legislature. It appears to me that it is rather an evidence of his capacity and integrity that he should receive an appointment. The case that has been instanced by the gentleman from Monroe, however, rather staggered my belief. It appears to me that a gentleman who receives an appointment where the salary is only eighty dollars, and pays out one hundred and twenty dollars for expenses, shows an incapacity that ought to exclude him from the Legislature. [A laugh.]

Mr. READ of Monroe. He might not happen to know the compensation which he was to receive until the duty was performed.

The question was taken on the motion to reconsider the vote by which the section was passed, and it was decided in the negative.

So the vote was not re-considered.

The Convention then proceeded to the consideration of the section which provides that "The sessions of the General Assembly shall be held biennially at the Capital of the State, commencing on the first Monday after the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place be appointed by law. But, if in the opinion of the Governor, the public welfare shall, at any time, require it, he may, by proclamation, call a special session."

The section having been read,

Mr. MORRISON of Marion moved to amend by inserting the words "at Indianapolis." [Cries of "No! no!"]

Mr. MORRISON. I want to show gentlemen why it is necessary to insert these words.

It will prevent any attempt being made by future Legislatures to change the seat of Government. If gentlemen will refer to report No. 17, line No. 38, they will see it is there provided in what cases the seat of Government may be changed. There is ample provision there for changing it in the case of an epidemic or other unforeseen occurrence, at any time. It declares that it may be changed on the happening of certain contingencies. If the Convention think with me, that that provision is sufficient, without leaving it in the power of the Legislature to change the seat of Government at their caprice—if they agree with me in the opinion that there ought to be some stability and certainty as to the place where the seat of Government shall be established, there certainly can be no impropriety in so stating in this place. And in connection with this amendment, I move further to strike out the words "or places," wherever they occur, so as to make the section consistent. My object is to make the seat of Government permanent and certain, subject only to change in such cases as are provided for elsewhere.

Mr. BERRY moved to lay the amendment on the table.

The motion was agreed to.

Mr. FOSTER moved to amend the section by striking out the words "after the first day," and also to strike out "1853" and insert "1852."

My object, said Mr. F., is simply this: It is provided here that the General Assembly shall meet on the first Monday after the first day of January. If the month comes in on Monday, the Legislature, of course, will meet on the second Monday of the month. By striking out the words "after the first day," it will read: "commencing on the first Monday of January."

A MEMBER. Suppose the month commences on Monday.

Mr. FOSTER. Never mind about that. [Laughter.] In regard to the other part of the amendment—striking out "1853," and inserting "1852"—it appears to me, that, if the new Constitution should be adopted, the first session of the General Assembly should not be put off for two years. Now, the presumption with me is, that the people will adopt the Constitution, if they do at all, during the summer of next year; and the first election under the new Constitution will take place in October of next year. Why, then, the first session of the Legislature should be put off for two years from January, which will be some fifteen or sixteen months after the first election that will be held under the new Constitution, I cannot conceive.

In my opinion, the General Assembly should convene as soon as possible after the adoption of the Constitution. It does appear to me singular gentlemen should propose that their meeting should be put off for two years. These

are the reasons which have influenced me in offering this amendment.

Mr. NILES. I desire to submit an amendment to the amendment of the gentleman from Monroe, if it be now in order. I propose to strike out in the — line, the words "after the first day," and to insert after the word "on," the words "Thursday after," so as that the sessions of the Legislature shall commence on the Thursday after the first Monday in January. [A voice—"make it Wednesday."] I don't know that I should have any great objection to Wednesday, though I am inclined to think that Thursday would be the better day.

I will make a single remark in reference to the propriety of the amendment which I propose. It is undoubtedly true that the public interests would be equally subserved by the Legislature meeting on Thursday as on Monday. No public interest, then, can stand in the way of the proposed change. It is also undoubtedly true, that, under the present system of convening the Legislature on Monday, the preceding Sunday is always a day of bustle and confusion. It is devoted to exchanging salutations, electioneering, and holding caucuses, and in a manner wholly in conflict with the prevalent feelings and opinions of our people. Now, sir, though I do not think it proper to mix up much of theological opinions in a Constitution, I do hold that a decent respect for the opinions and feelings of a large majority of the people of the State, if nothing else, should forbid our imposing upon the members of the Legislature a kind of necessity for spending the Sabbath in such a manner.

Within a very few years, a person can start from his home in any part of the State, on or after Monday, and be in Indianapolis before Thursday; and I apprehend there are few persons who would not prefer spending Sunday quietly at home, after the manner of our people, than to be in the excitement which attends the convening of the Legislature. I have another reason for proposing Thursday *after the first Monday* in January—that it will enable members of the Legislature to remain at home during what are called the holidays. The observance of the holidays among ones friends, has almost become interwoven with our social habits, and I wish to see the good old usage respected. It is well known that little work is done by Legislative bodies, though nominally in session, between Christmas and New Years. I see every reason in favor of the change, and can conceive of no objection to it whatever.

Mr. BRIGHT. The proposition, as I understand it, is to strike out the words "after the first day," so that the section will read thus: "Commencing on the first Monday in January." Now, the design of the committee, in fixing the time named, was, that the meeting of the Legislature should occur after the first day of January, so as not to interfere with the holidays.

As to the other objection, that is, to the postponement of the first meeting of the Legislature, under the new Constitution, if this Constitution be adopted, it is more than probable that there will be some legislation necessary under the old Constitution, and therefore, it might become necessary, after its adoption, to have a called session of the Legislature, to make the necessary provisions, under the old Constitution, to carry the provisions of the new Constitution into effect.

Mr. STEVENSON. I would suggest one thing, and it is this: That the act under which this Convention is called, declares that the Legislature shall provide for submitting the new Constitution to the people for their ratification or rejection. Well, sir, I think it highly probable that the new Constitution will not be completed before the adjournment of the Legislature, so that you will be obliged either to convene the Legislature for the special purpose of making provision for submitting the new Constitution to the people, or you must wait for the meeting of the Legislature a year from this time.

Mr. TAYLOR said that he saw no reason why the Legislature that was to meet in a few weeks, might not, with great propriety, go on and pass a prospective act, providing that the Constitution which the Convention should frame, should be submitted to the action of the people sometime during next summer. They could do this as well as the succeeding Legislature, and without the delay that would be attendant upon waiting for the action of the succeeding Legislature.

In regard to the day upon which future Legislatures should meet, he had only to say, that he thought it would better suit the views of the people, and be to the mutual benefit of all concerned, for that body to meet on Thursday, in place of Monday. He considered it would be more agreeable to the Representatives themselves, and more in accordance with the wishes of a large portion of the people of Indiana, if the members of the Legislature could avoid traveling upon the Sabbath, which many would doubtless have to do, if that body met on Monday. He was no great stickler for the Sabbath, but he thought, also, if they could do it, they might just as well save their legislators from electioneering on Sunday—as it was well known that it had been their custom to hold a caucus for officers, on the Saturday or Sunday evening prior to the opening of the session, on Monday. He hoped, therefore, that Thursday would be fixed upon as the day of meeting for the Legislature.

Mr. DOBSON said that he thought the difficulty in regard to the meeting of the Legislature, in 1853, could be obviated by striking out in the third line of the section, all after the word "January," and inserting "immediately succeeding the adoption of the new Constitu-

tion." If this proposition met with the approbation of the gentleman from Monroe, (Mr. Foster,) he would move it as a substitute for that gentleman's amendment.

Mr. BORDEN remarked that there were two questions to decide; and first, as to the day of the week on which the Legislature should meet. He believed, as far as he had heard the opinions of members on this point, that they were in favor of changing the day of meeting, from Monday, to Tuesday or Wednesday. Thus the members would have a day or two before the meeting of the Legislature, to make such arrangements as they might deem proper, and would not be compelled to infringe upon the Sabbath, or violate the feelings of the religious portion of the community. As it was now, the Legislature, meeting on Monday, the whole of the Sabbath, immediately preceding that day, was devoted to electioneering and visiting from house to house, much to the annoyance of those who were anxious to observe that day.

In regard to the other question, as to the year of the next meeting of the first Legislature, under the new Constitution, he had only to say that he was in favor of the proposition reported by the committee. The next Legislature, which was soon to assemble, must pass a law, providing for the submission of the amended Constitution to the people, for their approbation or disapproval. He supposed that the vote upon the ratification or rejection of the Constitution, would take place in August next; and that after that, a session of the Legislature, under the old Constitution, would be held, for the purpose, among other things, of making provision for the holding of the first election under the amended Constitution. He was also of opinion that the first election, under the new Constitution should be held in October, 1852, and that the proper time for the meeting of the first Legislature, under the new Constitution, was fixed in the report of the committee, which was in January, 1853.

He thought that ample time should be afforded for the discussion and examination of the provisions of the new Constitution, by the people. The merits of those provisions could be fully discussed before the people, by the candidates for office, during the canvass preceding the August election of '51. It was one thing to make a Constitution, and another thing to satisfy the people in regard to its merits, and nothing but a full and fair discussion would accomplish the latter object. Where there was such a discussion had, the people would settle down in favor of the Constitution, and would probably allow it to remain for many years, without desiring any change in its provisions; but, where it was adopted without that mature discussion and consideration, which would be calculated to enlist the public mind in its favor, the people would soon be prepared to change the Constitution, which was certainly not to be desired.

Again, if the Constitution was submitted to the people at the spring election, there would be but few votes given upon the question. There were few persons who attended the polls at the annual spring election, in April or May, especially in the southern portion of the State, and, although the Constitution might be such as to meet with the general approbation of the people, yet there was a chance, at that period of the year, of its being rejected.

The same objection would apply to a special election, ordered in June or July, as it had been intimated would be ordered—as he presumed there would be less votes given at the polls at a special election, than there would at the annual spring election, on the first of April or May.

He trusted the section would pass as it was, only changing the day of the meeting of the Legislature from Monday, to Tuesday or Wednesday.

Mr. PETTIT said, that he took pleasure in saying that, for once—if never before—he agreed with the gentleman from Monroe, (Mr. Foster,) who made the motion. He trusted it would not be the last time. He thought that the amendment was a very necessary one, and the arguments advanced by the gentleman in its favor, he concurred in heartily. He was in favor of commencing the session of the Legislature on Monday, for the reason that, hitherto, this had been the custom, and the people had become used to it. It was an old and a familiar usage; besides, he believed, that, to do a good week's work, it was always necessary to commence Monday morning, and this rule applied to legislative action, as well as any other kind of actions. He desired that the Legislature should meet the first Monday in January; and he was equally willing, that, on the first day of the year—say the first of January—they should meet and commence their labors with the new year.

If, continued Mr. P., the objection raised by the gentleman from Laporte, (Mr. Niles,) that, by the Legislature's meeting upon Monday, the religious observance of the Sabbath will be desecrated; then, for the last thirty-four years, have the devotional feelings of the people living at the seat of Government been disturbed. By meeting on Monday, the Legislature is but doing that which is done by Congress, by the Legislature of Ohio, and nearly all the State Legislatures in the Union.

What, sir, is the truth in relation to this matter? Do not the members almost invariably make their calculations to get here on Saturday evening, so as to make their appearance at church or in the streets on Sunday. Those who have been members of the Legislature know that that is the fact.

The other gentleman from Laporte (Mr. Taylor) has stated, that, by the Legislature's meeting on Monday, the Sabbath would be desecrated by members meeting in caucus and

electioneering for officers. Now, sir, it is a known fact that these caucuses are held on Saturday evening almost invariably. I prefer, sir, to adhere to the old usage on this subject.

A few words with reference to the period when the first Legislature, after the adoption of the Constitution, shall meet—whether in the year 1852 or '53:

The gentleman from Jefferson (Mr. Bright) is of opinion that the Legislature, under the new Constitution, should not meet until January, 1853; and he further says that it will be necessary to have one session of the Legislature, after the adoption of the new Constitution, under the old Constitution. Now, I deny the possibility of such a thing. When the new Constitution shall have been adopted—the very moment the people, by their action, breathe life into it—it becomes the supreme law of the land, and under no other law can the people of Indiana live. If ever it is to go into effect, it will during the next summer; and I hope that it will be at as early period as practicable. I am opposed to having this Constitution voted upon at a general election, when there is always a scrambling of many political partisans for place. I desire to have the calm and unbiased judgment of the people upon it. I desire that the Constitution we frame should be submitted to the people at a separate election, and not mixed up with anything else. And when will that be done? It is well known to the members of this Convention that it is proposed to change the time of holding the general election from the first Monday in August to the first Monday in October, and I have not heard a dissenting voice in regard to this change. I have no doubt it will be made. Now, it is probable that we shall get through with our labors here by the first of February, at the farthest, though I solemnly believe we shall be through by the middle of January. If the Legislature is in session at the time we get through with our work, they can appoint the day when the election shall be held which is to decide the fate of the Constitution; otherwise we can fix the day. That it will be adopted, there can be no doubt of; and this assertion is not a presumptuous one. I say, whatever shall come from the hands of this Convention, in the shape of a Constitution, will be ratified by an immense majority. The election will then be held, and returns made of the number of votes polled in the different counties, either for or against the Constitution, by the proper officers, to the Secretary of State's department. It will then be the duty of the Governor to issue his proclamation, stating the number of votes and the adoption of the Constitution. And from the moment the Governor issues that proclamation, the Constitution will be in force, and that will be before August next.

How then, sir, are you going to hold another session of the Legislature under the old Con-

stitution? The old Constitution, like the old law of the Israelites, will have passed away, when the new Saviour, or, in other words, the new Constitution, comes, not to destroy the law, but to fulfil. We will live under the new Gospel dispensation. So soon, then, as this new Constitution goes in force, the general election comes on under it in October following, and members are elected to the new Legislature. For these reasons, sir, I shall vote for the proposition of the gentleman from Monroe, (Mr. Foster,) and I trust it will be adopted.

Mr. PEPPER of Crawford. I have another reason, sir, to present, which has not as yet been presented, why we should begin the sessions of the Legislature under the new Constitution in 1852. We have, sir, determined to hold biennial sessions. It is known to all the delegates that we elect our United States Senators every two and four years. We elect a Senator this winter, and another in 1854; and a Legislature ought to be in session at the time of the election of our Senators. If the Legislature assemble, in 1853, and every two years thereafter, we will either have to elect a Senator one year in advance, or the Governor call an extra session to elect him. If we fix the time of the meeting of the Legislature at the year 1852, and every two years subsequently, it will be in session just at the right time to elect United States Senators.

By reference to the fifteenth section of the article calling this Convention together, it will be observed that it becomes the duty of the Secretary of State, so soon as the same is recorded in his office, to deliver to the Governor of this State a certified copy of said amended Constitution, who shall, on the meeting of the General Assembly of this State at its *next session*, lay the same before them; and it shall be the duty of the said General Assembly to pass all laws necessary and proper for submitting the same to the qualified voters for their approval and rejection.

If this law remains in force, it will be impossible to submit the new Constitution at any time during the ensuing summer to the people; but it will be a very easy matter for the Legislature, which is soon to assemble, to amend the law so as to provide for submitting the amended Constitution at the earliest convenient day.

I desire to see it submitted sometime during the next summer; and if adopted, the first session of the Legislature, under the new Government, should be in 1852.

Mr. CLARK of Tippecanoe said that he did not doubt but that his colleague understood the subject of caucuses better than the gentleman from Laporte. After a caucus was held on Saturday evening, there should be a day of rest when gentlemen could attend church and quiet their minds in some degree; he, therefore, thought it well enough to leave the day

as it had already been fixed upon—say Monday.

He did not think, however, that his colleague's argument was true as to the year when the Convention should meet. The gentleman did not seem to suppose that the Legislature elected under the old Constitution could hold a session after the adoption of the new Constitution. It was true when the new Constitution was adopted the old one would be abrogated, but there was nothing to hinder the Convention from providing that the Legislature under the old Constitution should meet one year after the adoption of the new.

The committee thought it absolutely necessary that there should be two annual sessions after the session of the Legislature which would shortly commence. They will be necessary to carry into effect the provisions of the new Constitution, and to provide for the transition from the present to the new one, if it shall be adopted. The committee thought it unsafe to provide that the first biennial session should commence before 1853, lest the new order of things should be hurried upon the State indiscreetly. The Legislature elected under the old Constitution will be as certainly the Representatives of the people as if they were elected under the provisions of the new.

It is, perhaps, impossible to foresee and provide for all contingencies that may arise. At all events, in a matter of so much importance, it is wiser to give time for deliberation, and opportunity to remedy omissions, and to correct mistakes. It is even possible that this Convention may not complete its labors before the ensuing Legislature may have adjourned, and in that event it would scarcely be possible to provide for the election of the members of the Legislature under the new Constitution to meet in 1852.

Mr. READ of Monroe. Is the question upon the amendment of the gentleman from Laporte (Mr. Niles)?

The PRESIDENT. Yes, sir.

Mr. READ. Well, I greatly prefer Thursday as the day of the week for the meeting of the General Assembly. That day will best comport with the feelings of the people of the State on the subject of the observance of the Sabbath. These feelings ought to be respected in establishing the fundamental law of the land. The business of organization, appointing committees, and getting ready for work, can be done, so as to make a fair commencement on the Monday morning of the ensuing week. All will be done which would be accomplished in the full week.

As for caucusing, if that is a necessary prefix to the meeting of the Legislature, I do not see why Wednesday evening would not be just as good for that purpose as Saturday evening. It is not, of necessity, a Saturday night work. Besides, there is the danger, when the

caucus is on Saturday night, that the electioneering will be on Sunday.

Mr. NEWMAN observed that he considered the first meeting of the General Assembly to be elected under the new Constitution should be held as early as practicable. It should be recollected that there were a great many changes to be made in the organic law of the State, and it was not to be expected that the Legislature that met this winter would do much in the way of altering the general laws of the State. Therefore, it would seem to be important that as soon as the new Constitution may be adopted, and the time should have elapsed for the election of the members of the two Houses, that in accordance with the provisions of the Constitution, they should convene for the purpose of adapting the general laws of the State to the provisions of that Constitution.

It was well known that the people had particular habits of doing their business, and he would suggest that it would be much more in conformity with their interests if the time of the meeting of the Legislature was fixed on the first Monday in December instead of the first Monday in January. If the Legislature was to meet in January, its sittings would probably extend to the first of March, before which time a large number of Representatives would be desirous of being at home to attend to their spring business. The first session of the new Legislature would probably occupy ten or twelve weeks, owing to the amount of business to which they would have to attend under the new Constitution; and unless they met in the first part of December, the members would be greatly embarrassed, doubtless, in their business operations. In order to remedy this evil, therefore, he would move the following amendment, viz.: To strike out the entire section—which motion would be in order, as no motion of that kind had been made, and substitute the following in lieu thereof:

"The sessions of the Legislature shall be held biennially, commencing on the first Monday in December, unless a different day be fixed upon by law, and if in the opinion of the Governor the public welfare shall require it, he may by proclamation convene the two Houses at such time and place as he may name."

He had left this amendment open for the change of the time and place of meeting of the Legislature in case a possible state of affairs should arise when in consequence of disease, rebellion, or invasion, it should become necessary to remove their sessions from the capital.

The PRESIDENT. The question must be first taken upon the questions now pending before a motion can be made to strike out and insert.

The question being upon the adoption of the amendment offered by the gentleman from LaPorte, (Mr. Niles,)

Mr. FOSTER said, that he was happy to

find that the gentleman from Tippecanoe (Mr. Pettit) concurred in his views in regard to this subject. It was true he seldom did so, but he had only to say that as they now agreed—so far as the concurrence of the gentleman was concerned—it was better late than never. [Laughter.]

The gentleman from Tippecanoe had superseded him (Mr. F.) in some of the arguments he (Mr. P.) had advanced, but he had only to say that when a gentleman of his superior intelligence concurred with him, it was some evidence that he was right in the position he had assumed. He would barely remark, in addition, that it was his opinion also that if the Legislature met on the first Monday of January, it would be in accordance with the established usage of some other States.

In regard to the amendment suggested by the gentleman from Wayne, (Mr. Newman,) continued Mr. F., of changing the time of the meeting of the Legislature to the first Monday in December, I have only to say that I think he is mistaken in supposing that by meeting in January, the pecuniary interests of the members of the Legislature will be interfered with. It has been heretofore the case, and doubtless it will be so hereafter, that a large portion of the General Assembly are agriculturalists. Now everybody knows that this class of our population have at the end of the year gathered in their crops, killed their hogs and taken them to market, and generally arranged their business. The assumption is, that generally the Legislature will not sit more than six weeks, but of course the first session of the Legislature under the new Constitution will be much longer. Suppose they were to remain until the end of March, it would not interfere with the home duties of the member—for we all know that farming operations hardly ever commence before the first of April. I, therefore, think that the first Monday in January will be a more appropriate time for the meeting of the Legislature than the first Monday in December.

In regard to the proposition of the first Legislature under the new Constitution, meeting in 1853, I must say, I cannot for a moment give my consent to it. I have not the smallest doubt, sir, that this Convention will have to fix the day upon which this Constitution shall be voted upon by the people; because I consider the Legislature have no authority to fix it. Some time in June would be a proper time to fix upon, as then all the farmers will have got their corn planted and harvest will not have commenced. If we select the month of June, this will be anterior to the general election in August, as I think it should be, to blend action upon the new Constitution and the election of State officers together at one election, I consider would be a great and egregious mistake. Another thing in relation to this matter. The General Assembly will meet in the course of a few weeks, and they

will make some provision for the apportionment of Senators and Representatives under the old Constitution, which provides that an apportionment shall be made every five years. I would take occasion to remark that a proposition somewhat analogous, has been under consideration by the committee on apportionment. This committee proposes to frame a section providing that the apportionment of the next General Assembly under the old Constitution, shall be the apportionment according to which the next General Assembly shall be elected under the provisions of the new Constitution. This will supersede the necessity of districting the State again, for if we do not adopt this provision, this Convention will have to district the State in like manner as it was districted by our former Convention. There will thus be the same system of districting under the new and the old Constitution. If the Constitution should be adopted in June it will supersede the necessity of an election in August, and in October the election would take place, and the people would elect representatives fresh from the people with the power to carry out all the provisions of the new Constitution. I cannot see how the members of the Legislature under the old Constitution, after taking an oath to support it, can act in obedience to the provisions of the new Constitution. This appears to me to be contradictory, and such briefly are my views in relation to this subject.

Mr. KELSO. I am in favor of the amendment to the amendment decidedly. I would remark here that the gentleman from Tippecanoe, (Mr. Pettit,) it appears to me, in one breath is a great stickler for old usages and customs, and in the next breath he is for reform, and nothing but reform; for instance his radical proposition with reference to the Grand Jury system; and now no day but Monday will do for the Legislature to meet, because, forsooth, such has heretofore been the custom.

I favor the proposition of the Legislature meeting on Thursday instead of Monday, for what I consider very good reasons. I care as little, personally, for the observance of the Sabbath probably as any other man here, and I will not tell you a lie about it. But while I may not care anything about it, there are thousands of men in this State as good and perhaps better than I am, who do care a great deal about it. I feel then it is our duty to respect the feelings of that portion of the citizens of our State.

If we fix upon Thursday as the day of meeting for the Legislature, inasmuch as the remotest portion of Indiana is not more than three days journey from the Capital, we will give our representatives ample time to start on Monday and be here in season for the opening of the session.

I favor, also, the idea of the Legislature meeting on the first Thursday after the first

day in the month. The first day of each month will of necessity occasionally fall on a Monday, and it is a notion with many persons that new year day should be kept as a holiday; and as we can just as well as not allow to them that privilege, and do no wrong thereby, I am in favor of the Thursday after the first day of January.

There is yet another reason. In this country the 8th of January is as much thought of as the first, and the meeting of the Legislature should take place the Thursday between, and they will just about have time to organize the three last days of the week, and such as wish can celebrate the anniversary of the glorious victory at New Orleans, achieved January the 8th, 1815; and we will thus compel no man to legislate on the first day of the year, which has been one of our greatest holidays from time immemorial, or to labor on the glorious eighth day of January, and at the same time have an appropriate day of meeting.

Now as to whether the Legislature shall meet in January or in December, I do not care particularly; the one or the other time will equally suit me; nor do I think the people will not be greatly advantaged in their interest, by a decision in favor of January over December, or *vice versa*.

It has been said, that the Legislature now about to meet may disregard our proceedings here, and proceed on their action without reference to our operations; or that they may pass laws which will operate injuriously upon what we are about to do.

Now, sir, I assert that they cannot control our action—they cannot shorten our sessions—they cannot force us to sit in different parts of the State—they cannot compel us to pursue any certain line of policy they mark out; but they may pass laws, good and legitimate, which will be in force and effect until this Constitution is adopted, and other laws made under that Constitution. In making laws they will probably consult our action; at any rate it is best so to frame the provisions of the new Constitution as not to drive the Legislature to do anything that will operate against our action.

I am distinctly in favor of submitting this Constitution to the people at a separate election, where it may go, disconnected with any other issue, to the people. The first general election next fall, we shall elect members of Congress, members of the Legislature, and some other officers, and I do not want to see this Constitution submitted to the people at a time when it may be bartered and traded off for offices or political preferment.

I am of opinion, sir, that the Legislature should meet in 1852, for I see no necessity for putting off the meeting of the Legislature for a year unnecessarily. I shall vote for the amendment to the amendment, and if it carries with the gentleman from Laporte, (Mr. Niles,) I

shall feel myself at liberty then to vote for the entire amendment.

The question being upon the adoption of the amendment of the gentleman from Laporte, (Mr. Niles,)

Upon a division—ayes 56, noes 33—

The amendment was concurred in.

The question then recurring upon the adoption of the amendment of the gentleman from Monroe (Mr. Foster) as amended.

It was concurred in.

Mr. HENDRICKS offered the following amendment to the original section:

“But the Governor shall specify in his proclamation calling each special session of the Legislature, the object thereof, and at such special session no matter shall be acted upon beyond that specified in each proclamation.”

The question being upon the adoption of the amendment,

Mr. PETTIT. I do not think it wise or necessary to adopt this amendment. Its adoption may make it necessary for the Governor to call two, three, or even more extra sessions. Emergencies may arise between the issuing of his proclamation and the meeting of the Legislature under it, for further legislation, and the Legislature being in session cannot take cognizance of them, as it would be an absolute impossibility that they could have been anticipated. Therefore the Legislature must be dissolved, go home, and return again under a new proclamation. I do not think it either politic or wise to adopt the amendment.

Mr. COOKERLY moved to lay the amendment on the table.

The yeas and nays being demanded on this motion, they were ordered and taken with the following result—yeas 49, nays 68:

Those voting in the affirmative were,

Messrs. Allen, Badger, Barbour, Beard, Berry, Biddle, Blythe, Bourne, Bright, Brookbank, Bryant, Butler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Fisher, Garvin, Gibson, Gordon, Haddon, Hitt, Holman, Howe, Johnson, Kendall of Wabash, Maguire, Miller of Gibson, Mooney, Newman, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Snook, Steele, Stevenson, Tannehill, Taylor, Thornton, Watts, Wiley, and Mr. President—49.

Those voting in the negative were,

Messrs. Alexander, Anthony, Bascom, Borden, Bowers, Bracken, Carr, Chandler, Cole, Colfax, Crawford, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Farrow, Foster, Hamilton, Hardin, Helm, Helmer, Hendricks, Hogin, Huff, Jones, Kelso, Kendall of White, Kinley, Lockhart, Logan, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Niles, Owen, Prather, Rariden, Read of Clark, Ritchey, Rob-

inson, Schoonover, Shannon, Sherrod, Smiley, Smith of Scott, Spann, Tague, Thomas, Todd, Trimble, Walpole, Wolfe, Work, Wunderlich, Yocum, and Zenor—68.

So the amendment was not laid on the table.

Mr. HENDRICKS. I have but very little to say, sir, on this subject. If there is any one thing desirable in government it is to have the laws under which we live stable and uniform. One of the prominent causes of the calling of this Convention was the uncertainty of legislation and the fluctuation of the laws of the State.

We have, sir, agreed by a large vote to have biennial sessions of the Legislature; and if we adopt this amendment and give to the Governor the power of calling extra sessions of the Legislature whenever he sees fit, it will defeat this very action of ours in limiting the meetings of the Legislature to every other year. I wish, for one, to have consistent and permanent laws. To have a stable and uniform laws under which to live is one of the most desirable objects we can have in view in the formation of our Constitution.

I will add, Mr. President, that the Legislature should have stated times for holding its sessions, and there should be no power in the State to call that body together at any other times except when some great emergency, some public necessity, requires it.

And, sir, when the Governor exercises this extraordinary power of calling a special session of the Legislature, is it not right to impose a restraint, and throw a proper responsibility upon him by requiring him to show to the people, in his proclamation, the cause and necessity of such call? And when the Legislature is so called together, is it not right that it should be confined in its action to the matter or subject which is the occasion of such special session?

This will secure the country against an abuse of the power, and against the breaking up of the laws at unusual times, and will secure their stability for at least two years. I hope, sir, the amendment will be adopted.

Pending the question, on motion of Mr. GORDON, the Convention adjourned.

AFTERNOON SESSION.

BIENNIAL SESSIONS.

The Convention resumed the consideration of the section which provides for biennial sessions of the Legislature, &c.

The pending question being on the motion of Mr. Hendricks, that the Governor specify in his proclamation calling a special session of the Legislature the object for which the call is made, &c.—

Mr. PRATHER. Is it in order to move further to amend?

The PRESIDENT. There is an amendment to the section now pending.

Mr. PRATHER. Well, sir, I move to amend the amendment by adding the following:

"Nor shall a session of the General Assembly continue beyond sixty days."

I hope, sir, that this amendment will be adopted. It seems to me that if we had had such a rule as this prevailing here from the commencement of this session we should have been through with our business by this time. And as we are about prohibiting the Legislature from passing laws, I think that sixty days is amply sufficient. I would like to have the yeas and nays upon this amendment.

Mr. CHAPMAN. Does the amendment of the gentleman from Jennings apply to regular as well as to called sessions?

Mr. PRATHER. It applies to all local sessions.

Mr. CHAPMAN. I desire, in the first place, to say a few words in reference to the amendment proposed by the gentleman from Shelby. I object to it for two reasons: first, to its intent, and secondly, to its insufficiency in verbiage to enforce that intent, if the Convention should determine in favor of the proposition.

The amendment proposes, according to the intent of the mover, to confine the action of the General Assembly, during its called sessions, to such matters as may be "specified" in the proclamation of the Governor. This leaves the whole subject to the discretion or caprice of the Governor. The restriction applies altogether to the legislative body; not at all to him. Now suppose, that the Governor should entertain, as I do, liberal views in favor of the representative department; and suppose that the exigencies of the times should require him to call a special session of the General Assembly to make provision for the payment of the interest on the State Debt, or for any other important object, what would prevent him from adding, at the close of his proclamation, a sentence like this: "*and for such other purposes as the public good may require*"? A simple sentence like that would render the proposed amendment entirely nugatory. It must be apparent from this, that the verbiage of the proposed amendment will not accomplish the purpose which its drawer had in view.

But if it did, I should object to it, as altogether inexpedient. It is inconsistent with my ideas of republicanism to restrain the representative body to the exclusive consideration of such subjects as may be indicated and prescribed by the Governor. The Convention has already reduced the legislative power at least fifty per cent. by providing for biennial instead of annual sessions of the General Assembly. Close upon the settlement of that, came a proposition for the reduction of representation, which I am glad did not succeed. Now we have the proposition under consideration, honestly intended, I have no doubt, but to me quite as objectionable. If it should succeed it would nearly anni-

hilate the half of the legislative power left under the first decision.

Almost the entire weight of this Convention seems to be directed against the legislative department, as if, in that department alone, originated all the evils of government. I will not deny that this spirit is in accordance with the present sentiments of the people; but I have as little doubt that the Convention, and the people also, are laboring under a mistaken notion as to the true remedy which should be applied to cure the evils of bad legislation. The people generally, I doubt not, are in favor of biennial sessions, because they wish to restrain excessive and bad legislation; but they certainly never designed for a moment to destroy the legislative branch of government; they only wish to reform and correct it. They may, perhaps, upon a specious plea of economy, be induced to declare in favor of reduced representation in a new apportionment. But let every gentleman bring the question home to himself; let the people of the several counties be asked if they are willing to give up their own representative, and the response will be very different from what it now seems to be.

The people are right as to the bad character of our past legislation. No man is more sensible of it than myself—none more anxious to apply a remedy. But biennial sessions, reduced representation, and executive dictation, such as proposed by the amendment under consideration, without other and better Constitutional remedies, will only increase the evil. Satisfied that the people are right as to the object, while they are in error as to the means of accomplishing it, I shall act accordingly. I have no fear that they will not justify me in so doing. I came here upon no other conditions, and I shall endeavor to do my duty conscientiously, and in accordance with the oath I have taken.

I desire to correct and improve legislation, not to destroy the power of the people to legislate. We have been repeatedly referred to New York and the New England States. No local legislation, such as we have had, ever existed in any of them; but it was not because of such obstacles as are now proposed here. Their system of legislation is different; they permit localities to legislate for themselves, under general laws, as we must do before we can effect useful reform. Unless we do that, all the changes yet proposed here will only make the matter worse. Let us adopt that feature of their Constitutions, and require from members of the General Assembly strict accountability and responsibility, as can easily be done, and we shall accomplish a thousand times more than we can expect from destructive measures. These remedies are simple, but they will be effectual, and having adopted them, we may safely trust the action of the Legislature to the guidance of enlightened public sentiment.

Having razed the legislative department one-

half, by the institution of biennial sessions; having decided, notwithstanding the rapid progress of the State in wealth and population, not to increase, even prospectively, the number of representatives; having determined to confine the Legislature hereafter to the enactment of general laws, I repeat the hope, sir, that the Convention will not take the step now proposed, giving power to the Governor alone to say what the Legislature shall or shall not do, whenever it becomes necessary to call an extra session.

Mr. BIDDLE. I am so much surprised at the vote refusing to lay the amendments of the gentleman from Shelby (Mr. Hendricks) on the table, that I cannot be silent. I look upon the amendment as a bad one. I had no idea but that it would be laid on the table. I think the Convention has not maturely considered its effect. There is much force in what was said by the gentleman who has just taken his seat, (Mr. Chapman,) that this Convention is progressing in a wrong direction. Let us look at it for a moment. It is proposing to restrict the special sessions of the Legislature to such measures as shall be recommended by the Governor in his proclamation.

Now what is the purpose of assembling the Legislature in special sessions? A special session is called upon an extraordinary occasion of some great infringement of popular right; some financial disaster, threatened invasion, declaration of war, or some other unforeseen difficulty in the State. Well, sir, this proposition requires that on all these important measures the deliberations of the General Assembly, when thus called together, shall be restricted as to all important, useful purposes, by the will of the Governor. What is the object of calling the Legislature together? It is that the representatives of the people may consider of those circumstances which authorize the calling of them together. Shall the Governor then be empowered to prescribe to them what they shall do and what they shall not do? Sir, that would bring the legislative power to the feet of the Executive. It is most undoubtedly a retrograde movement. It is going back two or three hundred years, to the times when the Crown of England granted charters to its favorites to govern the colonies; and it was thought a great condescension of majesty when the people were allowed a counsel even of its own appointing, to advise with the Governor.

This measure, Mr. President, proposes to call the representatives of the people together to register the edicts of the Governor. What else is it? Put such a provision as this in your Constitution and it will be sufficiently obnoxious to induce the people to go against the whole instrument. Now, sir, pass this provision, declaring that the Legislature shall do nothing but what it is the pleasure of the Governor to prescribe to them before they meet; give him, in

addition to this, a veto which will require a two-thirds vote to overrule, and grant him the pardoning power, then who will vote for the Constitution? No republican, sir!

I recommend gentlemen to pause. If there is a power in the State that should be kept free, above all others, it is the Legislative; and if there is a power to be restricted, it is the Executive. This measure reverses the republican maxim. It is shackling the power that belongs to the people of every free State. Sir, I will not detain the Convention with another remark upon the subject. It is the worst provision that has been introduced into this body.

Mr. RARIDEN. I would like to hear the amendment read.

[The amendment was accordingly read by the Secretary.]

Sir, either the gentleman or myself utterly misapprehends the force of this amendment. I understand the object of it to be to throw the responsibility upon the Executive in the case of calling a special session, and that the public may know the merits of that call. He is to indicate the subjects upon which they are called to deliberate, and upon those subjects they are just as free to act as if they were not specified at all. They will be as free from influence in acting upon them as in acting upon any subject in their ordinary sessions. The object of the provision is to throw the responsibility of the exercise of the executive power in calling the Legislature together, upon the Executive. He is an officer who is set apart to superintend the public interest, and he is to be held responsible for any extraordinary expense that may be brought upon the people by any act of his. He is by the specification of the objects for which the Legislature is called to hold a special session, to show the necessity for such call. If, in his opinion, there is a necessity so urgent as to justify the expenditure of the public money that is involved in the holding of a special session, he is to call such session and to indicate the object for which it is called, that the people may determine whether his action be right or wrong. He does not designate the course that they shall take. He does nothing of the kind. He merely indicates the subjects, that in his judgment require their deliberation. And they are as free as they ever were to take such course as their wisdom may dictate. For my own part I conceive that it is a provision that is eminently necessary. If we cannot trust the Governor so far to superintend the affairs of the State as to give warning to the representatives of the people of the difficulties that the State has to encounter, and to take upon himself the responsibility of incurring the expense of a special session, we had better abolish the office of Governor altogether. I trust the amendment will be adopted.

Mr. BORDEN. I am in favor of the proposition of the gentleman from Shelby, for the

reason that I think the Convention is determined to establish biennial sessions. It seems to me that if we do not adopt such a provision as this we had better rescind the provision for biennial sessions. If we intend to carry out the principle of allowing the Governor to convene the Legislature at his pleasure, I think we should require him to specify the purpose, leaving it to the community to judge whether he acts right or wrong.

We should take into consideration that the first session of the Legislature after the Constitution goes into effect, will have to be a longer session than the sessions afterwards. In case you go into a revision of the statutes your session must necessarily be longer. Suppose the Legislature should appoint commissioners to draw up a revised code to be submitted to the Legislature for their consideration, the session must necessarily be prolonged; therefore, some provision must be made for this matter. But I rose chiefly to call the attention of the Convention to a provision that I have to offer as soon as it shall be in order. It is that for one, two, or three years after the new Constitution goes into effect the sessions of the Legislature should be annual. For this reason it would be almost impossible to get along with the business of the Legislature for two or three years unless they have annual sessions. One gentleman who sits near me, and with whom I have conversed on this subject, informs me that he is in favor of annual sessions, but that he will go against the proposition of mine, because he wants the people to see the inconvenience that will arise from biennial sessions, and he believes that they will then be inclined to go back to annual sessions. I, therefore, tell the friends of biennial sessions that some system like this will have to be adopted. I am in favor of the proposition of the gentleman from Shelby, and with a proper modification I shall be in favor of the proposition of the gentleman from Jennings.

Mr. CHAPMAN. So far as I am concerned, I have no such motive as that suggested by the gentleman from Allen, to influence the vote which I shall give on this subject. I do not oppose the proposition for any such reason, but simply because I regard it as a further attempt to bind the people at the will of the Governor. I have no disposition to act unfairly in regard to the matter of biennial sessions; and although I have protested against the change from the beginning, I am willing that the people shall try the experiment fully. I have been influenced throughout by the belief that I am right in the abstract principle, and I am now fully certain in my own mind, that few years will roll round before the majority of the people will become satisfied of the inutility of the change as a measure of reform.

The question being taken on the amendment, it was decided in the negative.

Mr. WOLFE proposed to amend by inserting the following:

"That no member of the General Assembly shall, after the first seven weeks of any session, receive more than one dollar and fifty cents per day, except the first session after the adoption of this Constitution."

Mr. NAVE moved that the amendment of the gentleman from Sullivan be laid on the table.

Mr. WOLFE demanded the yeas and nays.

Mr. EDMONSTON. I will ask the gentleman to withdraw his motion for a moment.

Mr. NAVE. Certainly, if the gentleman desires to speak.

Mr. EDMONSTON. I wish to move an amendment.

The PRESIDENT. There is an amendment to an amendment pending.

Mr. EDMONSTON. Perhaps the gentleman will accept my amendment as a modification of his own. It is a proviso:

"Provided, That the charge for board shall not be higher than one dollar and fifty cents per week." [A laugh.]

Mr. KELSO renewed the motion to lay the amendment of the gentleman from Sullivan on the table.

The yeas and nays were ordered, and being taken were—yeas 86, nays 38—as follows:

YEAS.—Messrs. Anthony, Badger, Barbour, Beard, Berry, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Chapman, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foster, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Helm, Helmer, Hendricks, Hitt, Hugin, Holman, Hovey, Jones, Kelso, Kendall of White, Kinley, Lockhart, Logan, Maguire, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Morrison of Marion, Murray, Nave, Newman, Niles, Owen, Pettit, Rariden, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Taylor, Thomas, Thornton, Todd, Elliot, Watts, Wheeler, Wiley, Zenor, and Mr. President 86.

NAYS.—Messrs. Alexander, Beeson, Bright, Chenoweth, Clark of Hamilton, Coats, Cookerly, Crawford, Dobson, Dunn of Perry, &c., Duzan, Gordon, Hall, Hamilton, Huff, Johnson, Kendall of Wabash, March, May, McClelland, McLean, Milroy, Moore, Morgan, Mowrer, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Smiley, Tague, Trimble, Walpole, Wolfe, Work, Wunderlich, and Yocum —38.

So the amendment was laid upon the table.

The question recurred upon the amendment of the gentleman from Shelby.

The yeas and nays were ordered, and they were taken with the following result—yeas 60, nays 65—as follows:

YEAS.—Messrs. Alexander, Blythe, Borden, Bracken, Chandler, Chenoweth, Colfax, Crawford, Dick, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Foster, Gootee, Graham of Miami, Hall, Hamilton, Helmer, Hendricks, Hovey, Howe, Huff, Jones, Kelso, Kendall of White, Lockhart, Logan, March, Mather, May, McClelland, McLean, Miller of Clinton, Milroy, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Pepper of Ohio, Prather, Rariden, Read of Clark, Ritchey, Shannon, Smiley, Smith of Scott, Tague, Tannehill, Thomas, Todd, Trimby, Elliot, Walpole, Wolfe, Work, Wunderlich, and Yocum—60.

NAYS.—Messrs. Allen, Badger, Barbour, Beard, Berry, Biddle, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chapman, Clark of H., Clark of Tippecanoe, Coats, Cole Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Fisher, Garvin, Gibson, Gordon, Graham of Warrick, Haddon, Harboit, Helm, Hitt, Hogin, Holman, Johnson, Kendall of Wabash, Kinley, Maguire, Miller of Gibson, Mooney, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Snook, Smith of Ripley, Spann, Steele, Stevenson, Taylor, Thornton, Wallace, Watts, Wheeler, Wiley, Zenor, and Mr. President—65.

So the amendment was rejected.

Mr. BORDEN offered the following amendment, to come in at the end of the section:

“Provided however, That the General Assembly may meet annually until the year 1855, if they shall determine the interest of the State requires it.”

Mr. PEPPER of Crawford moved that the amendment be laid upon the table.

The motion was agreed to.

Mr. KELSO moved to amend by adding a proviso to the effect that there shall be no legislative action on any subject that is not specifically referred to in the message of the Governor to the Legislature, at the commencement of such special session.

The PRESIDENT. The Chair would remark to the gentleman that a similar amendment has been already voted down.

Mr. KELSO. This is not the same amendment, sir. It is quite another thing.

The PRESIDENT. It appears to be substantially the same.

Mr. KELSO. It is substantially a great deal better. Does the Chair decide that it is out of order?

The PRESIDENT. The Chair suggests to the gentleman from Switzerland that it is precluded by one of the rules of the Convention.

Mr. KELSO. The propositions are about as different as any two propositions well can be.

Mr. WALPOLE. One word as to the right of the Chair to determine this question. I maintain that it is not for the presiding officer to determine that a proposition has been already decided upon. That is a question for the House to determine.

The PRESIDENT. The Chair would remark, with all due deference to the gentleman, that the Chair has decided no such thing.

Mr. WALPOLE. The authority of—

The PRESIDENT. The gentleman will defer his remarks for a moment. It is not the province of the Chair to decide an amendment out of order on account of want of congruity. But where an amendment is clearly out of order according to an existing rule of the Convention, it is the imperative duty of the Chair so to decide. The gentleman was very anxious to get a cut at the Chair before the Chair had decided the matter. The Chair suggested to the gentleman from Switzerland that the proposition was substantially the same as one already offered.

Mr. WALPOLE. The Chair seems to be rather sensitive.

The PRESIDENT. Not quite so much so as the gentleman from Hancock. If the gentleman had kept his seat we should have got along a great deal better. The question is on the amendment of—

Mr. WALPOLE (interposing). Well, sir, I appeal from the decision of the Chair. I hope we shall not have a “higher law” practiced here.

The PRESIDENT. The gentleman will send up his point of order in writing.

Mr. WALPOLE. Yes, sir.

Mr. KELSO. There has been no point of order decided.

Mr. WALPOLE. I understand the Chair has decided your motion to be out of order.

The PRESIDENT. The Chair has decided no such thing.

Mr. WALPOLE. Does the Chair take back its decision?

The PRESIDENT. The Chair takes back nothing.

The question is on the amendment of the gentleman from Switzerland.

Mr. KELSO demanded the yeas and nays.

Mr. SMITH of Ripley. I will remark, that by this amendment the Governor is required to prescribe, identically, the business that the Legislature is to do. I care not whether this is done in the proclamation calling the Legislature together or in the message of the Governor after they assemble. It is equally improper in either case. When the Legislature comes together, I think they will have discretion enough to act in reference to all subjects necessary to be acted upon, without being directed to by the Governor.

Mr. KELSO. Gentlemen seem to be remarkably apprehensive of throwing too many restrictions around the Legislature. Now, sir, if we are going to ingraft the proposition that we shall have biennial instead of annual sessions, let us also adopt a provision to prevent the Governor from having it completely in his power to direct annual sessions to be held in contravention of the law. If the Legislature is to be accountable to any body, let them not be accountable to the Governor but to the people. I want to see a provision adopted, that when the Governor shall deem it necessary to convene the Legislature out of season, he shall put on paper, in some shape, the cause that has induced him to call them together.

The yeas and nays were then ordered, and being taken, were—yeas 53, nays 75—as follows :

YEAS.—Messrs. Alexander, Borden, Carter, Chandler, Colfax, Crawford, Davis of Parke, Dunn of Perry, &c., Farrow, Foster, Frisbie, Gootee, Graham of Miami, Hamilton, Helmer, Hendricks, Hitt, Hovey, Huff, Jones, Kelso, Lockhart, Logan, March, Mather, May, McClelland, McLean, Miller of Clinton, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Prather, Rariden, Read of Clark, Ritchey, Shannon, Smiley, Smith of Scott, Tague, Tannehill, Thomas, Todd, Trimble, Elliott, Walpole, Wolfe, Work, and Wunderlich—53.

NAYS.—Messrs. Anthony, Badger, Barbour, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Edmonston, Fisher, Garvin, Gibson, Gordon, Graham of Warrick, Haddon, Hall, Harbolt, Helm, Hogin, Holman, Howe, Johnson, Kendall of Wabash, Kinley, Maguire, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Snook, Smith of Ripley, Spann, Steele, Stevenson, Taylor, Thornton, Wallace, Watts, Wheeler, Wiley, Yocum, Zenor, and Mr. President—75.

So the amendment was not adopted.

Mr. KELSO. I have one other amendment to offer. It is this: "Provided, that no such special session shall continue longer than twenty days."

Mr. PEPPER of Crawford demanded the previous question.

The demand for the previous question was seconded by the Convention.

The main question was ordered to be put. The question being first on the amendment of the gentleman from Switzerland,

The yeas and nays were ordered, and being taken, were—yeas 53, nays 73—as follows :

YEAS.—Messrs. Alexander, Beeson, Borden,

Bowers, Bracken, Butler, Chandler, Chenowith, Clark of Hamilton, Coats, Crawford, Dick, Dunn of Perry, Duzan, Elliott, Farrow, Foster, Gootee, Graham of Miami, Hall, Hamilton, Helm, Helmer, Hendricks, Hitt, Hovey, Huff, Johnson, Jones, Kelso, Kinley, Logan, March, McClelland, McLean, Milroy, Moore, Mowrer, Nave, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Ritchey, Smiley, Smith of Scott, Tague, Trimble, Walpole, Wolfe, Work, and Wunderlich—53.

NAYS.—Messrs. Anthony, Badger, Barbour, Beard, Berry, Bicknell, Biddle, Blythe, Bourne, Bright, Brookbank, Bryant, Carr, Chapman, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Edmonston, Fisher, Frisbie, Garvin, Gibson, Gordon, Graham of Warrick, Haddon, Harbolt, Hogin, Holman, Howe, Kendall of Wabash, Kendall of White, Lockhart, Maguire, Mather, May, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Morgan, Murray, Newman, Niles, Owen, Pettit, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Spann, Steele, Stevenson, Taylor, Thomas, Thornton, Todd, Wallace, Watts, Wheeler, Wiley, Yocum, Zenor, and Mr. President—73.

So the amendment was rejected.

The question recurred on the motion of the gentleman from Wayne, to strike out the entire section and insert the following :

"That the sessions of the General Assembly shall be held biennially, on the first Monday in December, unless a different day be fixed by law."

The question was taken upon the amendment, and it was not agreed to.

The question then being : That the section, as amended, be engrossed for a third reading,

It was read, as follows :

"The sessions of the General Assembly shall be held biennially at the Capital of the State, commencing on Thursday after the first Monday in January, 1852, and on the same day every second year thereafter, unless a time or place be appointed by law ; but the Governor shall have the power, at any time, by proclamation, to call a special session."

The section, as amended, was ordered to be engrossed for a third reading.

The Convention then took up the eighth section of report No. 12, upon its second reading. The section provides that each House, when assembled, shall choose their own officers, (the President of the Senate excepted,) be the judges of the qualifications and returns of their own members, determine the rules of their proceeding, and sit upon their own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Mr. BORDEN moved to insert the word "election" before the word "qualifications." This, he said, was the usual form, but it had, by some means or other, been omitted.

Mr. EDMONSTON. I can see no necessity for the amendment. "Each House shall be the judge of the qualifications of its members." That is quite sufficient.

Mr. BORDEN. Will the gentleman allow me to suggest to him, that, although a man may have all the requisite qualifications, yet he may not be duly elected.

Mr. WALPOLE. I will state to the Convention the view that the committee took of this matter. The object of omitting the word "election" was this: The question as to the legality of an election of a member of the General Assembly in case of a contested election, should be left to be determined in the county where the election took place, and not be made a political contest in the Legislature. If there is any contest, let the question of legality be left to the Circuit Court.

Mr. BORDEN. I now see the object of submitting it. It is to leave the decision to a county board.

Mr. WALPOLE. I did not say to a county board.

Mr. BORDEN. Well, sir, some tribunal in the county. It seems to me that this will be an innovation upon the usual course of proceeding in such cases, which should not be rashly made. I trust the House is not prepared to adopt such a principle.

The question was then taken, and the amendment was, by ayes 37, noes 46, rejected.

Mr. MOWRER moved to strike out so much as relates to the President of the Senate.

Mr. EDMONSTON. All I have to say in relation to this amendment, is: that if it be the will of the Convention to abolish the office of Lieutenant Governor, it will be proper to strike out what is proposed to be stricken out: but we do not yet know whether the Convention will agree to abolish that office; and, if it be not abolished, these words ought to remain.

Mr. MOWRER. I will state to the gentleman, that that is precisely my object. I desire that the office of Lieutenant Governor shall be abolished.

Mr. READ of Clark. I have just drawn up an amendment, and it is to strike out these words. My friend over the way has saved me the trouble of moving that amendment. I am in favor of such an amendment, and one for abolishing the office of Lieutenant Governor, and letting the Senate elect a President, as the House of Representatives do.

Mr. SMITH of Scott. I shall vote in opposition to the proposition to strike out. One of the considerations which induced the calling of this Convention was, that every officer of the State should be elected by the people. Not only the Governor, but every other officer,

being the immediate servant of the people. And as this proposition, aiming at nothing else than the abolishing of the office of Lieutenant Governor—upon what principle I cannot tell—and that the President of the Senate shall stand in the place of the Lieutenant Governor, and supply the place of the Governor, in case of his decease, I am opposed to it. Our object is that every officer shall be elected by the people. What is the purpose to be accomplished by abolishing the office of Lieutenant Governor? Is it upon the principle of economy? What is the expense of that office? Perhaps seventy-five dollars a year. Is that a sufficient cause why we should lay aside such an important officer? I cannot vote for such a proposition.

The question was taken upon the motion to strike out, and it was not agreed to.

The question recurred upon the engrossment of the section for a third reading.

Mr. HELMER moved to strike out the word "their," and insert "its."

Mr. BRIGHT. The section is grammatically right as it stands. If, however, there be any imperfection in the phraseology, it will be the duty of the committee on revision to set it right.

Mr. SMITH of Ripley. It is good Jefferson county grammar and I go for it. [A laugh.]

The amendment was not agreed to.

The section was then ordered to be engrossed for a third reading.

QUORUM.

The Convention then proceeded to consider the section which provides that two-thirds shall constitute a quorum to do business; and two-thirds being in attendance, if no organization is effected in five days, no compensation shall be paid to members after that time, until an organization is effected, on its second reading.

Mr. PRATHER moved to strike out the word "five" and insert "two."

The amendment was not agreed to.

Mr. KELSO moved to strike out "five" and insert "three." That, he said, would meet the views of those who had voted to fix Thursday, after the first Monday of January, for the meeting of the General Assembly.

The question being upon the adoption of the amendment,

The yeas and nays were demanded, and they were ordered.

Mr. BARBOUR. I move to strike out all after the word "members." My object in making this motion is—

The PRESIDENT. The Chair would remark to the gentleman that there is an amendment already pending, and the question must be taken upon it first, unless the gentleman proposes to amend the amendment.

The yeas and nays were then taken upon the adoption of the amendment of the gentle-

man from Switzerland and resulted thus—yeas 62, noes 66—as follows:

YEAS.—Messrs. Alexander, Allen, Bascom, Beeson, Blythe, Bowers, Bracken, Brookbank, Bryant, Carter, Chandler, Coats, Crawford, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Foster, Frisbie, Garvin, Gootee, Gordon, Hall, Hamilton, Harbott, Helm, Helmer, Hitt, Holman, Huff, Jones, Kelos, Kendall of Wabash, March, Mather, May, McClelland, McLean, Miller of Clinton, Milroy, Moore, Morgan, Mowrer, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Ritchey, Smith of Ripley, Steele, Tague, Tannehill, Thornton, Trimble, Walpole, Wolfe, Work, and Wunderlich—62.

NAYS.—Messrs. Anthony, Badger, Barbour, Beard, Berry, Bicknell, Borden, Bourne, Bright, Butler, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crumbacker, Davis of Parke, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Gibson, Graham of Miami, Graham of Warrick, Haddon, Hendricks, Hogin, Howe, Johnson, Kendall of White, Kinley, Lockhart, Logan, Maguire, Miller of Fulton, Miller of Gibson, Mooney, Niles, Owen, Pettit, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Scott, Spann, Stevenson, Taylor, Thomas, Todd, Wallace, Watts, Wheeler, Wiley, Yocum, Zenor, and Mr. President—66.

So the amendment was not adopted.

Mr. RITCHEY moved to amend as follows:

"Strike out all after the word 'days,' and insert 'a plurality of the votes of the members present, shall elect any officer of either House.'"

[Cries of "no, no," "agreed, agreed."]

Mr. RITCHEY. I think if gentlemen will reflect for a moment, they will see that this will be more effective, while, at the same time it will not be liable to the charge of injustice. As the section now stands, it provides that if the House fail to organize for five days, the pay of the members shall cease. Now, you know, and every one knows, that when parties become factious and excited, feelings exist, as was the case at the organization of the present Congress of the United States, members might remain in their places for days together without accomplishing anything. The mere stoppage of their pay could not accomplish the desired object. But if the amendment that I propose, be adopted, they will be enabled to effect an organization. That is the method that Congress adopted. We have their example to guide us. The House of Representatives of the United States balloted for days together without being able to elect a Speaker, and would have continued under the same embarrassment if they had not adopted the remedy that I now propose. It proposes that balloting for a certain length of time—a reasonable time—after balloting for five days, for instance, a plurality of votes

of the members present, only, shall be required to organize the House and to elect any of their officers. If gentlemen will consider this matter, I think they will agree with me in the propriety of the amendment which I propose.

Mr. BORDEN. I wish simply to ask a question, and it is this: whether, if this provision be inserted, members may not retire and permit the officers to be elected by a few votes?

Mr. READ of Monroe. The difficulty in the organization will be that it is not known who are members. That is precisely what occurred in Ohio.

The question was taken on the adoption of the amendment, and it was decided in the negative.

Mr. COLFAX. I move to strike out "two-thirds," and insert "a majority," and I desire to say a few words in support of the motion. The section as reported by the committee requires (continued Mr. C.) two-thirds to make a quorum in each House. This is holding out an inducement for gentlemen who may be disposed to resist the passage of a law, to break up the quorum. I know it is not often that you will find eighty members in their seats, and if you require sixty-nine members to form a quorum, and ten or fifteen members only choose to leave their seats, the quorum will be broken up. That is a thing that has been done in this Hall. I desire to adopt such a rule as they have in Congress, that a majority of the body should constitute a quorum for the transaction of business. [Cries, "no, no"—"consent."]

The question being taken, the amendment was rejected.

Mr. BARBOUR moved to strike out all after the words "members."

Mr. BARBOUR. I will remark that I do not think that men who come here to do their duty as legislators ought to be punished, because the House will not organize within a certain specified time. Men who desire to do their duty and are doing it, ought to receive their pay for the time they are so engaged.

Mr. WATTS. I hope the motion will not prevail. If the Legislature should be here for five days and fail to organize, it is a sufficient evidence that members are not doing their duty; and therefore they should not receive pay.

The question being taken, the amendment was rejected.

The section which provides that each House shall keep a journal of its own proceedings and publish the same, and the yeas and nays of the members on any question shall, on the request of any—of them, be entered on the journal, was taken up, on its second reading.

Mr. DOBSON moved to fill the blank with the word "two."

The object that I have in view, said Mr. D., is this: during the last few days of the session of the Legislature, it has been customary, heretofore, to pass a great many bills, and if

you require ten members or more to call the yeas and nays it will be impossible in many cases to procure the yeas and nays, and bills will pass that ought never to be passed. I hope, however, that we shall insert in the Constitution, a provision requiring that the yeas and nays shall be taken upon all bills upon their final passage. I want to put it in the power of two men in the Legislature of Indiana to compel the balance to put their names upon the record, that the people may see how they vote, so that if ninety-eight are compelled to go astray, two will compel them to put down their names, so that the people may see how they vote.

Mr. BRIGHT. I think that upon the final passage of every bill, if the yeas and nays were taken, there would be less occasion for frequent calls of the yeas and nays in the progress of the bill. The Constitution of the United States requires one-fifth of either House of Congress to call the yeas and nays. In the Constitution of Wisconsin I see it requires one-sixth. If the number was larger there would not be such frequent calls for the yeas and nays, and I think we have witnessed on this floor, the necessity for inserting a large number to prevent the too frequent recurrence of calls for the yeas and nays. I therefore move that the motion of the gentleman from Owen be laid on the table.

Mr. MILLER of Gibson. I am satisfied, from the experience I have had in legislation, that if we provide that the yeas and nays shall be called upon the final passage of bills, it will not prevent the calling of yeas and nays in the intermediate stages. It is proper that they should be called upon amendments that are salutary and necessary to perfect the bill. I recollect on a certain occasion, when an amendment was pending, if the yeas and nays had not been called, the amendment would not have been adopted, and the bill would have been lost. How often do you find it the case, when the yeas and nays are called that there is no quorum present? And how often does a bill fail merely from the fact that members have not the opportunity to stand up and call the yeas and nays. Just so in regard to an amendment. Men are afraid to show their hands, and refuse to have the yeas and nays recorded. I trust that the amendment will not prevail.

Mr. WALPOLE. I cannot, so far as I am concerned, consent to an alteration in the provision of the present Constitution, in regard to demanding the yeas and nays. The argument which the gentleman from Jefferson contemplates, that upon the final passage of every proposition, the yeas and nays shall be required, is not a sufficient reason why the old provision of the Constitution should be abrogated. Every gentleman connected with legislation in Indiana is aware that the most important questions

determined are those side questions—questions intervening before the final passage of the proposition. You place it then in the power of the majority to run, rough shod, over the minority, when you make the number required to demand the yeas and nays so large. We find here, that upon some of the most important questions, it is difficult to get ten gentlemen to demand the yeas and nays, and when you require fifteen, which is about one-fourth of the whole number of representatives, you will find it almost impossible to procure the yeas and nays; but when you bring it down to two, you will have the yeas and nays taken, you will make every representative responsible for the vote he gives, even upon the simple question of adjournment. Your Constitution does not provide that the yeas and nays shall be called upon motions to adjourn. I trust that we shall adhere to the long established principle. There is no reason why it should be abrogated. There is no inconvenience growing out of it, but on the contrary, much good to the public. I regret that an innovation has been made by this Convention upon the old established usages, in requiring a greater number to demand the yeas and nays.

Mr. FISHER moved that the Convention adjourn.

The motion was not agreed to.

Mr. READ of Monroe. I hope, sir, that a higher number will be adopted as the number with which to fill the blank. We have all seen cases of factious opposition on the part of members of the Legislature; we have seen them availing themselves of frequent calls of the yeas and nays for the purpose of embarrassing the body and preventing the transaction of business. I once witnessed a scene of this kind, where four or five men prevented the action of a large majority. One of these four is now a member of this Convention, though not now present. They prevented the action of the majority by constantly calling the yeas and nays until the period had expired when it would be of any use to pass the bill; and inasmuch as that kind of operation may be constantly brought to bear, it seems to me that ten or fifteen members should be required to demand the yeas and nays before they shall be called.

Mr. RITCHEY. I hope the motion to insert "two" will prevail. Sir, if there is anything that will force a man to the discharge of his duty, it is the responsibility that will rest upon him when his vote is recorded. If you require ten or fifteen members to call the yeas and nays and a member believes it will be a little disreputable to him to have his conduct exhibited, he will refrain from calling the yeas and nays. I would like to see it provided that one man should have a right to demand that the votes given upon every important question that comes up before the Legislature, either in

the Senate or in the House, should be recorded. Sir, if there is anything that men dread to see, it is to see their names recorded upon the passage of a measure that is not proper to be passed; and when they can screen themselves by voting without recording their votes, they always prefer to do so. There is a difficulty in getting ten men here, as we know by daily experience, to demand the yeas and nays; and if the number were larger, it would still be more difficult to call them. But it appears to me that any two should have the right to demand the yeas and nays, in order to compel each man to assume his proper share of responsibility.

Mr. READ of Clark. I feel a good deal of interest in this subject, having seen so much evil grow out of acts passed by a minority of both branches of the Legislature. I appeal to the old members of this Convention, those who have witnessed the winding up scenes in the Legislature, if they have not seen bills of importance—in fact, the most important of the bills passed during the session—passed by a minority in both houses? And why? The reason is this: the yeas and nays were not taken. And why were they not taken? It required but two to demand the yeas and nays, and even then it was difficult sometimes to get them. But if you require a larger number, the difficulty will be still greater; therefore I think we should not increase the number. I go for the lowest number. I think that two members should have the right to call the yeas and nays, so as to let the action of representatives be laid before their constituents. The passage of objectionable measures by a minority, is of very frequent occurrence; whereas, if the yeas and nays had been called, those measures would not have passed.

Mr. EDMONSTON. I certainly cannot feel the force of the arguments of the gentleman from Clark. I have had some experience in legislation and I have seen the effects that have been produced by the passage of bad measures, but it was not for the want of an opportunity to call the yeas and nays, because it was in the power of two members to do that, but it was because there was not a quorum in the house, and it was necessary that those measures should be passed in order to accommodate the members present. And I appeal to the gentleman from Clark and the gentleman from Johnson, if they have not witnessed scenes in the Legislature that were enough to turn men against allowing a small number of men to call the yeas and nays, when it has been the practice for two members to move to adjourn and call the yeas and nays upon the question, for the purpose of harrassing the majority? Now is there any question upon which the people care anything about seeing the votes of their representatives, that ten members cannot be got to call the yeas and nays? Why it is preposterous to think the contrary. Is it sup-

posed that men will shrink from the responsibility of recording their votes? ["Not at all."] I am in favor of inserting ten, that a factious minority may not harrass a majority to death, as has been the case in the Legislature of this State. I am in favor of requiring one-fifth of the members present to second the demand for the yeas and nays. I appeal to members if much time is not spent in calling the yeas and nays upon questions of no vital interest, upon questions about which the people care nothing, simply to suit the caprice of some gentleman who wishes to show the country how he has voted. I move that the blank be filled with "ten."

Mr. SMITH of Scott. I am satisfied, sir, that the gentleman does not take the right view of the subject. This kind of confusion that the gentleman alludes to, is precisely what I want to get rid of. I want to put it in the power of two men to compel the recording of the yeas and nays. I want no vote to pass without the proper responsibility attaching to every man who votes. Gentlemen talk about the consumption of time and the disturbances that will take place. A hundred side motions may be made, and motions to adjourn to a particular time, and as soon as the question is taken a motion to adjourn again to a different time is made. How are you to make members responsible in such cases, unless you place their names upon the journal? It seems to me the idea is preposterous; and this is not the only important matter. Suppose a question of some importance is brought up and gentlemen skulk behind the bush, because they do not wish to give their names to the public. We have witnessed such instances; and so far as the confusion alluded to by the gentleman from Monroe is concerned, I have seen more confusion where the yeas and nays were not called, because in that case members did not feel the same responsibility. I trust that the motion will prevail, and that "two" will be inserted, and that the number will not exceed that number.

Mr. DUNN of Jefferson. It appears to me that the reason which has been assigned for increasing the number of those calling the yeas and nays, is based upon the principle of the necessity of giving members the opportunity of recording their votes upon the final passage of a bill. Now on the next page to that upon which we are engaged, there is a provision, one that I have no doubt will meet the approbation of the Convention, which declares that on the final passage of any bill the yeas and nays shall be recorded. That will effectually prevent the passage of any bill when less than a quorum of members are in attendance. As to the case that has been referred to by the gentlemen from Gibson, I promise that it will rarely occur that on a motion to adjourn ten members will be found in either branch willing to waste

the time by calling the yeas and nays; and I presume that if we pass some such wholesome provision we shall save a great many hours of time, and a great deal of useless expense in both branches of the Legislature. My short experience has taught me that the calling of the yeas and nays is more frequently for factious purposes than for the purpose of obtaining a vote. And any gentleman who feels himself oppressed or wronged by the action of the majority can readily protest—he can put upon the record the solemn protest against such action, and thus place himself right before the country.

Mr. CLARK of Tippecanoe. I shall not detain the Convention a moment, sir, but I wish to say a word or two in regard to this matter. I hope the blank will be filled by "two." Now I have myself felt an inconvenience from the operation of the rule that we have here. There have been at least two occasions on which I wished to have the yeas and nays called if I had have been certain that nine gentlemen would have joined me in making the call. But I was reluctant to ask, and the body decided against having them called. Now I have had some experience in legislation, and I think there is no evil arising out of permitting a small number to call the yeas and nays, except such as is attendant upon all rules that may be passed. In my judgment each individual should have the right to demand that the vote should be seconded. I know there are many members who are far more modest than I am, who would be deterred from asking the yeas and nays if nine members were required to join him in the request before he could obtain them. I have no fears that the yeas and nays would be called on unimportant questions.

Mr. RITCHEY. I wish merely to say in reply to the gentleman from Dubois, that frequently at the conclusion of the Legislature here, as you and he both know, a great many members go home. Make what provision you may, therefore, there may be still on the clerk's table a vast amount of business, carried up to be ready fixed for the day of the adjournment. And on that day, we all know, many bills are passed of a most iniquitous character—passed when there is no quorum present. Every one will agree with me that this should not be permitted. I heard last night of one iniquitous measure that was defeated in the Senate, and defeated only by the constant watchfulness of a member who sits behind me, the delegate from Franklin county—he is always vigilant. He had placed himself in a position in which he could demand the yeas and nays. Had it not been for his vigilance the bill would have passed. There are numerous cases in which the necessity for putting it in the power of a single member to demand the yeas and nays is manifest. Every gentleman here must feel that there have been times when such a rule was of the utmost importance.

Mr. BROOKBANK. There appears to be a tolerably wide difference of opinion upon this point. Some gentlemen insist that two members shall have the power to claim the yeas and nays, and some that ten shall be required. I propose a compromise: I propose that it shall require five in the House and two in the Senate.

Mr. NEWMAN. I think that if we are going to adopt a large number there should be a distinction made between the two Houses. I move therefore to amend by inserting the following:

"SEC. —. The sessions of the General Assembly shall be held biennially, on the first Monday of December, unless a different day be appointed by law. And if in the opinion of the Governor the public welfare shall require it, he may, by proclamation, convene the two Houses at such time and place as he may name."

The PRESIDENT. The Chair would remark that the question under consideration is on filling the blank. The rule requires that the question be put first on the largest number.

Mr. WOLFE. I move—

The PRESIDENT. The gentleman from Wayne is entitled to the floor.

Mr. NEWMAN. We are all aware that it is difficult to adopt any rule in which there will not be some imperfection. But certainly the error cannot be greater, especially after the provision is adopted, that upon the final passage of all bills the yeas and nays shall be called. The difficulty suggested by the gentleman from Johnson might be obviated. Every gentleman here must feel that there has been time wasted. Members become excited. Now, although it is wrong to become excited, it is the case sometimes, and though I might demand the yeas and nays, and the House reject the demand, it would be no evidence that the House was right. Is it right that the time of the body should be consumed at the instance of two members. I think not. I think there ought to be ten required in the House and five in the Senate. But I am willing to say one-fifth of each House.

Mr. — moved that the Convention adjourn.

The motion was, upon a division—ayes 46, noes 46—negatived.

The question being first on filling the blank with the number "fifteen"—

Mr. WOLFE. I hope the Convention will consider this matter maturely before they vote. It does appear to me that we should not act hastily in regard to it. It may be considered a very trifling matter, but I have seen the time, sir, when it would be difficult to get ten members to call the yeas and nays upon some very important questions, and I say that we should have such a rule that we can set ourselves right at any time. For, sir, in some cases the same votes would not be given if the yeas and nays were called. I hope that the number two will

be retained. I am for preserving the old landmarks. I am always willing to declare the position I occupy by my vote. I am always willing that my acts shall be known by the people. Shall we say to the Legislature that in future, perhaps for fifty years, it shall require ten or fifteen members to call the yeas and nays upon any question, merely because they are directed to be taken on the final passage of every bill? How many important propositions may be voted down without the people being able to know how their representatives voted? I go for the smallest number.

Another motion was made to adjourn.

The Convention refused to adjourn.

Mr. CHAPMAN. Would it be in order to move to insert one-tenth of each House?

The PRESIDENT. That number is proposed already.

The question was then taken on filling the blank with "fifteen."

The motion was negatived.

The question was then taken on filling the blank with "ten."

It was not agreed to.

The question was then taken on filling the blank with "five."

The motion was lost.

The question was taken on filling the blank with "two;"

And it was adopted.

On motion, the Convention adjourned.

WEDNESDAY, DEC. 11, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CARY.

The journal of yesterday was read and approved.

Mr. BEESON presented a petition from citizens of Wayne county praying for the abolition of capital punishment, for the establishment of equal rights, and for the reduction of the salaries of public officers to the wages of day laborers, &c., &c.

The petition having been read—

Mr. BEESON moved that it be referred to the committee on the legislative department.

Mr. WATTS. I would suggest to the gentlemen that he ought to vary his motion a little, so as to refer so much of the petition as relates to taking the life of a human being, so pathetically set forth therein, to a committee on that subject; so much as relates to amalgamation to the committee on miscellaneous subjects [laughter]; and so much as relates to the *per diem* allowance of public officers to the committee on the legislative department. It seems to me that these would be the appropriate references.

Mr. RARIDEN. To what committee would the gentleman refer that part of the petition

which relates to the general reformation of the human family?

Mr. WATTS. I would refer that to a committee of which the gentleman from Wayne (Mr. Rariden) should be chairman. [Renewed merriment.]

The question was taken on the motion of the gentleman from Wayne, (Mr. Beeson,) and it was agreed to.

So the petition was referred to the committee on the legislative department.

Mr. FOSTER, from the committee on the elective franchise and the apportionment of representation reported the following amendment to the Constitution:

SEC. —. The General Assembly shall, at their first meeting after the adoption of this Constitution, and every six years thereafter, cause an enumeration to be made of all the white male inhabitants above the age of twenty-one years.

SEC. —. The number of Senator and Representatives shall, at the periods of making such enumeration, be fixed by law, and apportioned among the several counties according to the number of white male inhabitants above twenty-one years in each: *Provided*, The first election of members of the General Assembly, under this Constitution, shall be according to the apportionment made by the Legislature at its session of 1850-51."

The sections were read a first time and passed to a second reading on to-morrow.

Mr. MORRISON of Washington, from the committee on education, reported the following sections:

"SEC. —. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide, by law, for a general and uniform system of common schools, wherein tuition, as soon as circumstances will permit, shall be gratis, and equally open to all.

"SEC. —. It shall also be the duty of the General Assembly, (in order to furnish the common schools of the State with efficient and well qualified teachers,) to establish in the State University, a Normal School, wherein students shall be admitted upon such conditions, and instructed in such subjects, as shall be prescribed by law.

"SEC. —. The University Fund shall consist of the proceeds from the sales of the lands granted by the United States for a Seminary of Learning, and of such of said lands as remain unsold, together with such other grants, gifts, and donations as have been, or may hereafter be, made thereto. The principal of said fund shall forever remain inviolate, and the interest and income thereof shall be applied to the main-

tenance of the State University, in such manner as the General Assembly may direct.

"SEC. — The Common School Fund shall consist of the Congressional Township Fund and the lands belonging thereto:

"The Surplus Revenue Fund.

"The Saline Fund, and the lands belonging thereto.

"The Bank Tax Fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana.

"The fund to be derived from the sale of the county seminaries, and the moneys and property heretofore held for such seminaries, the fines assessed for any breach of the penal laws of this State, and all forfeitures which may accrue.

"All lands and other estate which shall escheat to this State, for want of heirs or kindred entitled to the inheritance.

"All lands that have been or may hereafter be granted to this State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof.

"All corporation taxes that may be assessed by the General Assembly for common school purposes, as hereinafter provided.

"The several counties of this State shall be held liable for the preservation of so much of the said funds as may be entrusted to them, and the payment of the annual interest thereon.

SEC. — There shall be annually deducted and paid over to the Treasurer of State, for the use of common schools, from the dividends of each company, which may hereafter be incorporated, and of each company which has been heretofore incorporated, in whose charter the General Assembly has received the right to repeal, alter, or amend the same, — per cent. of such dividend, whenever the same shall exceed the amount of six per centum.

"SEC. — The principal of all the said common school funds, shall be and remain a perpetual fund, which may be increased, but shall never be diminished, the interest and income of which shall be inviolably appropriated to the maintenance of common schools, and to no other purpose whatever.

"SEC. — The general Assembly shall invest in some safe and profitable manner, all such portions of said common school fund as have not heretofore been entrusted to the several counties, and make provision by law for the distribution of the interest thereof: *Provided*, That each county shall be entitled to its proportion of the interest and income of said fund, and if not demanded for common school purposes, shall be re-invested for the benefit of such county."

Mr. MORRISON of Washington. On presenting this report, Mr. President, if I have sufficient strength, I am inclined to say a word or two in explanation of the reason why the report has been delayed so long. The committee

on education had several meetings shortly after the opening of the Convention, and determined upon the general principles to be embodied in the report. But in consequence of the absence of some information which the committee desired to have prior to their final action upon the subject, they thought proper to delay final action, and accordingly a resolution was offered calling upon the Auditor of State, who is *ex officio* superintendent of common schools, for information in regard to the condition and safety, and amount, of the several common school funds; and a communication was received from the superintendent, in a day or two, stating that the information called for could not be obtained in his office, but that he had dispatched circulars to the various officers connected with common schools, and that as soon as he received the information he would lay it before the Convention. The information, however, has not yet been received. The committee on education thought proper, also, to delay their report until after the book committee had reported, so that they might know what system of banking would be agreed on by the Convention. In the last place, sir, it will be recollected by the Convention, that I have not been in my seat for the last three weeks. Three weeks ago today I was seized by an attack of pleurisy, which has confined me to my room until the present hour. I hope that these reasons will be considered sufficient to show why the report has been delayed so long.

The sections were read a first time and passed to a second reading on to-morrow.

The Convention then proceeded to the consideration of the

ORDERS OF THE DAY.

The section providing for biennial sessions and for the meeting of the Legislature under the new Constitution on the Tuesday after the first day of January, 1852; and on the same day every second year thereafter, &c., was taken up.

The question being, Shall the section pass? The yeas and nays were taken and resulted—yeas 120, nays 5—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beard, Beeson, Berry, Bicknell, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chenoweth, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Lockhart, Logan, March, Mather, May, Mc-

Clelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimby, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—120.

NAYS.—Messrs. Biddle, Chapman, Clark of Hamilton, Maguire, Morrison of Marion—5.

There being three other sections on their third reading,

Mr. SMITH of Ripley said, he would like to see the vote taken upon the remainder of the sections together. It would be a considerable saving of time. I move that they all be read, and if any gentleman desires a separate vote upon any section he can indicate it [cries of "no, no"],

The PRESIDENT. The Chair would remark to the gentleman that it would require a vote the other way, the Convention having decided that the vote shall be taken separately on each section.

Mr. SMITH. Well, sir, I have no great objection.

Mr. PRATHER. I would like to make a suggestion. I discover on examining the report on the subject of education, that it is an important document, and I think we should have an extra number of copies printed. I, therefore, move that five hundred copies of that report be printed.

The motion was not agreed to.

The Secretary then read the section which provides that "Each House shall choose its own officers, be the judges of the qualifications of its own members," &c.

And also the section which provides that "Two-thirds of each House, shall constitute a quorum to do business; and that if no organization be effected in the first five days after the meeting, no compensation shall be allowed to members," &c.

The PRESIDENT. It is moved to take the question on these two sections together.

Mr. BORDEN. If nobody objects, we may as well pass them without the yeas and nays. I suppose the rule can be suspended by general consent.

Objection was made.

The PRESIDENT. It requires a two-thirds vote to suspend the rule.

The question was put: Shall the rule be suspended?

The rule was not suspended.

The question was then taken on the motion that the vote be taken on the two sections together, and it was agreed to.

The yeas and nays were then taken, and resulted—yeas 122, nays 2—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Bascom, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Borden, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Holliday, Hamilton, Harbolt, Hardin, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Taylor, Thornton, Todd, Trimby, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—122.

NAYS.—Messrs. Rariden and Spann—2.

So the sections were passed.

The following section, on its second reading, was then taken up:

"Each House shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members on any question, shall, on the request of any of them, be entered on the journal."

Mr. MAGUIRE moved to amend by adding the following:

"And the names of the members demanding the yeas and nays shall also be entered upon the journal."

The amendment was agreed to.

Mr. KELSO. On yesterday I voted to insert the word "two" in this section, and I still believe that number to be right; but, upon reflection, I believe that the section can be improved by adding the following proviso:

"That, upon a motion to adjourn, it shall require one-fifth of the members present to demand the yeas and nays to be recorded on the journal."

Mr. GRAHAM of Warrick moved to amend by striking out the section as amended, and inserting a provision to the following effect:

"That one-tenth of the members elected in either branch shall be necessary to require the yeas and nays to be entered upon the journal."

The PRESIDENT. The question will first be upon the amendment of the gentleman from Switzerland.

Mr. KELSO. I will modify by substituting one-tenth instead of one-fifth.

The question being taken, the amendment was agreed to.

Mr. GRAHAM of Warrick. The object of the amendment I have offered is this: It will require ten in the House to call the yeas and nays, provided there shall be a hundred members, and five in the Senate, provided there shall be fifty senators. It appears to me, sir, that it ought not to require the same number in the Senate as in the House to demand the yeas and nays; and I think, from the expression we have had here, ten is a small enough number to demand the yeas and nays upon any question. I appeal to any one who has paid attention to the proceedings of the Legislature, to say whether I am not right. Upon an examination of the journals, I will venture the assertion, that it will be found that the yeas and nays have frequently been demanded upon the most unimportant and trifling questions. It is upon little questions, when members wish to procrastinate the proceedings, that the yeas and nays are demanded. This amendment, if adopted, will require that one-tenth of the members elected shall be necessary to demand the yeas and nays. I think that, upon all questions of importance, a sufficient number of members will be found willing to have their names recorded upon the journal.

Mr. WOLFE. This matter was settled yesterday, I thought, definitely; and I was in hopes that it would be allowed to rest. The gentleman from Warrick refers to the inconvenience of having the yeas and nays demanded upon unimportant questions. His experience differs from mine very much; my experience is the very reverse of his. I know it is right that we should have the yeas and nays, in order to make members accountable for their acts. I want public servants to be responsible to the people.

Mr. GRAHAM. The gentleman says that his experience is directly the reverse of mine. He desires that it shall appear upon the journal how every member votes. Yet he complains that, under the old Constitution, the yeas and nays are not entered upon the journal, so that the evil of which he complains, his own proposition does not cure. It is true that, upon unimportant matters, in order to procrastinate, the yeas and nays are often demanded. But the evil of which the gentleman complains is remedied by another section, which requires that the yeas and nays shall be taken upon the first passage of every bill; and upon the intermediate questions there will always be found ten members who will be willing to demand the yeas and nays, when it is necessary that they should be taken.

The question was taken upon the amendment of the gentleman from Warrick, and it was rejected.

The section was then ordered to be engrossed for a third reading.

The following section, upon its second reading, was then taken up:

"Any member of either House shall have the right of protest, and of having his protest with the reason of his dissent, entered upon the Journal."

No amendment being offered, the section was ordered to be engrossed for a third reading.

The Secretary read the next section, as follows:

"Either House may punish its members for disorderly behaviour, and with the concurrence of two-thirds expel a member, but not a second time for the same cause, and shall have all other powers necessary for a branch of the Legislature of a free and independent State."

Mr. MURRAY moved to strike out the words, "but not a second time for the same cause."

It seems to me, said Mr. M., that if it becomes necessary to expel a member a second time for the same cause, it must be an aggravated aggravation of the offense.

A MEMBER. "The second expulsion will not be for the same cause."

Mr. BORDEN. The only difficulty is in the change of a word. The word "cause" has been inserted in the place of "offense." The language usually employed is, "that a member shall not be expelled a second time for the same offense."

The PRESIDENT. Does the gentleman insist upon his amendment?

Mr. MURRAY. It seems to me that a man might be guilty of the same cause of offense a second time.

Mr. MAGUIRE. I move to strike out the word "cause" and insert the word "offense."

The PRESIDENT. Does the gentleman from Huntington withdraw his motion?

Mr. MURRAY. Yes, sir.

The question being on the motion of the gentleman from Marion—

Mr. BRIGHT. It is always wrong to expel a man for an act which is not an offense. This provision adheres to the language of the old Constitution. Two-thirds of the body may expel a member; not for an offense, merely, but for any misconduct. Misconduct does not always constitute an offense against the law. But he should not be expelled a second time for the same cause. This provision grew out of the celebrated trial of Wilkes, in England, who was expelled and re-elected, and an attempt made to expel him a second time for the same cause. If you strike out "cause" and insert "offense," then a member cannot be expelled, however disreputable his conduct, unless it amounts to crime. That is not what is contemplated.

Mr. KELSO. I do not conceive that the word "offense" is quite so limited as the gentleman seems to understand it.

Mr. BRIGHT. I was going to add, that we have adopted exactly the language of the old Constitution.

Mr. KELSO. As this is the only word that is left of the old Constitution, we may as well strike it out.

The motion was agreed to.

The section was then ordered to be engrossed for a third reading.

The next section was read, as follows:

"Either House may punish by imprisonment, during their session, any person not a member, who shall be guilty of any disrespect to the House by any disorderly or contemptuous behaviour in their presence. But such imprisonment shall not at any one time exceed twenty-four hours."

Mr. DOBSON moved to amend by adding after the word "imprisonment," the words "or fine."

I will just remark, said **Mr. D.**, that one of the last things that I wish to do, is to imprison an individual; but if guilty of any misconduct, I would let the Legislature exercise their discretion whether they would imprison or impose a fine. I am opposed to imprisonment.

Mr. READ of Clark. I would inquire of the gentleman how he proposes that the fine shall be collected, and how disposed of after it has been collected?

Mr. DOBSON. The Legislature will have the power to provide for just such cases. I am for allowing them to exercise a discretion in the matter, as to whether they will imprison or fine an individual who may be guilty of disrespect or disorderly behaviour. When the punishment is by imprisonment, it is never enforced. There never has been an instance, I believe, where an individual has been imprisoned for contemptuous conduct. But there have been instances where, if the Legislature had had the power to fine, fines would have been imposed. I hope the words that I have proposed will be inserted. If they have the power to imprison, they should have the power to fine.

The question being taken upon the amendment, it was rejected.

The section was then ordered to be engrossed for a third reading.

The section providing that when vacancies happen in either branch of the General Assembly the Governor shall issue writs of election to fill such vacancies, was then read.

The section was then ordered to be engrossed for a third reading.

The next section was read as follows:

"Senators and Representatives in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same, and shall not be subject to any civil process during the session of the General Assembly, or for fifteen days next before the commencement thereof."

Mr. BORDEN. It occurs to me that the committee have been generally successful in retaining every portion of the old Constitution, which is deemed material. But I think there is a part of this section that is incorrect. By looking at the Constitution of the United States, it will be found that it is provided, that for any speech in either House, a member shall not be questioned in any other place. I think this provision ought to be retained in our Constitution. I therefore move to amend by adding at the end of the section these words: "and for any speech or debate in either House, they shall not be questioned in any other place."

Mr. NAVE. I cannot see, sir, the necessity of adopting this amendment. I do not believe that a man, simply because he happens to be clothed with a little brief authority, and to take a position in either branch of the Legislature of Indiana, he should be thereby licensed to slander the whole community. It is a feature in the organic law that I am opposed to. No man should ever be licensed by the Constitution, to slander an entire community, or an individual in the community, without being held responsible for every word that he utters—every sentence that falls from his lips, to those against whom he utters an imputation, in the same manner as if he were a private citizen, in the private walks of life. No man should ever be relieved from an action for slander, which he may utter against any portion of the community, merely because he is clothed with office; but, on the contrary, he should ever be held responsible for everything he utters; and if this were made a permanent rule, it would not be the case hereafter, that men would rise up in a deliberative body and traduce the character or those who are not present to defend themselves. They would then be guarded as to the language they used, and not utter that which is calculated to blight the character and the prospects of any individual. I am opposed to the amendment, and am in favor of the section as it was reported from the committee; believing that it is right that every portion of the community should be secured against the calumny of those who are clothed with a little brief authority.

Mr. BORDEN. It seems to me that the principle contended for by the gentleman, is not correct. We cannot tell what may take place in the future progress of the State. The time may come when influential persons—persons occupying official stations, and prominent positions in society, may have an entire ascendancy over the Legislature, and there may be corruption on the part of officers of the Government. For instance, the banking interest may gain an ascendancy in legislation. I ask you, whether if a man gets up and frankly exposes this corporation, there would not be influence enough to bring him to trial, and perhaps imprison him. It is a well established principle, that the rep-

representatives of the people ought to be secured against influences of this kind. Yes, sir, the omission of such a provision in the Constitution would be a departure from a principle that is established in almost every Constitution that has been formed. I think it is highly necessary that these provisions should be retained.

Mr. CLARK of Tippecanoe. I think that the gentleman from Marion is right in the view that he takes of this matter. It was not canvassed, if I recollect right, in the committee. I think that a representative of the people should be relieved from the assaults that he might be subjected to for being a little too free in debate. A member, it is true, is responsible to his constituents for the manner in which he exercises the powers conferred upon him, and for the faithful discharge of all his duties; but, on the other hand, the public might suffer if he were restrained from exposing corruptions, by the dread of being involved in law suits. I think the amendment ought to prevail.

Mr. BRIGHT. I believe it was the design of the committee to adopt as many of the provisions of the old Constitution as possible.—Indeed to adopt them in all cases where they have not been made the subject of objection before the people of the State of Indiana.

The thirteenth section of the old Constitution, provides "that Senators and Representatives, shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly; and in going to and returning from the same."

This is the precise language of the provision now under consideration, and it further provides that, "for any speech or debate, in either House, they shall not be questioned in any other place."

This has, I think, by accident, been omitted. The committee have added to this section of the old Constitution, "that they should not be subject to civil process." The provision that has been omitted, I think, ought to be supplied, for reasons that are obvious. It is one that is to be found in the Constitution of almost every State, and in that of the United States, and I know no reason why it should be omitted in the Constitution of Indiana.

The question was then taken on the amendment, and it was adopted.

Mr. HOLMAN moved to amend, by striking out all after the word "same," in the original section.

It was remarked, said Mr. H., by the chairman of the committee, that the propriety of this provision in the old Constitution, was so apparent, that he presumed no remark was necessary. If its propriety be so apparent, I must be exceedingly dull of comprehension. This right of exemption from arrest upon any civil liability, is a right that is granted, not for the benefit of the member, but for the benefit of his

constituents; for the purpose of enabling the Representative to discharge his duty without interruption. But if we adopt a principle of this kind in the Constitution, it not only exempts him from arrest on civil process, but for breaches of the peace. By exempting from arrest on civil process, we are giving a privilege that is not conferred upon any other class of citizens. The judge on the bench is not exempt. Process may now be served upon a citizen, though a thousand miles from his residence.—Why? Because public interest requires it. The effect of this provision will be this: If a court is to be held in April, process cannot be served, returnable at that court, unless served before the member comes to the Legislature, and fifteen days prior to the meeting of the Legislature. Under such a provision, manifest injustice will be done in many cases, to the citizen, who has a just demand against the Representative. For my part, I cannot see the force of the argument which the honorable chairman says is so conclusive to his mind, in favor of this part of the section.

The question was taken upon the amendment of the gentleman from Dearborn, and it was not agreed to.

The section was then ordered to be engrossed for a third reading.

The next section was then read, as follows:

"The doors of each House, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the House, may require secrecy."

Mr. MATHER moved to strike out all after the word "open."

Mr. DOBSON. I think this amendment should not be adopted. Cases may arise where secrecy is required. It is important at times that those outside of the Hall should not know what is going on in it—they are extreme cases, to be sure, but such cases do occur. I remember one instance when it became necessary to secure funds belonging to the State to a large amount, that the doors should be closed. The fact of the embezzlement of the public funds to a considerable amount, was communicated to us, and immediately the doors were closed, and a bill was passed, and signed by the Governor, before the ink was dry with which it was written, and the rights of the State secured, which could not have been done if those outside had known what we were doing. It has been necessary heretofore, that the Legislature should sit with closed doors, and it may be so again.

Mr. WOLFE moved to strike out the entire section, and insert the following:

"That the doors of each branch of the General Assembly, and of committees of the whole, be kept open, except in such cases as, in their opinion, may require secrecy."

Mr. KELSO. Mr. President——

The PRESIDENT. The gentleman from Sullivan is entitled to the floor.

Mr. WOLFE. I have no wish to debate the question.

Mr. KELSO. The Chair will permit me to say that I do not regard the rule established by the Chair, as a very correct one. When I offer an amendment, I have only the floor——

The PRESIDENT. The Chair has not established the rule; it was established long before the present incumbent ever occupied the chair.

Mr. KELSO. I am happy to hear it, and I take back my remark. Now, sir, the proposition I believe is to strike out the entire section.

The PRESIDENT. The question will first be on the amendment of the gentleman from Elkhart.

Mr. KELSO. Yes, sir. I have listened attentively to the remarks of my friend from Owen, who is pretty near right in regard to matters generally. I happened to be with him in the Legislature at the time he speaks of, when it was necessary to pass a law with the utmost expedition in order to save certain funds belonging to the State. The doors were carefully guarded, sentinels were placed at them, and a law was passed, but, sir, what was accomplished by it? Nothing at all. I maintain that it is not necessary that we should pass any such provision as this, for so far as secrecy is concerned, there is no such thing known to the legislation of the State of Indiana. Nor should there be. There was a provision put into the Bank charter, and perhaps it was well enough to put it there; that while the Legislature were engaged in electing the officers of the Bank, the doors should be closed. This was done in order to prevent bank influence from operating upon the members of the Legislature. But, sir, the election of bank officers is no part of legislative proceedings, and I should have no objection to an amendment declaring that upon such occasions the doors might be closed, and it would be strictly constitutional, for, in such cases, it is not a legislative act. But I am opposed to the amendment as it stands.

Mr. EDMONSTON referred to the case of Beckwith, who was endeavoring to swindle the State to a large amount. It was necessary on that occasion, said Mr. E., to close the doors of the Legislature while acting upon the case. They were accordingly closed, and we passed an act, and it was signed by the Governor, and Beckwith was caught, whereas it never could have been done if we had gone on with open doors. He was caught, as I said, and some part, I believe, of the money was recovered.

Mr. KELSO. The gentleman is mistaken. The money was not recovered.

Mr. EDMONSTON. Well, that was not the fault of the Legislature. I will venture to say that if they had passed the law with open

doors, Beckwith would never have been heard of.

Mr. KELSO. Then the State would have saved several hundred dollars expense.

Mr. PETTIT. The question, I believe, is on the amendment of the gentleman from Elkhart.

The PRESIDENT. It is, sir.

Mr. PETTIT. Then, sir, I shall ask the yeas and nays upon it. I am opposed to the proposition to transact governmental business in secret. I am utterly opposed to secret machinery in the government of a Republic. I think, therefore, that there is no sort of necessity for adopting the amendment.

The yeas and nays were ordered, and being taken were—yeas 56, nays 67—as follows:

YEAS.—Messrs. Anthony, Bascom, Beard, Beeson, Berry, Bicknell, Bowers, Brookbank, Braynt, Carr, Carter, Chandler, Chapman, Chenowith, Cole, Colfax, Crumbacker, Dunn of Jefferson, Duzan, Garvin, Hamilton, Hendricks, Hitt, Kelso, Maguire, March, Mather, May, McClelland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Nave, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Ristine, Shannon, Sherrod, Snook, Smith of Ripley, Steele, Taylor, Trimble, Elliot, Wheeler, Wiley, Yocum, and Mr. President—56.

NAYS.—Alexander, Allen, Badger, Biddle, Blythe, Borden, Bracken, Bright, Butler, Clark of Hamilton, Clark of Tippecanoe, Coats, Conduit, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Perry, &c., Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Haddon, Hall, Harbolt, Hardin, Helm, Helmer, Hugin, Holman, Howe, Huff, Johnson, Jones, Kendall of Wabash, Lockhart, Logan, McLean, Miller of Gibson, Morgan, Newman, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Smiley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, and Zenor—67.

So the amendment was not adopted.

The question then being upon the amendment of the gentleman from Sullivan, to strike out the entire section, and insert the following:

"That the doors of each branch of the General Assembly, and of committees of the whole, shall be kept open, except in such cases as in their opinion may require secrecy.

The question was taken, and the amendment was not agreed to.

The section was then ordered to be engrossed for a third reading.

The next section was then read as follows:

"Bills may originate in either House, but may be altered, amended, or rejected in the other; except that bills for raising the revenue shall originate in the House of Representatives."

Mr. STEVENSON moved to amend the section by adding the following:

"Every law shall embrace but one object, which shall be expressed in the title."

Mr. STEVENSON. The object of this amendment is to obviate a difficulty that frequently occurs in the Legislature. When a bill is presented and its friends are not numerous enough to pass it, and they enter into a coalition with gentlemen who desire the passage of some other measure to mutually assist each other in the passage of both combined under one head; and it is intended to prevent another difficulty, which often arises when only a part of the character of the bill is expressed in the title.

Mr. BORDEN. I will remark, sir, that I should have proposed such an amendment myself if the gentleman had not done it. I come here instructed in regard to this matter. I am glad the gentleman has proposed it. We have, sir, a precedent for such a provision. I have in my hand the Constitution of California which contains this provision, "Every law shall contain but one subject, and that shall be expressed in the title." I suppose the object of it is to prevent the practice of log-rolling, as it has been termed by the Legislature. I am satisfied that the correct course is to adopt the provision. Almost every State Convention that has been called for the purpose of revising their Constitution, has inserted a provision of this kind.

Mr. CHAPMAN. Gentlemen will find that the operation of such a provision will be to embarrass the Legislature exceedingly. I very much doubt the propriety of passing it. I am willing that the contents of every special law should be specified in the title; but I think it will be almost impossible, if we generalize the laws, to express their contents in the title, unless you duplicate the laws. I think it will lead to much practical difficulty.

Mr. CLARK of Tippecanoe said, he doubted very much the propriety of adopting this amendment. He thought it would be difficult to carry it into effect.

Now if it should happen that two or more subjects are embraced in a bill, the whole law would have to be pronounced unconstitutional, and I think it will be found very difficult to confine every bill to one specific object. There must be a variety of things embraced in a bill. There are occasions upon which there must be compromises made. The people of the different sections of the country cannot think precisely alike. Their interests are different, and their views are different; you must arrange your measures so that there may be a majority to act upon them. It is impossible that the government can be conducted upon any other plan. I am not in favor of omnibus bills. But you have seen what has been necessary to be done in Congress, and so it will be in your Legislature.

It will be necessary to make compromises in order to reconcile conflicting interests.

Mr. SMITH of Ripley. The provision that we are now about to act upon is one of considerable importance. Gentlemen will recollect that this question has been very elaborately debated. It occupied some five months of the last session of Congress—the object being to ascertain the proper mode of saving the Union. It was contended by Mr. Clay and others that the only possible way in which the Union could be saved was to pass a number of bills together. Mr. Benton and other gentlemen opposed this course, and contended that the Union could not be saved in that way. The measures originally proposed were subsequently passed in connection with each other, although not in one bill, and the Union has been saved. I think the provision now proposed ought to be adopted.

Mr. RITCHEY. I hope the amendment of the gentleman from Putnam will prevail. I can see no difficulty that is likely to grow out of its practical operation. It is said by some gentlemen who oppose the amendment, that if we classify the laws it will be impossible to comply with this provision. I can see no difficulty in the operation of the rule. If we have a bill passed classifying the subjects, we can have a general head for each particular class of subjects. Suppose the Legislature pass a bill upon the subject of incorporating railroad companies, it will be very easy to class them all under one head.

Mr. READ of Monroe said, he wished to assure the gentleman from Putnam (Mr. Stevenson) how cordially he was with him in the present proposition. That gentleman is now on the high road of reform.

If there had been a single reform principle introduced into the lately made Constitutions, this of requiring a majority of all the members to pass a law, is one of the most valuable in preventing irresponsible legislation. When the ayes and noes are required to be entered upon the journals for the passage of every bill, and when a majority of all the members must give their assent thereto before it can become a law, there will be safe and careful legislation. When there must be a majority to pass all laws *bolting* and other means of escaping responsibility will be prevented. Every member will be obliged to act and to show how he acted. It is the only effective way of keeping full houses.

Mr. BRIGHT. The title of a bill is no part of the law. An act will have its full force and effect without any title whatever. The title is the last thing generally that is thought of. One objection which I have to the amendment is, that many subjects are sometimes necessarily embraced in one object. We cannot specify the various subjects that will necessarily be connected in any given object. All the difficulties which have been suggested by gentlemen will be overcome, it appears to me, by re-

quiring the passage of the bill by yeas and nays. If we adopt that system representatives will be more careful in attending to the reading of bills, and more careful in voting upon their provisions, than has heretofore been the case. The evil of careless legislation will, I doubt not, be overcome by the provision to which I have referred. I think it will be a more effectual remedy than that proposed by the gentleman from Putnam. Who is to decide whether a law embraces two or more objects?

A MEMBER. "The courts will decide."

Mr. BRIGHT. Then the validity of every act will depend upon that which is no part of the act. It will depend upon the title which is appended to the act, not upon the act itself. I think we had better leave this matter as it has heretofore been. Leave it to the Legislature to embrace as many subjects or objects as they please, taking care, however, that those subjects shall be duly considered, and that they shall not be adopted without the yeas and nays being recorded. That I think will be a sufficient remedy for all the evils that are apprehended.

Mr. DOBSON. I think the gentleman from Jefferson, although generally right, is wrong in regard to this matter. The bill and the title should correspond.

Mr. BRIGHT. The title is no part of the bill.

Mr. DOBSON. The title of a bill should be clear and explicit. But under the system of log-rolling, which prevails in the Legislature, it has become, in fact, like a nick name, conveying no true idea of what it purports to indicate. It is no indication of what the contents of the law are. I hold that the title of a bill ought to be correct; that a law should not sail under false colors. It is a duty we owe to the people that every law that is passed should be expressed in plain and simple language, in order that the people may understand it; and it should have its proper title—like a finger-board—so that the people may know where it leads to; or like a sign, so that a man may know its object. I hope that the amendment of the gentleman from Putnam will be adopted.

Mr. READ of Clark. I am in favor of the amendment. I think that much evil has grown out of legislation under our former rule upon this subject. One word in reply to the gentleman from Jefferson. He says that the title of a law is not the law itself. That we all admit, although my friend over the way says it is a kind of a sign-post. I will ask the gentleman from Jefferson this question: Suppose you adopt the amendment which provides that a bill shall contain but one subject, and suppose that a bill shall be passed containing two subjects, will not that bill be unconstitutional? Look at your statute book and you will find many bills, the titles of which run thus; A bill for the relief of Richard Roe, and for other purposes. Well,

sir, the "other purposes" may be the establishment of a railroad or a canal. I think we ought to remedy this in some way. Common sense dictates that the title of a bill should express precisely and distinctly what follows in the sections of the bill. I think the amendment ought to be adopted.

Mr. HALL. The abuses practiced under our present system of legislation, by incorporating various measures in one bill, is a subject which the people have taken under their consideration; and among other resolutions that have been adopted by them in reference to it, is this one: that special legislation should be prohibited in the State Legislature—that no act should embrace more than one object, and that that object should be expressed in the title—that upon the final passage of every bill in either House the yeas and nays should be entered upon the journal. The provision which requires that no act should embrace more than one subject and that that shall be expressed in the title, I think is one which ought to be adopted by the Convention. And I am in favor, therefore, of the amendment of the gentleman from Putnam.

Mr. OWEN. I am in favor of the amendment. Gentlemen say that nothing is to be effected by it. It will, without doubt, prevent incongruous subjects being grouped together in the same bill. Of this I remember a remarkable example, that came under my own knowledge, while a member of the State Legislature. There was a bill introduced by a member, whose name it is not necessary to mention. The title of the bill was to appropriate a portion of the three per cent. fund, coming to a certain county, "and for other purposes." It was read a first and second time, by its title, as a local bill: on its third reading, some member asked for the reading of the "other purposes;" and it came out that the last section contained a provision divorcing a man from his wife. [Laughter.]

Mr. MAGUIRE. I have heard much complaint—and there is undoubtedly some ground for the complaint—as to the manner in which legislation has sometimes been conducted in this State. I have a distinct recollection of a case somewhat similar to that referred to by the gentleman from Posey, where a section was inserted in a bill, otherwise unobjectionable, appropriating the sum of seventy-five thousand dollars for a private and local purpose. The bill had a general title, to which was added the words, "and for other purposes." The bill passed both branches of the Legislature, most probably without having been read through in either. It was discovered by the vigilance of Governor Noble, and sent back to the House in which it originated with his veto. On the question of its passage a second time it received but the single vote of the member by whom it was introduced. This and other cases to which reference might be made, shows the necessity of some measure to prevent their recurrence. The object of the

gentleman from Putnam is, therefore, in my judgment, correct and laudable, but I would suggest whether it would not be better to say that the *objects*, instead of the *object*, of a bill should be set forth in the title. It may be convenient and proper sometimes to embrace two or more objects or subjects in the same bill. There can be no objection to doing so if the title shall be so worded as to set forth all the purposes of the bill. The intention of the gentleman, no doubt, is to prevent the insertion of provisions not at all indicated by the title of the bill. The intention, as I said before, is a good one, and I think should be carried out; but that can be done without circumscribing the Legislature so that they shall be compelled to embrace but a single object in a bill. If deception be prevented, that is all that the gentleman has in contemplation, and I should think that might be accomplished by requiring that the objects or subjects of a bill shall be clearly defined in the title.

Mr. NAVE. There is one question that has not yet been introduced into the argument. It is this: If we declare in the organic law that every law passed by the Legislature of Indiana, shall embrace but one subject, and that subject shall be expressed by its title, and if the Legislature should in some act, introduce two subjects, would not that be a violation of the Constitution?—and if a violation of the Constitution will it not entail a curse upon the country in lieu of a blessing? It will be a question for the courts to determine whether more than one subject is included in any one act, and if more than one, it will be unconstitutional, and therefore a nullity.

Mr. GIBSON. I move to amend by striking out the word "object," and inserting the word "subject;" and I will remark that it makes a very material difference. I will venture to say that if the word "object" be retained, there will not be a law passed within a dozen years, that will be constitutional.

Mr. READ of Clark. I presume the gentleman from Putnam will accept the proposed amendment as a modification.

The question was taken on the amendment to the amendment, and it was agreed to.

Mr. MORRISON of Marion. I think we had better vote down this proposition, for it is one that will cost us a good deal of trouble. Instead of restricting bills to one subject, you will have to branch off into collateral subjects. If you turn to the revised code, you will find an epitome of every act set forth between the title and the body of the act. If this be done, there can be no deception. But for fear the law might be unconstitutional, I would duplicate it: call one the title and the other the law. This will prevent all mistakes.

The question being on the amendment of the gentleman from Putnam, the yeas and nays were demanded, and they were ordered.

Mr. GIBSON. This is an important matter, and I think we ought not to act upon it hastily. I move that it be postponed until Monday next.

The motion to postpone was not agreed to.

The yeas and nays were then taken on the amendment of the gentleman from Putnam; and they are—yeas 105, nays 21—as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Barbour, Bascom, Beard, Beeson, Berry, Bicknell, Borden, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chenowith, Cole, Colfax, Crawford, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Harbott, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morgan, Mowrer, Niles, Owen, Pepper of Ohio, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Tood, Trimby, Wallace, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—105.

NAYS.—Messrs. Allen, Blythe, Bright, Clark of Hamilton, Clark of Tippecanoe, Coats, Conduit, Davis of Madison, Dunn of Jefferson, Gibson, Gordon, Graham of Warrick, Howe, Mooney, Morrison of Marion, Nave, Newman, Pepper of Crawford, Spann, Taylor, and Walpole—21.

So the amendment was adopted.

The question then being on ordering the section to be engrossed for a third reading,

Mr. DUNN of Jefferson moved to amend by providing that if any subject is embraced in a law, and not expressed in the title, the law shall only be void so far as such provision is concerned.

I desire to say a few words in explanation of this amendment. Gentlemen, in endeavoring to avoid one difficulty, sometimes run very naturally into another. How easy would it be for a person opposed to the passage of an act, to defeat it, by heaping up provisions, and accumulating amendments. My object is that, where the provisions embraced in a law are not expressed in the title, such provision shall be void; but the fact of its being in the law shall not render void the whole act.

The question being taken, the amendment was, upon a division—ayes 55, noes not counted—agreed to.

Mr. RARIDEN. I would like to hear the section read.

The Secretary read the section as amended.

Mr. RARIDEN. I want to strike out the

latter part. The words, "it shall be expressed in the bill," is sufficient. It is not to be supposed that a legislative body will be acting fraudulently all the time. It is proper that the title should fairly indicate the substance of the law—that it should be an index to its contents. But I do not see the propriety of the latter clause of this section: that so much of the law, as is not fully expressed in the title, shall be void. I move to strike out the latter part of the section.

The PRESIDENT. It has just been inserted.

Mr. RARIDEN. Well, let it go; I will not fight about it.

The section was then ordered to be engrossed for a third reading.

Mr. BORDEN. When the proposition of the gentlemen from Posey, in regard to the rights of married women, was up some days ago, I voted in favor of its adoption. In accordance with the request of several friends, I have consented to move to re-consider the vote that was taken on its passage; and I will observe, on making the motion, that I do not make it because I am opposed to the principle of the section as it stands. On the contrary, I am in favor of it. But some gentlemen are apprehensive, that, if that section be allowed to stand, it will create opposition to the Constitution. For the purpose, then, of enabling the friends of the section to perfect it, and to give its opponents an opportunity to set forth their objections, I now submit the motion to re-consider.

Mr. RARIDEN. Is the motion debatable?

The PRESIDENT. It is.

Mr. RARIDEN. Well, sir, I am not going to make a speech on the subject. I have thought of it, however, very seriously, and of its effects, and have endeavored to prepare an amendment, the object of which is to carry out practically all that is contemplated, as I suppose, covertly, in the article itself. I have prepared a section very carefully; and in order that every gentleman may see what will be the practical results of such a provision—for whatever may be done for the benefit of married women, ought to be done in the right way to carry out the purpose of the Convention—I will read it; and it will answer for the speech I might make.

The object is to carry out the idea of separate property between husband and wife. The object is to put them upon a perfect equality as regards the property and personal rights that they may possess at the time of the marriage, or that they may acquire thereafter:

[The section was not furnished us by the Reporter.]

If the wife is to have a separate property and a separate existence, it is proper that she should be armed with all the artillery of the

law to protect her in the enjoyment of that property, and the maintenance of her rights over it. The courts of justice must be kept open for the protection of her separate rights. She must be allowed to maintain an action for wrongs or trespasses committed upon her person or property by her husband or others, and this remedy in her own name. You will see that it is the object of the first provision to give her the right to banish the husband from all participation in her property, so that if any usurpation be attempted on his part, she shall have the right to have set apart for her use half of what the husband may be seized of—or any other person for him—excluding, however, what he may hold by way of advancement from his relatives. It is proper to possess the wife of every legal means of redressing wrongs committed upon her by her husband or others. I have read this to show the length it will reach. It will require a great deal of legislation to carry out the rights that will be vested in women, and to protect her in the enjoyment thereof. I dislike the idea of placing it in the Constitution. I will go any length with the gentleman to amend and perfect the law of descents; but a provision which dissevers the sacredness of the marriage relation, I never can consent shall be introduced into the organic law, and make man and wife mere partners in business, in no way bound for each other, or to each other, as the proposition contemplates them.

Mr. NILES. I rise, sir, not to make any remarks upon the main question, but merely to suggest the propriety of postponing this motion to some day certain. The Convention is now earnestly engaged in going through with the sections upon the legislative department; and I am convinced that were this motion to be taken up to-day, debate would not be tolerated. I regard the section relating to the rights of married women, which it is now proposed to re-consider, as of more overruling importance than any other section upon which we shall be called to act. On looking into the proceedings of the New York Constitutional Convention, I see that a proposition of a similar character was at first adopted, but it was subsequently re-considered and rejected. I can but express my earnest hope that this motion may be taken up under such circumstances, that the Convention will be in a mood to listen to some of the reasons which I think may be urged against the section. I therefore propose that it be postponed until, say, Monday week.

SEVERAL MEMBERS. "Next Monday."

Mr. NILES. I move, then, that it be postponed until next Monday.

The question being taken upon the motion to postpone, it was, upon a division—yeas 56, nays 48—decided in the affirmative.

On motion, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day.

The question being on the seventeenth section of the report of the committee on the legislative department,

The section was read by the Secretary, as follows:

"Every bill shall be read on three different days in each House, unless, in case of emergency, two-thirds of the House where such bill may be depending, by a vote of yeas and nays, shall deem it expedient to dispense with this rule; and the vote on the final passage of every bill shall be taken by yeas and nays, and entered on the journal. Every bill having passed both Houses, shall be signed by the President and Speaker of both Houses."

Mr. DAVIS of Madison. I move to amend the section by inserting after the word "House," in the eighty-third line, the following:

"And before the second reading of any bill, the same shall be printed, and a copy thereof laid upon the desk of each member."

My object in presenting this amendment is simply that the hasty and inconsiderate legislation, which has heretofore characterized this State, should be arrested. The first step taken in order to prevent hasty legislation is, that each bill should be read on three different days, and that the yeas and nays shall be taken on its final passage. Now, unless members have the bill before them, they may be completely in the dark as to its provisions. It is impossible that any man of ordinary capacity can understand the provisions of many bills by merely hearing them read; and we all know, that, in their progress, they may be so altered and amended as entirely to change their character. This Convention, at the very commencement of its deliberations, found the necessity of having each proposed alteration of the old Constitution printed and laid upon the table of each member; and I apprehend that the same rule ought to be observed in the Legislature, especially when we remember that all future legislation is to be of a general character.

Mr. CHAPMAN. I have a substitute for that section, which includes the proposition of the gentleman from Madison, (Mr. Davis,) and which I hope will receive the consideration of the Convention. I desire that it may be read.

The substitute proposed by Mr. C. was read, as follows:

Sec. —. Every bill shall be read at least once in each House; and free discussion allowed thereon. Any bill shall be printed for information, whenever required by one-third of the members of either House; but the vote on the final passage shall not be taken until the third day after the introduction of any bill. None of the foregoing rules shall be suspended, unless, in case of emergency, two-thirds of either

House shall deem such suspension necessary; and all votes upon such suspension shall be taken by yeas and noes and recorded.

The vote on the final passage of every bill shall be taken by yeas and nays, which shall be entered on the journal; and it shall require the votes of a majority of all the members elect of either House to pass any bill. Every bill having passed both Houses, shall be signed by the President of the Senate and the Speaker of the House.

This substitute, which I propose in lieu of that reported from the committee, I regard as involving a matter of great practical moment. I trust, if the Convention is not now ready to adopt it, that the subject will be laid upon the table, until the substitute can be printed for the better information of members. I have no personal interest in this subject, beyond that of any other citizen, but it is one upon which I have heretofore bestowed much reflection, and I must be permitted to say, that I cannot but believe, if the rules which I propose are approved and adopted, they will prevent much of that objectionable legislation, which has induced a majority of the people of the State to pronounce in favor of biennial sessions of the General Assembly, instead of annual.

I will not go over that ground now, sir. I alluded to it at an early period of the session of this body, when the question of the reduction of representation was under consideration. I will only repeat, that whether your sessions are biennial or annual, or whether your representation be liberal or restricted in numbers, you will find such changes of far less consequence, as remedial to bad legislation, than proper constitutional rules, founded on the results of experience and progressive improvement.

We all know, from our experience in this body, that the old rule, requiring that a bill shall have three separate readings on three several days, is of but little real use, inasmuch as it is almost impossible for us fully to comprehend all the bearings of a single section, or proposed amendment of a few lines, except after repeated and careful readings; while, at the same time, we have the printed original before us. How much more difficult must it be to arrive at a correct understanding of a bill of many sections? Without printing, a member must either be guided by the representations of members interested in the passage of a bill, or he must resort to the Clerk's desk and investigate it, if he can get the chance, for himself.

The old rule has long been obsolete, and was omitted in the New York Constitution four years ago. For many years it has been practically discarded by most of the State Legislatures and by Congress. It originated in Parliament, probably long before the introduction of printing, and at a period when a majority of

members could neither read nor write, and were obliged to depend on the reading by clerks for information. No man would think of competing with the magnetic telegraph by a horse-back express; and as little should we endeavor to enforce this old parliamentary rule imperatively, now, that it is comparatively useless, and when better ones are presented.

The amendment proposed to the old rule, by the committee, is, that it shall require a two-thirds vote by ayes and noes, in order to suspend its operation. That would only add to the evil, and make the old rule the more obnoxious. Universal usage, in every legislature, for many years, has proved its inefficiency, and that is the great reason why it has generally been suspended by common consent. My position is, that we should adopt more efficient and practical rules, and such as are worth enforcing. None others are worthy of a place in the Constitution.

My proposition requires that a bill shall be read in full at least *once*, and free discussion allowed thereon. This does not preclude as many more readings as the body may require and direct. Secondly, that, if it should be desired, I give to one-third of the members the right to require the printing of a bill for full information and investigation. Thirdly, I propose that no bill shall be passed until the third day after its introduction, and I thus retain the time for deliberation which it was doubtless the original intention of the old rule to secure.

These rules need seldom or ever be suspended; but in case of emergency, they may be suspended by a two-thirds vote, by ayes and noes. The cost of printing may possibly alarm a certain kind of gentlemen, but I am sure that dispensing with the mere useless formality of three full readings by the Clerk, will save time enough to pay for the printing at five times its present cost, and will be far the best economy in every point of view.

In addition to the rules above recited, I add two others, not liable to suspension in any case: the one requiring a majority of all the members elect to pass a bill; and the other that all such votes shall be by ayes and noes, and recorded. These are of paramount importance in my opinion, and of far greater utility in abating hasty and bad legislation, than even a division of your legislative body into two Houses—much greater than the supposed remedy of biennial sessions and a reduced representation, which only detract from the power to legislate, while they insure no reform whatever.

I believe the desire of the people to be to reform and not to destroy the legislative body, and to that end I present the result of my reflections in the substitute which I offer, and ask for it the consideration of the Convention.

Mr. SMITH of Ripley said, he thought that both of the propositions of the gentlemen who

were last up had merit in them, but he thought it was hardly proper that the Convention should lay down rules for the government of the legislative body. He would hardly think that the Convention would say that the legislative body should have bills printed, if they themselves did not want to have them printed. If they desired to have any bill printed, they had both the power and the right to order its printing, and why, therefore, the necessity of making such a provision in the organic law? He thought that there was sufficient in the section as it stood to prevent hasty legislation, and that there was no necessity for the proposition either of his friend in front of him (Mr. Davis) or of his friend from Marion (Mr. Chapman).

Mr. THORNTON said that he had had some experience in legislation, and if there was one thing that he deprecated more than another it was that of hasty legislation. He was disposed to favor the proposition of his friend over the way, (Mr. Davis,) which, he understood, required that all bills should be printed prior to their last reading. He had prepared an amendment to meet that difficulty, because he was fully satisfied that it was impossible for the Legislature fully to understand a bill comprising several sections without having an opportunity carefully to read it. This was fully proved by the experience of the Convention. Many of the reports from the various committees had been so radically amended that it not unfrequently happened that the Convention did not vote understandingly. He thought, therefore, that the bills as prepared for a third reading should be printed; at least that the rule proposed by his friend from Marion (Mr. Chapman) should be adopted. He would go for the printing of all bills, because seeing that legislation for the future was to be of a general character, the bills would not be so numerous, and they would unquestionably embrace more important subjects than much of the legislation that had hitherto characterized the State. He understood that it was the purpose of the Convention to repudiate everything like local legislation; and, therefore, no subject could be brought to the consideration of the Legislature except that which would affect the interest of the State in general. It would, therefore, be a matter of great convenience when legislators were called upon to give a vote which was to be indicated by yeas and nays, that they should have the bills before them. Under the present arrangement they had to sit and listen, and if their hearing was not very accurate they would often vote in the dark. He would tell what happened in the Legislature some years ago. In the year 1835 a gentleman proposed a bill for the purpose of appropriating a part of the three per cent. fund of Vermillion county. That was the title of the bill; but it was afterwards amended by the addition of the words "and for other purposes." He (Mr. Thornton) went to the clerk's table

and undertook to read the bill, when a loud call was made that it should be read by its title. The bill passed through both Houses, and nothing arrested the mischief but the veto of Governor Noble. And what did they suppose was in that bill? Why it appropriated seventy-five thousand dollars of the money of the State instead of the three per cent. fund. I will not name the member who attempted to perpetrate this fraud, but an attempt was made to expel him, and he doubtless would have been expelled had there been a quorum present when the motion was made. Viewing, therefore, the necessity of being acquainted with the provisions of bills before being called upon to vote upon them, he felt disposed to favor the proposition of the gentleman from Madison (Mr. Davis;) but he thought the proposition of the gentleman from Marion (Mr. Chapman) was still better, and ought to be adopted by the Convention, as he was clearly of opinion that it was calculated to prevent many of the evils of hasty and inconsiderate legislation.

Mr. READ of Clark. Notwithstanding the argument of the gentleman from Marion, I cannot vote for this amendment. I know that we have too much hasty legislation—too much legislation at any rate; but if you print every bill that may be introduced you will have an enormous printer's bill to pay for very little purpose. It is well known that not one-tenth of the bills that are introduced are ever passed; and that they sometimes come in in such an extensive shape as to embrace from one to two hundred sections, costing the State some two or three hundred dollars each to print them, and then but few of them are adopted.

I am in favor of having every bill upon its third reading read by sections, but I cannot vote for the printing of every bill, because it would incur an enormous expense to the State.

Mr. WALPOLE. It is objected to the proposition of the gentleman from Madison that the printing of all bills would greatly augment the expenses of the Legislature. The section under consideration contemplates three several readings of a bill. When a bill is introduced, if it be of such a character as ought not to be considered, it is objected to and laid upon the table; but if it should pass to a second reading, the House determining that they will entertain the proposition, is it not proper that one-third of the body, if they should desire it, should have the bill printed so as to enable them better to understand it? The gentleman from Clark (Mr. Read) made a strong argument if our legislation were going to remain as it was under the Constitution of 1816. But according to all that we can now see there is to be no special legislation—every thing is to be of a general character. There will be no acts of incorporation for rail roads here, or rail roads there, or plank roads in this place, and canals

in that. Legislation is all to be general. This being the case, why should we not have symmetry and congruity in the acts of the Legislature of Indiana? And how can you have it unless each bill is printed and laid upon the tables of members, so that they may have an opportunity of reflecting upon its provisions. The great difficulty in construing statutes in our courts is owing to their incongruities; and that arises from the fact that bills are not printed and arranged in their proper order. Now there is no doubt that we will adopt a provision in the Constitution that there shall be no special legislation. It is all to be of a general character, and if one-third of the members of the Legislature should desire that a bill should be printed, why not have it printed? The gentleman from Ripley (Mr. Smith) says that if a majority of the members desire to have a bill printed they can so order it; but the object of this provision is to protect the minority in order that they may not be led into error. Now, sir, let any gentleman ask himself the question, what condition would we have been in to-day if none of these reported articles had been printed? Could they have told from the reading what are the exact provisions even of the section now under consideration? Most certainly not. All that they could rely upon would be their verbal recollection. So it is. Here is a bill read. One gentleman at his desk imagines that it means one thing, another that it means another, and relying only upon their recollection of its verbal phraseology they must make endless mistakes as to its meaning. Now, in legislation, a mistake of this kind may be fatal to the best interests of the community, and ought to be avoided if there be any means by which it can be avoided. I think the proposition would tend much to prevent these mistakes.

The question being taken on the amendment of Mr. Davis, it was rejected.

Mr. PETTIT. I believe it is in order to move to amend the original section. I move to amend in the eighty-third line by inserting after the word "bill" the words "or joint resolution."

The amendment was adopted by consent.

Mr. MILLER of Gibson moved to amend the section by inserting in the eighty-third line, after the word "read," the words "throughout by sections."

The amendment was agreed to.

Mr. HOLMAN proposed to amend the section by inserting after the word "journal," in the eighty-seventh line, the words "and a majority of all the members elected to each House shall be necessary to pass every bill."

Mr. KELSO moved to lay the amendment upon the table.

Mr. HOLMAN demanded the yeas and nays, which were ordered and taken, with the following result:

YEAS.—Messrs. Alexander, Allen, Badger,

Barbour, Bascom, Beard, Beeson, Bicknell, Bid-
dle, Blythe, Bowers, Bright, Butler, Chenoweth,
Clark of Hamilton, Clark of Tippecanoe, Con-
duit, Davis of Parke, Davis of Vermillion, Dunn
of Jefferson, Edmonston, Fisher, Foster, Fris-
bie, Gootee, Gordon, Gregg, Harbolt, Helm,
Hogin, Howe, Huff, Jones, Kelso, Kendall of
White, Lockhart, Logan, Mather, McLean, Mil-
ler of Fulton, Miller of Gibson, Mooney, Mow-
rer, Newman, Pepper of Crawford, Pettit, Rari-
den, Ristine, Robinson, Schoonover, Snook,
Spann, Tannehill, Taylor, Walpole, Watts,
Yocum, and Zenor—58.

NAYS.—Messrs. Anthony, Berry, Borden,
Bracken, Brookbank, Bryant, Carr, Carter,
Chandler, Chapman, Cole, Colfax, Crumbacker,
Davis of Madison, Dick, Dobson, Dunn of Per-
ry, Duzan, Elliott, Farrow, Garvin, Gibson, Gra-
ham of Miami, Haddon, Hall, Hamilton, Hardin,
Helmer, Hendricks, Hitt, Holman, Hovey, John-
son, Kendall of Wabash, Maguire, March, May,
McClelland, Moore, Morgan, Morrison of Mari-
on, Murray, Nave, Niles, Pepper of Ohio, Pra-
ther, Read of Clark, Read of Monroe, Ritchey,
Shaannon, Sherrod, Smiley, Smith of Ripley,
Smith of Scott, Steele, Stevenson, Tague,
Thomas, Thornton, Todd, Trimby, Wallace,
Wheeler, Wiley, Wolfe, Work, Wunderlich,
and Mr. President—69.

So the amendment was not laid upon the
table.

Mr. KELSO. The question will now be
upon the amendment. Now I simply ask the
attention of the Convention while I say this
much before the vote is taken. In a House of
Representatives consisting of a hundred mem-
bers, it is not extravagant to suppose that five
might, at almost any time, be absent from the
House. Then upon a close vote upon an im-
portant bill—no matter how important or how
urgent the necessity for its being passed—you
completely prevent its passage by this provision
and block the wheels of legislation. Now if
two-thirds of the popular body may proceed as
a quorum to do business, why will you, by such
a provision as this, prevent them from doing a
single thing? There is no necessity for it, be-
cause when a majority of the members forming
a constitutional quorum have agreed that a bill
should pass, why ought it not to be a law?
With a provision of this kind, a few members
might, at any time, by absenting themselves,
defeat an important bill without incurring the
charge of voting against it. We have practiced
upon the principle of a majority governing for
thirty-four years, without a single instance of
inconvenience, and I see no reason why we
may not continue to do so. Sir, if this provi-
sion is ingrafted upon the new Constitution I
think it will be one of the very worst that can
be adopted.

Mr. RITCHEY. The gentleman from Swit-
zerland (Mr. Kelso) says that if we pass this
amendment we will in certain cases stop legis-

lation. That is the very thing that I desire to
effect. I hold that if a measure cannot com-
mand the votes of fifty members of the Legisla-
ture, it ought not to be imposed upon the peo-
ple of the State. I believe that the people have
a right to demand that a majority of those sent
to represent their interests should give their
sanction to every thing that is to become law.
I hold this to be one of the most important re-
forms that has yet been presented to our con-
sideration; and I would as soon see any other
measure fail as that this should fail. And, sir, I
would even go further, and say that I do not think
the Convention will act wisely in adopting any
proposition which will not command a majority
of the one hundred and fifty delegates on this
floor. I hope the amendment will prevail, for I
do regard it as embracing one of the most im-
portant principles that has yet been presented
to our consideration.

Mr. KELSO. It is well known to every
gentleman here that one-fourth, and perhaps
one-third, of all the most important amendments
that have been made to the Constitution, have
been adopted by less than seventy-five votes.
And is there anything wrong in that? It is
impossible to expect it. In a body of a hun-
dred men it is impossible that they can always
all be present, or that a majority of the whole
number can always be of one mind on an im-
portant measure. Nor is it reasonable to re-
quire that fifty members should vote for any
measure when you permit two-thirds to form a
constitutional quorum. We have said that
two-thirds of the number shall form a constitu-
tional quorum to do business. Now what busi-
ness are they to do if they are not to make
laws? Are they to come here from day to day
and wait for the absent members? Is that do-
ing business? Perhaps half a dozen of them
may be sick and unable to come. Now I hold
that what we mean by "doing business" is the
ordinary legislation of the country; and if two-
thirds of each House may form a constitutional
quorum to do business, why make it necessary
that fifty-one in the House and twenty-six in
the Senate should vote for a measure before it
can pass? There is no necessity for such a
provision whatever that I can see. It is only
calculated to retard legislation, and create great
additional expense and trouble without any cor-
responding good. For that reason I hope it
will not be passed. I shall ask the yeas and
nays on the question.

Mr. READ of Clark. The argument of the
gentleman from Switzerland strikes me as hav-
ing a great deal of force in it. I think this
proposition would result in much delay and ex-
pense. One great object to which our atten-
tion ought to be directed, is to guard the finan-
ces of the State. In order to do that, I will
offer the following amendment to the amend-
ment: "Provided, that any bill or joint resolu-
tion for the appropriation of money, or creating

any debt against the State, or for the payment of money in any way whatever, shall not pass unless such bill or resolution shall be voted for by a majority of all the members elected to each branch of the Legislature, and said vote shall be spread upon the journals of each House."

Mr. BORDEN. The gentleman from Switzerland (Mr. Kelso) has remarked that a great portion of the measures which have been passed upon by the Convention, have passed by a less number of votes than a majority of the whole body. That gentleman should remember, however, that the Constitution has to be passed upon by the people before it becomes the organic law, and I take it for granted, that any measure which does not receive fifty votes out of a hundred ought not to pass. I believe that in all the States in which they have revised their Constitutions, during the last five or six years, they have adopted a provision of this kind.

Mr. HOVEY. I wish to make a single remark in connection with those made by the gentleman who has just taken his seat (Mr. Borden). Any law that cannot receive more than one-half the votes of the Senate, must be of doubtful policy and should not be adopted.

If the members of the Senate and House of Representatives should absent themselves, both those bodies have full power to compel their attendance and if any law should be demanded by the people, that power would assuredly be exercised. I shall, therefore, vote for the amendment.

Mr. TAYLOR. The gentleman who last addressed the Convention, thinks that if a measure is not of sufficient importance to elicit a vote of the majority of all the members elected, it ought not to pass. Now, if the gentleman from Posey will reflect for a moment, he will find that the most important measures we have passed upon in this body, have been passed by less than a majority of all the members. If this amendment is adopted, we shall be placing the representatives of the people in leading strings, so that they cannot do what the people sent them to do. It is well-known that it is almost impracticable to have a full house upon any measure that is passed. Have we been full here all the time? Are we full now? Why, sir, there has scarcely a single vote been taken when the whole number of members has been present. Now, suppose that four or five members should be suddenly taken sick, when any great measure was under consideration, this provision would completely tie up the hands of the Legislature. Men who are in favor of a proposition are as liable to be taken sick as those who are against it; and by adopting this rule you would virtually, in many instances, make a man vote against his own proposition. Sir, if you require fifty-one men to pass any measure, you may rely upon it, that you will never see any measure of importance passed. There would

be absentees enough—some from necessity and others from choice—to prevent it. Besides, this is giving too much power to the members of the Legislature themselves, for they can at any time give a kind of half opposition to any measure, by merely stopping in the lobby while the vote is being taken. This would be a hard rule, and one which I think would work badly. If the Convention should think otherwise, of course I must submit; but I think the rule would be both unwise and improper.

Mr. PEPPER of Ohio. Without meaning to impute a want of perception on the part of other gentlemen, or, without claiming for myself any acuteness which is not common to all mankind, it does strike me that gentlemen who are opposed to this amendment are laboring under a delusion. What is the proposition? Plainly that a majority of the representatives elected by the people, and paid to come here and attend to and transact their business, should be required to pass a law which is to be binding upon them, and which is to affect their interests. Fifty-one, out of the number of one hundred men in one house, are required to sanction by their votes the passage of a bill, and twenty-six in the other house. What is the proposition on the other side? Why, sir, that thirty-four men in one House, consisting of a hundred members, may pass a bill, which seventeen members of another House, composed of fifty persons, may sanction. And thus, Mr. President, here are fifty-one persons out of one hundred and fifty, authorized to pass any and all laws, however important. Sir, we are to pay a hundred and fifty men to come here and attend to our business, and fifty-one of them may do it, leaving the ninety-nine to do as they please. If such a such a proposition is not absurd in the estimation of other gentlemen, I can assure them it appears to me to be peculiarly so.

Mr. EDMONSTON. I have only a word or two to say in reference to this matter. In the first place we say that two thirds of the House of Representatives shall form a quorum to do business. Two thirds of a hundred men will be sixty-seven. In the next place, by this amendment, if it is passed, we say that fifty-one men out of the sixty-seven, shall be required to pass any proposition. Does not every gentleman see that there is an absurdity here? How often do you get a full House? This is the ninth session that I have had the honor of serving the people of my country at this Capital, and I do not believe that at any time, on a call for the yeas and nays, has there been a full House. Now what is to be the result of this? You say that fifty-one members shall be required to pass any measure, and as that will rarely, if ever, happen, you simply require the Legislature to come here and spend the people's money in doing nothing but talking. And yet gentlemen call this democracy! If this be democracy, God deliver me from such

democracy! If you say that sixty-seven shall form a quorum, why then let them go on and do business. On the other hand if you require a majority of the whole body to pass a law, you may as well tie up the hands of the Legislature at once, and say that it shall require a unanimous vote of three-fifths of the Legislature to pass any law. What is the use of saying that you will have sixty-seven for a quorum, and yet say that you will require fifty-one to pass any measure? If that is your democracy, I have nothing to do with it.

Mr. NEWMAN gave notice that on to-morrow he would move that no measure should pass the Convention which did not receive the sanction of a majority of the whole body. The formation of a Constitution which was to be the basis of future legislation he regarded as a matter of much more importance than the passage of any measure which might be brought before a Legislature, and if it was right and proper that a majority of all the members elected to the Legislature should vote for a measure, it was unquestionably more right that all the members of that body should vote upon any proposition that might be brought before it, and which, if adopted, was to become the supreme law of the land for all time to come.

Mr. MORRISON of Marion. I dissent from the argument of the gentleman from Wayne. I am perfectly willing to require that it should take a majority of all the members elected, to pass the Constitution when it is completed, and I know that it will get it. But we are here now for the purpose settling the rules which are to govern the Legislature for a long time to come. We are endeavoring to fix these rules so plainly, definitely, and honestly, that under them every man will understand what is right in the community, and that the people shall be protected from anything and everything like corruption. Now I hold the argument of the gentleman from Ohio (Mr. Pepper) as a good one, and it might have been carried further. Suppose, for instance, that a banking company comes to the Legislature and wants a charter. They know that there are twenty-five votes in the Senate that they can rely upon, but these twenty-five would not give them a majority. All that they have then to do, is to procure the absence of one member, and they can then do everything they desire to do.

Again, take the argument of the gentleman from Dubois. He says that we will virtually tie up the hands of the Legislature, and stop the wheels of government, unless we permit a majority of a quorum to act. If we permit them to act, we do so that they may begin incipiently—that they may start the business. They can go on and pass bills to a third reading in every instance. There are doubtless a great many gentlemen who might find it very convenient to serve the people in the halls of legislation until they have passed one or two bills, in

which they are interested, and then go home and leave the rest of the business to be transacted by those who choose to remain behind; and thus while they are absent, a great measure may come up, and the people may be swindled by a dereliction of duty on the part of those who ought to do the work. I hold that this proposition is strictly democratic, and that to require a mere majority of a quorum to pass laws, is approaching too much to the one-man power.

Mr. ———. I move to postpone indefinitely the amendment under consideration.

Mr. READ of Clarke. I am opposed to the motion to postpone the subject indefinitely. The amendment of the gentleman from Dearborn provides that no bill shall pass except by the sanction of a majority of all the members elected to both branches of the Legislature. My amendment is that no bill appropriating money shall be passed without a clear majority of all the members elected; and I think, if that provision were adopted it would be sufficient.

Mr. NAVE. I have heard several objections urged to the amendment of the gentleman from Dearborn, none of which, however, have struck my mind with that degree of force which seems to have impressed the minds of other gentlemen. The object of having representatives is that the wishes and interests of the people may be attended to. And if a hundred men are necessary to represent the various interests of the State, is it not important that before any law is entailed upon the people by these men that at least a majority of them, should vote in favor of the passage of such a law? It seems to me that nothing in the world can be more reasonable. If a majority of the hundred men do not vote in favor of any law, it is evidence that the people's representatives are not in favor of it, and that it ought not, therefore, to be imposed upon the community. Sir, if you authorize a hundred and fifty men, assembling in your Capitol to make laws for your State, and then determine that a majority of a quorum of each House may pass the laws, you put it in the power of the minority to rule, which in my opinion is anti-democratic; because, I hold that in every community the majority ought to make the laws.

Sir, as has already been said, under the present proposed provision, that a quorum shall be enough to transact business in each House, seventeen Senators could pass a law in that branch of the Legislature and thirty-four in the other, making a less number than I think could ever be designed by the framers of the Constitution, to pass laws for the government of the people; and for one I am opposed to any less number than fifty-one in the one House and twenty-six in the other, ever having the power to pass laws by which I or my constituents are to be governed. Gentlemen say that members want to go and attend to other business, and that they cannot always at-

tend to the business of legislation. Why, sir, the very object of this amendment is to keep them from attending to other business. If they cannot afford to attend to the business of the people for the compensation of three dollars per day, but must practice law in the supreme and district courts, why, then, let others attend to the people's business who are willing to do so. [Applause.]

Sir, I say that men ought to come here and do that for which the people sent them here; and if they will attend to the people's business as they ought to do, you will not see them passing laws one year, which they are obliged to repeal in the next, but your Legislation will be of a fixed and permanent character, while at the same time it will be such as to suit the desires of those for whom it is made. [Applause.]

Mr. TAGUE expressed himself in favor of the amendment of the gentleman from Dearborn (Mr. Holman).

Mr. KELSO rose to reply to a remark of the gentleman from Hendricks, (Mr. Nave,) who seemed to be much affected at the idea of any one being a legislator, who was competent to obtain a practice in the supreme or district courts. Now if this doctrine were carried out to its legitimate extent, and none were sent here as legislators except those who had not capacity enough for such practice, why, their legislation, he thought, would be of a poor character. He maintained that the people would choose the best materials which they could get, of which to compose their Legislature; and he would ask, whether, if a man offered himself as a candidate, who happened to have brains enough to attend to other business besides that of legislation, the people should not have the right to choose him? He thought that they might do so without being obnoxious to the charge of acting inconsistently with their own interests. It did not follow as a matter of course that because a man could not get any other kind of business under heaven, he should therefore go into the Legislature. In regard to the amendment, he could not agree with it, for he believed it to be entirely useless.

Mr. BRACKEN. I have not been very troublesome to the Convention in the way of speech making, but I feel that I ought to say a few words upon this question. The notion which I have of a democratic government is a government in which the majority rules, and even in a whig government too. That I understand to be the essence of the doctrine of both of the great parties. If that is so, and we send a hundred men to legislate in the lower branch of the Legislature, fifty-one of that hundred will be a majority; and if it requires a hundred men to legislate upon any matter involving the interests of the State, it appears to me, as a matter of common sense, that fifty-one

measure. One gentleman thinks it strange that gentlemen should advocate the principle that if a man has not brains enough to obtain a practice in the Supreme Court, that he ought to be sent to represent the people in the Legislature; but we advocate the principle that if a man receives the pay for doing the people's work, he ought to come here and do it, and not be receiving pay for neglecting the interests of his constituents. If the people are mistaken about the honesty of a man, and they find that he will not do their work, let the matter be known; so that they may judge of how to serve him on the next occasion that he offers himself as a candidate for office.

Now, Sir, if there be any one principle that is settled in regard to our legislation, it is that a majority should rule. But, if we take a mere majority of a quorum, then in the lower House thirty-five members may pass a law, and eighteen in the Senate, and thus you would have legislation done by little more than one-third of all the members elected. With such a provision gentlemen could always be induced to dodge a measure, so as to prevent its passage. But let it once be known that you require a majority of the whole number of members to pass a bill, and my word for it, members will be here to attend to their duty. There are ninety-one counties in the State, and there are to be a hundred members in the popular branch of the General Assembly. Do the people want to pay a hundred men to come here and do their work, and then to have it done by only one-third? The proposition is preposterous.

Now, one word in reference to what fell from my friend from Clark (Mr. Read). He says that if money is to be appropriated, it should be appropriated by a majority. Sir, there are many things that are dearer to the people than money—their lives, their liberty, and a variety of social rights. And are they to be decided upon by one-third of those who are sent here for this purpose? If it is a democratic doctrine, to say that the majority shall rule, let it be so; and if it is not, then we may just as well throw up the whole business of legislation, and permit factious minorities to rule the State.

Mr. MURRAY. It seems to me that this proposition can easily be reconciled with the provision that a majority of a quorum can meet to do business; because, when a bill comes up for its final passage it can be laid over, and not be made the subject of the final action of the Legislature, unless a majority of the whole should agree to it. With this view of the case, I think the two propositions are perfectly reconcilable.

Mr. EDMONDSTON. I have only one word to say in reply to my friend from Rush, (Mr. Bracken,) who seems to take great pride in his constituents. In one breath he says that a majority shall rule, and in the very next breath he says that they shall not rule. Now he votes

for the proposition that two-thirds of the members shall form a quorum to do business, and then he says that a majority of that quorum shall not do business.

Mr. BRACKEN (interposing). I said that they should not pass laws.

Mr. EDMONDSTON. Is not that doing business? In the name of God, what other business have they to do?

Mr. BRACKEN. Two-thirds of the members may come here and organize, and compel the balance to come here and attend to the people's business; or if they do not, why then expel them and let others come in their places.

Mr. EDMONDSTON. No, sir; we have said that a quorum shall do business. And what is that business? Is it to proceed to the work of legislation, or is it to send the Sergeant-at-arms all over the State to hunt up the absent members? If gentlemen do not attend to the business of legislation, as the people expect them to do, and if a quorum should pass laws which are inconsistent with the public interest, then let the constituencies of the delinquent members call them to account. But it appears to me that, as we are now proceeding, this Convention is taking upon itself to settle forever hereafter, both what the people and the Legislature shall do. Now I would ask the gentleman from Johnson, (Mr. Ritchey,) if ever he saw a revenue bill pass by a majority of the whole house? If he has seen anything of the kind, he has seen more than I have seen. Those bills are generally passed at the end of a session, when you can seldom have more members than a quorum present; and if you adopt this amendment you will do nothing more than prevent all such bills from being passed; and the members will go home, and the result will be that the Governor will have to put the State to the expense of calling an extra session, or the wheels of government must be stopped.

Mr. RITCHEY. I wish to say, in reply to be gentleman from Dubois, (Mr. Edmondston,) that it is true that revenue bills have heretofore been the last that have been passed, and that a great many members of both houses have usually returned home before the passage of such bills. I ask if there are any bills which can be more important than those, and whether the argument of the gentleman from Dubois does not favor our position? If you require a majority of the whole number to pass those bills which are necessary for carrying on the government, then the members, instead of being in such haste to get home, will stay and pass these bills.

Now with regard to this question of democracy, it appears that doctors differ a little. The doctrine which the gentleman from Dubois contends for is, that one-third of the representatives of the people should govern; whereas, the doctrine that I contend for is, that nothing shall

have the sanction of law in the State of Indiana which a majority of the people, through their representatives, have not sanctioned. Now if the gentleman from Dubois prefers that one-third of the representatives of the people should rule the whole, he can have it so; but that is not the democracy which I profess. I want that democracy which insists on the right of the majority of the people of the State of Indiana to pass laws for themselves, through their representatives; and that no minority, either through corruption on the one hand or the neglect of duty on the other, shall have the power to pass laws in our State.

Mr. RARIDEN. The representatives of the people, in my view of the matter, represent the State of Indiana; and whenever a quorum—the constitutional number—are ready to speak the voice of the State, they ought to speak that voice. Now it is a matter of very little importance to the whole State of Indiana, whether the county of Wayne is represented or not. It is a matter of convenience alone, to that county. Two-thirds of the members would be as potent in their action; and, indeed, I would not say but that the interest of the State would be as secure in the hands of one-third of the representatives as in the hands of the whole of them, if we could only have the right kind of men. This is a matter which does not involve any principle; nothing beyond the mere responsibility of the members elected. It is altogether a matter between them and their constituents. Wayne county, or any other county, has a right to be heard; but if Wayne, or any other county, sees proper to elect a man to represent them who is not qualified to guard their interests, then it is the fault or the misfortune of that county which may be placed in such a position. It is utterly impossible that in any legislative body you can have the whole number of members present all the time, and to attempt to enforce their presence all the time would involve a large expenditure of money, or you would have your representative body composed of men of but indifferent talents. Now how is this provision going to affect the vitality of legislation? We have already a provision in the Constitution that two-thirds of the members of either house shall constitute a quorum, and it would be a silly Constitution without such a provision. When a number of members are assembled competent to make laws for the State, what is it to the State if they are not all there? Do gentlemen go upon the ground that the interest of the State is not secure unless the whole number of members are present? Or is it that one county or another, whose representative may not be present, is wronged by the action of the Legislature? If their representatives are not present it is their fault and their loss. I, sir, am in favor of leaving such responsibility to be settled between the absenting members and their constituents. I fear that infinite harm and de-

lay would be the result of the principle involved in the amendment.

Mr. DOBSON said he was in favor of the amendment offered by the gentleman from Dearborn, (Mr. Holman,) if for no other reason than that he believed it to be correct in principle. It would be a proper provision, too, in another regard; that it would prevent members from absenting themselves from the house and neglecting the people's business; and if they would not attend to that business, then the Legislature should have the power to expel them. The anxiety of the gentleman from Switzerland (Mr. Kelso) on the subject, had reminded him of another reason why he ought to go for it. Had this rule been in force in past sessions of the Legislature, the county of Ohio would never have been born, and some fifty thousand dollars would have been saved to the State. That was so managed that one or two gentlemen who were opposed to it were unsuspiciously invited out to take a glass of beer, and before they returned Ohio county was born. If the rule proposed by the gentleman from Dearborn had been in force that county would not have been created, because a majority of the whole number never would have voted for it. Many similar instances of the benefit of such a rule might be cited, and he hoped that it would be adopted by the Convention. In regard to a quorum proceeding to do business, he thought there was much business which they might transact, but they should not proceed to take a final vote on any measure.

The question was then taken on the motion to indefinitely postpone the amendment and the amendment to the amendment, and the yeas and nays being demanded and ordered, were taken, with the following result:

YEAS.—Messrs. Alexander, Anthony, Barbour, Beeson, Biddle, Blythe, Bright, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Conduit, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Edmonston, Gootee, Gordon, Gregg, Harbolt, Hogin, Howe, Huff, Jones, Kelso, Lockhart, Logan, Mather, McLean, Miller of Fulton, Mooney, Mowrer, Newman, Pepper of Crawford, Pettit, Prather, Rariden, Robinson, Spann, Tannehill, Taylor, Walpole, Watts, and Zenor—47.

NAYS.—Messrs. Badger, Bascom, Beard, Berry, Borden, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Coats, Cole, Colfax, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Johnson, Kendall of Wabash, Maguire, March, May, McClelland, Miller of Gibson, Moore, Morgan, Morrison of Marion, Murray, Nave, Niles, Owen, Pepper of Ohio, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Smiley,

Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Trimby, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—80.

So the motion to indefinitely postpone did not prevail.

Mr. BADGER. I move to lay the amendment to the amendment on the table.

The question being taken on the motion to lay the amendment of Mr. Read upon the table, it was decided in the affirmative.

Mr. KELSO. As the amendment offered by the gentleman from Dearborn is now subject to be amended, I propose to amend it by adding the following—

"And that no man shall be held to be duly elected to a seat in either branch of the Legislature unless he has received a majority of all the votes cast in the county or district for which he was elected."

I have no idea that the amendment I have offered will pass, but it certainly gives to those gentlemen who are so full of democracy, an opportunity to show their hands. Now let those gentlemen that have been born, and suckled, and fed, and raised upon democracy, and nothing else but democracy, come up and show themselves. [Laughter.] Sir, if we are to require fifty-one members out of a hundred, to pass any law, then, if there are two thousand voters in any county or representative district, let the man who is to be returned as elected, be required to have at least one thousand and one of them. If he is to be one of the fifty-one members who are to constitute the majority, let him stand the test at home, and see if he will obtain a majority there. I ask for the yeas and nays on my amendment.

The yeas and nays were not ordered.

Mr. FARROW. I would offer an amendment to the amendment of the gentleman from Switzerland. I know it is not in order to propose it now, but the gentleman, perhaps, will accept it. It is—

"Provided, That there shall not, at any time, be more than double the number of candidates in any county or district, that are to be elected in such county or district."

Mr. KELSO. I am obliged to the gentleman from Putnam for his amendment, but I think it unnecessary. I believe the people ought not to have any more candidates than they want, [laughter,] and that number they will undoubtedly have.

Mr. BRACKEN. I would just observe to the gentleman from Switzerland, (Mr. Kelso,) that I do not recognize his right to speak for the democracy, because he has not been long enough in their ranks to become thoroughly acquainted with their doctrines.

The question was then taken on the amendment offered by Mr. Kelso, and it was rejected.

THE PRESIDENT. The question is now on the amendment of the gentleman from Dearborn (Mr. Holman).

Mr. KELSO. I do not wish to debate any further the merits of this amendment, but I desire to say one word in reply to the last remark of my friend from Rush (Mr. Bracken). No matter what he may have to say about my right to speak for the democracy, I just tell him that I can teach him his A B C's both about the democracy, and about legislation, and, perhaps, about moral honesty, too. [Loud cries of "order, order."]

The question being taken on the amendment, it was adopted—yeas 78, nays 40—as follows:

YEAS.—Messrs. Badger, Bascom, Beard, Berry, Borden, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chandler, Chapman, Coats, Cole, Colfax, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gootee, Graham of Miami, Hadson, Hall, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Johnson, Kendall of Wabash, Logan, Maguire, March, May, McClelland, Miller of Gibson, Moore, Morgan, Morrison of Marion, Murray, Nave, Niles, Owen, Pepper of Ohio, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—78.

NAYS.—Messrs. Alexander, Anthony, Barbour, Beeson, Blythe, Bright, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Conduit, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Edmonston, Gordon, Gregg, Harbolt, Hogin, Howe, Huff, Jones, Kelso, Lockhart, Mather, McLean, Miller of Fulton, Mooney, Mowrer, Newman, Pepper of Crawford, Pettit, Prather, Robinson, Spann, Tannehill, Taylor, Walpole, Watts, and Zenor—40.

Mr. MARCH proposed to amend the section after the word "rule," in the 86th line, by adding the following:

"But the reading of a bill by sections, on its final passage, shall in no case be dispensed with."

The amendment was adopted, and the section was then ordered to be engrossed for a third reading.

On motion, the Convention adjourned.

INDIANAPOLIS, IA., Nov. 9, 1850.

Mr. DEFREES—Sir: In your report of the debates and proceedings of the Convention I find some errors, of either the stenographer or printer, which, if convenient, I would be pleased to have corrected. On page 36 I am made to say, I "derived" the intimation, &c. It should be, I "denied," &c.

Again, on pages 42 and 43, will be found a

resolution offered by me, which was referred to the committee "on the organization and functions of the standing committees." Among several errors I will mention two: the ninth proposition should read, "the power of impeachment and removal from office," and not as printed—"the power of impeachment and the qualifications to vote and hold office." And the seventeenth should read, "county boards," and not "county roads." On page 107, Mr. Stevenson's resolution requiring a majority of all the members elected to pass a law being under consideration, the reporter has entirely misconceived my meaning. I said, "in regard to the correctness of the position taken by gentlemen that it shall require a majority of all the members elected to pass a law, I think there cannot be much controversy." Again. I did not use the word "proper" purposes, but "private" purposes; intending to convey the idea that in voting money out of the treasury for private objects, it should require two-thirds of the members to pass the law.

I have noticed several other errors in the debates and proceedings, but have not the time at present to point them out.

Very respectfully, yours, &c.

JAMES W. BORDEN.

THURSDAY, DEC. 12, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. —.

The journal of yesterday was read and approved.

THE PRESIDENT rose and said:

GENTLEMEN OF THE CONVENTION: I have been requested to present, and take great pleasure in presenting to your consideration, a petition presented to me by the highly gifted and accomplished Miss MARY E. ORCHARD, on behalf of the pupils in the Indiana Asylum for the education of the Deaf and Dumb. In presenting to you this petition permit me to remark that in it is contained unquestionable evidence of the usefulness and utility of the institution. They are now demonstrating, not only in this petition, but by public exhibitions, that this institution has been eminently successful in cultivating the better portion of our nature—the intellectual portion—thereby calling forth, and cultivating the talent of that unfortunate class belonging to our race, which must, perhaps otherwise have remained like treasure hidden in the earth.

This, I say, is a source of high gratification to the philanthropic and the benevolent throughout the State. There individuals not only acquire the necessary knowledge to qualify them to take a position of usefulness in society, but to enjoy themselves and to enjoy the society which surrounds them. It may be said then, in

a qualified sense, that the deaf now hear, and the dumb speak. I present this petition for your consideration, believing that it will receive at your hands that attention to which its importance justly entitles it. [Applause.]

The petition was then read by the Secretary, as follows:

To the Honorable Members of the Constitutional Convention

We are aware that the present Convention, before whom we have the honor of appearing, is the most important which has ever assembled in this Capitol, and comprises in its ranks the most talented of the people of the State. Under these circumstances we feel overwhelmed with a sense of our incapacity; but we would crave your indulgence, and hope that your kindness will excuse the imperfections of our present address, as but a few years have passed since we first learned to communicate our thoughts to others.

We feel that the blessings which education has bestowed upon us, are far greater than the power of language can express; and it is to pray that these blessings may not be withdrawn from us and others equally unfortunapatrian, prompts us to address you at this time.

The pages of history contain the records of all classes of men; the plebian and patrician, the noble and the slave, are alike remembered. But who shall tell of our history in years gone by? The mute and the blind have gone down to the grave, leaving no record to tell that they had been. It is true, that, among the latter, many eminent individuals have been found, even as early as the days of the blind Grecian Bard; but, of the multitudes who have passed in darkness through the world, where shall we find the history? We would, however, hope that the dark clouds which hung over us have passed away, for teachers have been given, who, with words of wisdom, have imparted to us new life, and whose instructions shed light and joy on our path.

To us, who are mute, the world is no longer a joyless dwelling place. No more do we look upon the blue vault above us, with all its shining hosts, merely as an image of external beauty; for science has revealed suns and systems innumerable, in the vast regions of space; and in every star that shines, we see a world. And while thus our teachers have unfolded to our eyes the wonders of creation, and opened the mines of knowledge, affliction has been forgotten in the thought, that the treasures of wisdom and learning belonged to us, as well as to the more fortunate; while the Blind, in the intellectual joys to which they have attained, forget the darkness which envelopes outward things.

But what has hitherto been the condition of those whose lot it is to pass through life bewildered in the mazes of a disordered intellect? What heart does not feel for them, and what a tale of suffering does their history unfold!

Like the demoniac of Scripture, their dwelling has been among the tombs, being destitute, afflicted, tormented. The wild beast of the desert has not been shunned with greater dread, or treated, in captivity, with more severity than those on whose minds the lamp of reason sheds no ray. We rejoice to think, that they, too, have been succored by the angel-hand of benevolence, and rescued from oppression and misery. In the home which has been provided for them, their wounded spirits have found peace.

It is to ask that these blessings be extended to us all, by the renewed beneficence of our fellow-citizens, that this address is now presented to your honorable body—and we have been emboldened to make it, by the kindness and generosity which has always marked the conduct of our Government towards us.

And, in conclusion, we would say, that, although we can offer no suitable recompense yet, while we live, our prayers shall ascend unceasingly for our benefactors; and we trust to meet them in that world of joy and bliss, where our thanks shall reach their ears without the aid of an interpreter; there shall no eye be dimmed, neither shall any mind be darkened.

[Signed]

MARY ST. C. BELCHER,

MARY E. ORCHARD,

and 67 others.

Mr. SMITH of Ripley moved that the petition be laid on the table and printed; and that it be entered upon the Journal at length.

Mr. PETTIT. It ought to be referred.

Mr. SMITH. I move then, that it be referred to the committee on education.

Mr. PETTIT suggested the committee on the public institutions of the State.

Mr. SMITH modified his motion accordingly.

Mr. WOLFE. I move that the petition be spread upon the journal of debates, that it may go out to the public.

Mr. BROOKBANK. I hope that a copy of the memorial will be sent to the Governor of each of the several States of the Union.

["Consent."]

A MEMBER. "In order to do that it should be printed."

Mr. BROOKBANK. I move, then, that it be printed.

The PRESIDENT. How many copies shall be printed?

SEVERAL VOICES. "Five hundred."

Mr. MOWRER. Before the question is put on the motion to print, we had better determine what number shall be printed. I think that there should be more than five hundred.

Mr. WATTS. I would suggest to the gentleman who made the motion, to refer the petition to a committee—that, as it is a matter which interests the whole State, every portion of the State should be represented on the committee. I suggest, therefore, that it be referred to a select committee of one from each Congressional district.

The PRESIDENT. The Chair would remark that it is unusual to refer a document to a committee, and at the same time order it to be printed.

The question is: Shall the petition be referred to the committee on the public institutions of the State?

Mr. NILES. I am hardly willing that the petition which has just been read should be passed by without one word of response from this floor to its sentiments, or to the remarks which have fallen from the Chair. I could have hoped that the duty which I now assume might have been performed by some one else; and I should not have risen, except at the last moment, to take it upon myself.

The petition is no less beautifully expressed than true in sentiment. No memorial could come before this body, from any portion of our fellow-citizens, which would be more certain to meet a cordial and unanimous response. It comes from those whose lips would never have been unsealed but for the enlightened liberality of the State. Towards their education, it has been our privilege as citizens to contribute our mite. And in the satisfaction which we all experienced at the exhibition last evening, we had an opportunity to learn something of the truth, that it is even more blessed to give than to receive. By supporting the asylums for the education of the deaf and dumb, and the blind, and the hospital for the insane, we are only carrying into substantial acts something of that spirit of genuine benevolence which is beginning to characterize the present age. We cannot fail to recognize in these institutions, scattering rays from the early twilight of a better day for humanity. And, as suggested by an allusion from the Chair, I can but add, that, in sustaining them, we imitate—afar off, and in an humble way—the conduct of Him whose life on earth was devoted to active usefulness—who restored the deaf to hearing, the dumb to speech, and the blind to sight, and at whose command the lunatic went forth clothed and in his right mind. Blessings shall rest upon those who founded these institutions, and we may share in the blessing by helping to make them perpetual. But, sir, though we shall, as we ought, give them permanence by a provision in the organic law, it is delightful to know that they rest on a surer basis than any paper Constitution—the affections of the people. It is a delightful contemplation, that there is not a man within the limits of the State whose heart does not go with his hand in paying the tax necessary for their support. [Applause.]

Mr. MILLER of Gibson. I would suggest the propriety of withholding the publication of this petition until the report of the committee is made, so that the petition and report may go out together. I move that it be withheld from publication until we get the report of the committee.

The PRESIDENT. Is the motion to lay on the table and print withdrawn?

Mr. SMITH of Ripley. Yes, sir, I will withdraw the motion to print, although it occurred to me that it would be the better way to refer, and allow it to be printed at the same time.

The question being taken on referring the petition to the committee on the public institutions of the State, it was decided in the affirmative.

The question was then taken on the motion to spread the petition on the journal of the Convention and on the journal of debates, and it was decided in the affirmative.

STATE DEBT.

Mr. MILLER of Gibson said he had received from the Auditor of State some statistical tables containing information supplementary to that furnished a few days ago, on the subject of the State debt, and that he would be glad to have the communication referred to a select committee with the following instructions:

"To examine into, and report in tabular form, the indebtedness of the State on account of internal improvement bonds, with the amount of interest paid annually thereon; and also to submit a plan for the gradual payment of the same."

Mr. HALL. This subject has been before the committee on the State debt, and they have examined it thoroughly, but have not had an opportunity to lay before the Convention the result of their investigation. It will be brought forward when the section that has been reported from that committee comes up for consideration. I therefore move that the communication, for the present, be laid upon the table.

Mr. MILLER of Gibson. I have no disposition to take anything away from the committee on the public debt which properly belongs to it, but if I understood the statement of my colleague the other day, his estimates were based upon the supposition of a certain amount remaining in the treasury. My object is, that all the information shall be collected in order that some way may be provided by the legislative department for liquidating the debt.

Mr. GRAHAM of Warrick. I do not see that there need be any difference of opinion as to the reference that this matter shall take, and if this communication be referred to a select committee, I do not perceive that it will be taking anything away from the standing committee. So far as I am concerned, I should be glad if a separate proposition on this subject were submitted by every gentleman. I should like to see different plans submitted so that we might adopt that which appears to be the best. The gentleman from Gibson, who is chairman of the committee, has, I have no doubt, given the subject a thorough investigation. His plan is no doubt a good one, and may be adopted by this

Convention if no other plan be submitted. But at the same time, there might be other plans submitted, some of which we might prefer to his. I think there can be no impropriety in sending it to a select committee.

Mr. MAGUIRE. The subject of the public debt is the only subject which the gentleman from Gibson, and the committee of which he is chairman, had charge. It strikes me that it would be somewhat out of the usual course, if, after they have spent two or three months in the investigation of the whole subject, it should now be taken from them and given to a select committee. I have no objection that other gentlemen should be added to the committee, but it certainly appears to me that to take the subject now from that committee and give it to a select committee would be a breach of courtesy which is not often perpetrated in a deliberative body.

Mr. GRAHAM of Warrick. It is not proposed to take the subject away from that committee at all, and if it were, it would not be without precedent. The committee on the elective franchise, made a report, and the same subject upon which they reported, was then referred to a select committee. The committee on the State debt will not thereby be discharged from the consideration of the subject.

Mr. MAGUIRE. It does not discharge the committee but it takes away all their duties.

The question being taken on the motion to refer the communication to a select committee, it was not agreed to.

Mr. MILLER of Gibson, then moved its reference to the committee on the State debt.

The motion was agreed to, and it was so referred.

On motion by Mr. MAGUIRE, the gentleman from Gibson (Mr. Miller) was added to that committee.

On motion by Mr. MILLER of Gibson, the former communication from the Auditor, on this subject, was referred to the same committee.

On motion by Mr. BORDEN, the gentleman from Lagrange, (Mr. Howe) was also added to the committee on the State debt.

The committees were then called for reports.

Mr. KELSO, from the select committee appointed for the purpose of obtaining a place for holding the sittings of the Convention, made the following report:

Mr. PRESIDENT: The select committee to whom was referred a resolution on the subject of obtaining a suitable room for the sessions of this Convention hereafter, have had the same under consideration, and now report: That communications were addressed, at an early day, by your committee, to the owners, agents, and managers of the Masonic Hall, the Baptist Church, and Concert Hall, all situated in the city of Indianapolis, requesting a reply from each, severally,

whether the rooms could be rented for the use of this Convention, for a term of from three to six weeks, and if so, at what price, with and without carpet; whether seats, tables, stoves, &c., could be furnished by such owners, agents, managers, &c.

Your committee have been verbally informed by the Rev. Mr. CRESSEY, that the church cannot be obtained by this Convention; the same having been seated and otherwise arranged for church purposes.

Your committee have also received written replies from Messrs. YANDES & SHARPE and Mr. SHEETS; each of which replies your committee herewith submit and make them a part of this report.

Your committee do not feel at liberty to enter into any contract without first having the advice of the Convention.

All of which is respectfully submitted.

DANIEL KELSO,
E. K. BASCOM,
D. MAGUIRE,
S. P. MOONEY,
JOHN P. DUNN.

INDIANAPOLIS, Dec. 11, 1850

GENTLEMEN: Your note of yesterday, on the subject of the occupancy, by the Convention, of the Hall in the Masonic building, is at hand.

At the commencement of this session, I received a similar communication, from another committee, to which I replied, in respectful language, stating the terms upon which the Hall could be secured. My proposition gave great offense, and drew forth from several honorable members, remarks derogatory to my personal character. Not wishing to place myself in the same situation again, I respectfully decline making any further proposition.

If the Convention, however, are desirous of using the Hall, and choose to fix upon a sum they are willing to pay for it, and I should conceive it to be the interest of the stockholders to accede to the offer, I will do so.

Very respectfully, your ob't servant.

WM. SHEETS,
Commissioner of Masonic Hall.

TO Messrs.	DANIEL KELSO,	} Committee.
	E. K. BASCOM,	
	D. MAGUIRE,	
	S. P. MOONEY,	
	JOHN P. DUNN,	

INDIANAPOLIS, Dec. 10, 1850.

Gentlemen: In answer to your inquiries in your favor of this date, we would state that we will rent for the use of the Constitutional Convention *Concert Hall*, at the rate of *four dollars and fifty cents* per day. The room will be furnished with settees for the members of the Convention, and for the accommodation of the auditory, and a necessary number of stoves to heat the room.

We do not propose to carpet the room or furnish desks for the members.

Respectfully yours,
YANDES & SHARPE.

TO MESSRS. DANIEL KELSO,
SAM'L R. MOONEY,
JOHN P. DUNN,
E. K. BASCOM,
D. MAGUIRE, } Committee.

MR. PETTIT. I certainly am not in favor of accepting either of these propositions, and I have only risen to say that in my opinion we can remain where we are without the least trouble or inconvenience to the Legislature, which is soon to assemble. The court room in which the Supreme Court is now sitting, is large enough to hold all the members of the House of Representatives, although it might not be large enough for this body. That room is already carpeted, and by removing their desks into it, can be readily fitted up for the House of Representatives or for the Senate. We have arrived at that period in our labors when desks are not of great importance—at all events they can be spared, and, if desirable, a few tables can be substituted. I am satisfied, therefore, that we ought not to think of leaving this Capitol. It is nonsense to say that we shall be treading on each other's toes here, or be in each other's way. There are now in attendance upon the court in the room below, including the officers of court, members of the bar, &c., as many as one hundred persons, and there is sufficient room for them without any inconvenience.

I can see no objection to the two bodies, the Legislature and the Convention, meeting under the same roof, and prosecuting their respective labors at the same time. I should regard it as the height of folly to think of leaving the Capitol, where we have the rooms and other conveniences that we require. The expense of renting another room, is the least of the difficulty. The rooms that are offered to us have no conveniences, such as could accommodate a deliberative body. A large portion of the expense attending the removal would be for conveying fuel, and for the removal of stationary and other things that we may require. These halls that are proposed to us, have no adjacent rooms, for folding rooms; nothing but one square room, with a door opening at the head of the stairs. We should be disturbed by a constant clatter; the staircases are so narrow that two small persons can scarcely pass; and the room, I understand, is three stories high. In my judgment, we ought to stay here. I was about to say that I would move to lay the report upon the table, but it is a motion that I will not make.

MR. KELSO. So far as I am concerned individually, it matters not to me whether I stay here or go elsewhere, and if we go elsewhere, I am indifferent as to where we go. I can fight my way through as well as anybody else, but I am

candidly of opinion that the most foolish thing that we could possibly do, would be to attempt to stay here when the Legislature is in session in the same building. Now, in the first place, let us see what position we should occupy. The Senate may—they have a right to—and in all probability, will, refuse to surrender up their room to the House of Representatives; and I apprehend that the House of Representatives have no right to take it from them. Suppose that we should come down some morning to this Hall, and find it occupied by the Legislature, we should get up such a row as would result in the adjournment of both bodies; then what sort of a situation would the State of Indiana be in?

I am loth to charge the gentleman from Tippecanoe with anything like a trick, although he suspected the resolutions of the gentleman from Wayne were something like a cat in a meal tub. Now suppose the House of Representatives should come here and insist upon having this room. We should be forced to adjourn.

MR. PETTIT. I will say to the gentleman, that I shall under no circumstances vote to adjourn.

MR. KELSO. I say I am loth to make any such accusation against the gentleman, as he is generally very bold, frank, and candid about what he does. But let me make the further suggestion—would it not result in this?

Now, if we are going to adjourn over, and give the Legislature time to do what they have to do, let us, at once, like men, come up to the chalk line and agree upon it; and if not, let us determine where we will go, if we are to go elsewhere. I have submitted the report thus early, that we may be advised what further steps to take, if further steps are necessary on the part of the committee.

MR. GRAHAM of Warrick. This is a question in which I feel some little interest, and it seems to me that some of the suggestions which the gentleman has made, place us in a very ridiculous attitude, although I do not apprehend that anything of the kind will happen. I concur fully in the remark of the gentleman from Tippecanoe, that the Supreme Court room is large enough to accommodate either the Senate or the House of Representatives, and it is as much the interest of the Representatives and Senators as it is of this Convention that all these arrangements should be made with as little expense as possible, for they are responsible to the people for the additional expense that will be incurred. Both Senators and Representatives will be glad, I have no doubt, to have an opportunity, in moments of leisure to come into this Hall and witness the proceedings of this Convention; but if the Convention remove to Madison, what will become of those gentlemen who are members of this body and who are also members of the Legisla-

ture? I am for keeping as close together as possible, that we may, when important questions arise, vote in either body. In my opinion, there will be no difficulty when the Legislature comes together. There is sufficient room for all within this building.

Mr. WOLFE. I do not think it would be prudent for the Convention to remain here during the sittings of the Legislature. I know it is frequently very difficult when the Legislature is in session here, and a discussion is going on in one branch, and a vote is to be taken in the other—it is very difficult, I say, to get the requisite number of votes to make a quorum. Well, sir, if we have three bodies in session at the same time, members will be continually running from one to the other. I should be glad to accommodate gentlemen who are members of the Convention and also of the Legislature, but I cannot consent to do it at the expense of the interests of the people of Indiana—I cannot consent to do it at a sacrifice of the public interest. I know there would be some inconvenience experienced by us if we were to remove to any of the public buildings in this city, but at the same time, there would be some advantages attending it, not the least of which would be, being at some distance from the place where the Legislature will sit. I think it would be impossible for us to remain in this building.

Mr. LOCKHART. I believe that on examination it will be ascertained that the Supreme Court room would be a more convenient room for this Convention than this Hall itself. I therefore move that the report be referred back to the committee, with instructions to inquire into the expediency of fitting up the Supreme Court room for the use of the Convention.

Mr. NEWMAN. We are progressing pretty fairly with our labors, and this matter may as well be considered hereafter. I move that the further consideration of this subject be postponed until Saturday next.

Mr. RITCHEY. I hope it will not be postponed. We ought to determine whether we will go on and complete the work for which we have been sent here. If we determine to go on, it is necessary that we provide for the meeting of the General Assembly; that we try to get out of their way or else provide some place for them. I hope this question will be no longer postponed, but that we will decide this morning whether we shall remain here or remove. And, in reference to those gentlemen who are members of this Convention, and also members of the Senate, let me say that it appears to me that this is a reason why all three bodies should remain in this building. These three gentlemen have been sent here as members of this Convention—they are the servants of the people. If the people choose to be represented in two different bodies by the same men, it is not our business. And, sir, they can

discharge the duties of both, if the different bodies sit in close neighborhood to each other; but if we go to Concert Hall, or to any other remote place, it will be impossible for them to do so; or at least, they will not have the same facilities that they would have here. This, I think, is one reason why we should remain in our present position. I believe there will be no unwillingness on the part of the House or of the Senate, so to arrange as to give us the use of this Hall until we are through with our labors; and if we determine to progress rapidly, we can get nearly through by the time the Legislature comes together. I am in favor of progressing with all possible speed that is consistent with the necessary deliberation. I believe, at all events, we can finish our work within two weeks at farthest, after the Legislature meets. I therefore hope the Supreme Court room will be fitted up for either the House or the Senate; and if they are unwilling to yield to us, I shall, for one, be in favor of the Convention removing down into that room, to finish up our work.

Mr. COOKERLY. I am decidedly opposed to all three bodies sitting in this House. If we do undertake to remain in such close proximity to the Legislature, my word for it, there will be but little done. I have just been informed that the Masonic Hall can be obtained at our own price. [Cries of "no, no, no."] I am aware that there is a prejudice against the Masonic Hall, and against Mr. Sheets, but I think we should not cut off our own nose to spite ourselves. It is a very convenient room, and if we can get it at a reasonable price I think we ought to take it. Rather than have the three bodies sitting in this Capitol, I should be inclined to vote that the Convention adjourn over, and come back again after the Legislature adjourns, because I believe it will be a useless squandering of our time to attempt to do anything here while the Legislature is in session.

Mr. FOSTER. I trust, sir, that this question will be decided at once. There is no necessity, in my opinion, for postponing it until Saturday. With all deference to gentlemen who hold seats both in the Convention and the Legislature, I must say that we have met here, not for the convenience of those gentlemen, in order that they may assist in the deliberation of both bodies, but we have met here for the good of the people, and not to take into consideration the accommodation of individuals. It appears to me preposterous that three different bodies should attempt to hold their sessions in this building. It is hardly large enough for the two branches of the General Assembly. It is not sufficiently large to be convenient for them. I see none of the objections to removing to a different part of the town that seem to strike gentlemen so forcibly. We have but little use now for the library or for committee rooms. Besides, this will be a very important session of the Legislature—especially for the first week or

two: I believe it will be impossible to keep gentlemen of this Convention in their seats, particularly those who have aspirations for a seat in the United States Senate. And I do not feel any more dispositive to make arrangements for their convenience than for the convenience of those who hold seats in the two bodies. As I have remarked, let us go to Concert Hall, or else let us go to Madison. I am told that we shall there be furnished with accommodations gratuitously. I hope the question will be decided at once.

Mr. MURRAY. There are but few days now remaining before the Legislature will meet; we ought, therefore, to determine this question at once. A good many propositions have been made, and there are many of them that I have objections to. I believe that this room was relinquished for our use by the House of Representatives, in the expectation that we would finish our labours here, before the time of the meeting of the Legislature arrived. I think we had better surrender this room, therefore, and look for another. When we rejected the proposition for going to Madison, it was because most of us thought that we should be able to get through with our labors before the meeting of the Legislature, and were desirous of avoiding the loss of time attendant upon a removal. But now it has become necessary that another room should be provided. It has been suggested that we had better adjourn over. As to that, I do not see what is to be gained by it. I think we had better proceed, and finish our business, before we adjourn. It is proposed that the Constitution which we are about to make, shall be submitted to the people as early as the month of May or June. It will be impossible then, for us to adjourn for any length of time, and have our work completed in season. For these and other considerations, it seems to me that we had better persevere and finish our labors as speedily as possible.

Mr. DOBSON. I do not wish to occupy the time of the Convention further than to say that we ought to settle this question now, in order that the members of the Legislature may understand what our determination is.

Before I sit down I will move that the proposition now under consideration be laid upon the table, in order that I may introduce a resolution. It is in these words:

"Resolved, That we will remain in this Hall."
[Consent.]

Gentlemen do not take into consideration the inconvenience which we must experience if we go elsewhere. As to the expense it is my opinion that we need not put our constituents to any additional expense. This is the people's House, they built it for the use of the Legislature, and for any other purpose for which they might require it. There is ample room here for both the Legislature and the Convention; and as to the inconvenience of all three bodies

being in the same building, I do not apprehend that any inconvenience will arise from it. I am pleased with the idea that the Senate and the House of Representatives, and this Convention will all be in session at the same time, laboring for the public good. As to adjourning over, I can see no good that will result from it. We were elected to accomplish a certain work. Let us go on and accomplish it, and not waste time by adjourning. If no gentleman desires to make any further remarks, I will move that the propositions before the Convention be laid upon the table.

Mr. HELM. I desire to say a few words in reference to this question.

Mr. DOBSON. I will withdraw my motion, so that the gentleman from Rush can proceed.

Mr. KELSO. It is well known by most of the members of this Convention, that I am in favor of adjourning for a short time. This, sir, is a question that has been agitated in connection with that of our removal to some other suitable building, and I desire to say that both these questions should be settled before we proceed to any other business. We have had a report from the committee that was appointed for the purpose of procuring a suitable building; and in relation to the Masonic Hall, I will say that I think the proposition is very easily understood. We can obtain the Hall provided we make it profitable to the owners, and upon no other terms. If I understood the letter that has been received in answer to the application of the committee, we are required to make it a profitable operation to the owners of the Hall, if we accept that proposition. So much, then, in reference to our adjourning to the Masonic Hall. Then, sir, Concert Hall has been tendered to us, and that on very favorable terms; yet some gentlemen who have examined that Hall, have determined that it is not a suitable place. It is said that the staircase is too narrow. It is true that would be a serious objection to many members of the Convention, especially those who are inclined to corpulency. As I do not wish to impose any inconvenience upon gentlemen of the Convention, I think that we ought to determine not to remove to Concert Hall. I am opposed, then, to the acceptance of either proposition that has been tendered to us, and as has been well remarked by a number of members this morning, we need not think of continuing our sessions in this hall; and as it is a matter that I think has been clearly settled this morning, that we have no right to continue our sessions here to the exclusion of the House of Representatives, and as there is no other room large enough in this building, I feel satisfied that the question of adjournment is the only remaining question that we ought to consider, and in connection with that question I have a few remarks to make. I am, sir, in favor of adjourning for a short time. I believe it would be to the interests of the

people of the State of Indiana that we should adjourn, since other room must be procured for us and it will take some little time to have that room fitted up, and I think we had better adjourn while it is being fitted up. You will also bear in mind that the printing of our debates is some ten or twelve days behind, and such has been the case since the commencement of the session, and we know there is great inconvenience arising from this circumstance; then if we adjourn for ten or twelve days, the printing can be brought up and the transactions of each day can be laid upon our tables every morning, and we shall have a better opportunity of knowing how to proceed with our business. Another reason why I am in favor of an adjournment is, that the holidays are now almost at hand, and I learn from those who have experience in such matters, that there is usually but little done in deliberative bodies during the holidays. Then, sir, it will be better for us to adjourn and have some suitable room fitted up for us during the time of our adjournment, and that we should return home and mingle with our constituents. I believe it would be of great advantage to us.

Mr. ROBINSON rose and addressed the Chair.

Mr. DOBSON. I ask the gentleman to allow me to offer my proposition before he proceeds with his remarks.

Mr. ROBINSON acquiesced.

Mr. DOBSON then moved that the resolutions be laid upon the table.

The motion was agreed to.

Mr. DOBSON. I will now offer the resolution that I have already stated.

The PRESIDENT. It will require a suspension of the order of business.

Mr. DOBSON. I move that the order of business be suspended.

The order of business was suspended.

Mr. Dobson's resolution was then read, as follows:

"Resolved, That we will remain in this Hall."

Mr. OWEN. I am opposed to an adjournment. I think, while we are about it, we had better finish our business. I cannot see, practically, the use of adjourning for ten or twelve days. To effect any purpose by adjournment, we should have to adjourn over until the Legislature has completed its session. But I am opposed to any adjournment whatever. The gentleman from Monroe has said that it is preposterous that the three bodies should remain in the same building. I can see nothing preposterous, nor even specially inconvenient in it. It is more convenient to remain here than to go elsewhere. As to the suggestion that the candidates for the United States Senate would probably stray off into the Senate Chamber or the House instead of remaining here, it strikes me that the Convention could contrive to get along without them; they are not so very numerous that their absence should break up this body.

Gentlemen have said that we have no right to retain possession of this Hall. I do not see that. It belongs to the people of the State. It is assigned, indeed, by usage, to the House of Representatives. Last year the Legislature provided that it should be "prepared for the reception and sittings of the Convention." Nothing is said about our leaving it.

If, indeed, any difficulty might be apprehended between the Convention and the House soon to assemble here, we ought to avoid it by vacating this Hall; but I do not think we need fear this.

Mr. BADGER moved to amend the resolution by providing that this Convention proceed with its business until Wednesday evening next; and that it meet on Thursday morning in some room in this city, to be procured and fitted up by the committee appointed for that purpose.

Mr. PEPPER of Crawford. Mr. President, I shall cordially vote for the resolution of the gentleman from Owen (Mr. Dobson). I am decidedly in favor of remaining in this Hall until we close our labors. This Convention is representing the people in their primary capacity, and have paramount rights to the possession of this Hall. Besides, this is a more numerous body than any other that is to assemble at the Capital to transact official business, which entitles us to the largest room. The Supreme Court room is sufficiently large for either the Representative or Senatorial branch of the Legislature, and can be fitted up in time at a trifling expense. There is no doubt but that such arrangement will meet the approbation of the members of the Legislature, desirous, as they will be, to economize time and money, and expedite the public business with all commendable speed.

As for the proposition to adjourn over the Christmas holidays, or for any other cause, until our work be finished, I am utterly opposed.

We have already consumed much time—more than was expected when we convened, though certainly unavoidable, and for the purpose of shortening the session as much as possible, I shall vote for continuing at our labors in this Hall, without adjourning for any occasion until they shall be consummated.

Mr. WATTS. I think I can suggest a plan that will remedy all this difficulty. It is, that we pass a resolution to adjourn *sine die* in two weeks, and in the mean time go to work and make what amendments are necessary to the Constitution—postpone the Grand Jury question—postpone the question of the rights of married women, and some other questions, until the meeting of another Convention in the State of Indiana, and we can certainly wind up the remainder of the business within two weeks, and be ready to resign this Hall to the Legislature; and I think we are now getting along with our business pretty well. The intellectu-

al forces of this body are pretty well exhausted. Brute force has taken possession of the Hall, and is about to do the business. But if we cannot get through before the meeting of the Legislature, I am in favor of adjourning to Madison—separating ourselves as far as possible from the Legislature. It seems to me absolutely necessary that we should do so.

Some gentlemen suggest that this Convention is chiefly composed of such animals as are usually called jassacks. I think, then, as we are to make a moving menagerie of this Convention, we have exhibited here long enough; I am in favor of exhibiting for a while in Madison.

Mr. ROBINSON. This is a question which ought to be settled correctly, and I certainly think that if anything would be calculated to disgrace this Convention more than another, it would be the adoption of the policy proposed by the gentleman from Dearborn. After ten weeks spent in attempting to make an organic law, without having more than half completed our work, if we were to wind up in two weeks from this time our constituents ought not to allow us to come into the county. There is but one way in which we can satisfy the people, and I believe the gentleman from Dearborn misconceives their wishes. It is not that we should rush matters through by brute force. I do not understand the term. It is such a term as I do not use myself, and I do not know that any other gentleman has quoted it here except the gentleman from Dearborn, and he has done so, I trust, in no other than a humorous mood. Now as to the difficulties spoken of, they all exist in the imagination of gentlemen. Sir, when the Legislature meets there need be no difficulty. I have a higher opinion of the intellect, and capacity, and good sense of the representatives of the people, than to suppose for a moment that we should have to retain this Hall by brute force. Sir, they come here as reasonable men—they find us here—they have passed a law calling this Convention—they have given us the use of this Hall, and it is the property of the people of Indiana. If our labors should necessarily last until the meeting of the Legislature, there will be no difficulty in settling this question. I have no doubt that if we fit up the Supreme Court room, they will go there and perform their duty like sensible men, without a murmur. In regard to adjourning from this Capital to Madison, if there is anything that is truly ridiculous it is such an idea. Here, sir, is the place that has been prepared and set apart for us by the Legislature of the State. Sir, I have one opinion of my own respecting this matter, and I will not surrender that opinion to any gentleman until I am convinced that I am wrong. I believe that this Convention has no power to adjourn and discharge its duties in any other part of the State. The very law that brought into existence this

Convention, pointed out where its sittings should be held. It is true enough that if this Convention departs from this place, gathers up the books and records, and takes up its line of march, and on that line of march descends the inclined plane to Madison, it will look like a menagerie. It will be such a movement that the people will, in years to come, mark with their disapprobation.

It is said that the three bodies cannot sit together; and I was surprised to hear the sentiment coming from an old warrior, on whose shoulders the interests of the people of Indiana have rested for years, and without whose support those interests would assuredly have gone down. It has been said by the gentleman from Sullivan that the three bodies cannot sit together. Sir, the past history of legislation in Indiana will convince the gentleman that he is wrong. It is true, when the House and the Senate are in session, and an important question is under discussion, a member occasionally strays from one house to the other, but whenever the yeas and nays are called every one is at his post. It is true, the gentleman from Sullivan has been a vigilant representative. He is unwilling that any one else should represent his constituents in either House, and whenever an important question is up, we find him ready to make a speech. But I certainly think that his idea in regard to this matter is a total misconception. If you pass the resolution of the gentleman from Owen, that we will remain here, and if you take steps to fit up the Supreme Court room, when the Legislature meets, my word for it, you will not hear one word of complaint. The three bodies will go on harmoniously with their business; and I now say to my friend from Sullivan, with all good feeling, that if he should find it necessary to manage the three bodies, I am for giving him an opportunity to attend to it.

One word more on the question of adjournment. I have no feeling about the matter, but I believe we ought not to adjourn. If we do adjourn, I have one word to say as to the length of time to which our adjournment shall extend. Some of us live at a convenient distance from the capital, and can go to their homes one day and come back the next. There ought to be on their part a feeling of generosity towards those who live farther off. I will vote against all propositions to adjourn, unless it be to adjourn for a sufficient length of time to give every member an opportunity of visiting his family and seeing to his domestic concerns. My own notion is, that if we would progress with our business—decide to remain here—fit up the Supreme Court room, and we should have no difficulty to encounter.

In regard to the Masonic Hall, I have this to say: that I am not willing to have it upon any terms. I would rather sit in the open lot under the trees, exposed to the inclemency of

the season, than that the representatives of the people should knuckle or bow to what may be the notions of Mr. Sheets, or any other man. When we are told that we have got to make concessions—that, because we did not see proper to take the Masonic Hall at first, we must humble ourselves, I would rather sit in the open air.

Mr. MOORE moved that the amendment be laid upon the table.

Mr. KELSO demanded the yeas and nays, and they were ordered.

Mr. THORNTON rose for the purpose of making an explanation; and at his request the motion to lay on the table was temporarily withdrawn.

Mr. THORNTON. I have been requested by a number of members to offer a resolution that I have drawn up, in order to relieve us from the difficulty in which we are placed. I, for one, am not disposed to insist on remaining in this Hall, although I suppose we have a right to do so; but it might bring us into collision with the House of Representatives; for it is not to be disguised, that we shall have some hostility to encounter. It is said that we have been here too long, and if we continue to sit in this Hall, to the exclusion of the members of the House of Representatives, the odium hanging over us will be increased from the moment of our coming into collision with them. Suppose that we had a right to retain possession, would it be proper to exercise that right? It think it would not.

I am no candidate for office; I have no higher aims or aspirations. The only object that I have in view is to transact the business of my constituents. But it does strike me—and I claim to have some experience—that if we do continue in session in this Hall, in close proximity, as we must necessarily be, with the General Assembly, no good will be accomplished. I have understood—indeed, we cannot shut our eyes to the fact—that there are a number of candidates for the office of United States Senator; and it may be very convenient for them to remain here during the session of the Legislature. For my own part, I have no wish of that nature. I have no wish, however, to prevent them from taking care of their own interests; but I am not for making the public interest secondary to theirs. It appears to me that it would be much better that we should adjourn over until the session of the Legislature is ended. [Cries of "No, no."]

I have, sir, as I have said, a resolution which I will read. It is a proposition, however, that I am not devoted to; but I think that we must necessarily resolve upon something; and I protest most solemnly against going to Concert Hall. There are many of us who are getting in the vale of years, and who cannot easily climb so many flights of stairs. And I am altogether opposed to occupying Masonic Hall.

I will now read the resolution which I wish to offer as a substitute for the resolution of the gentleman from Owen.

[Mr. THORNTON then read a preamble and resolutions providing for an adjournment from the 22d instant until the 13th of January, and that no *per diem* or mileage be allowed during the recess.]

The PRESIDENT. Does the gentleman from Owen accept the resolution as a substitute for his own.

Mr. DOBSON. I do not.

The PRESIDENT. The resolution, then, cannot be entertained at this time.

Mr. MOORE renewed his motion to lay the amendment of the gentleman from Putnam upon the table.

The yeas and nays were again ordered, and being taken, were—yeas 105, nays 29—as follows:

YEAS.—Messrs. Alexander, Anthony, Beard, Beeson, Berry, Bicknell, Biddle, Bourne, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Coats, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Edmonston, Elliott, Farrow, Fisher, Garvin, Gootee, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Howe, Huff, Johnson, Jones, Kendall of Wabash, Kendall of White, Lockhart, Logan, Maguire, March, Mather, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Rariden, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimby, Wallace, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—105.

NAYS.—Messrs. Allen, Badger, Balingall, Bascom, Beach, Blythe, Borden, Bryant, Clark of Tippecanoe, Cookerly, Dunn of Jefferson, Foster, Frisbie, Gibson, Graham of Miami, Kelso, Kilgore, Kinley, McLean, Pepper of Ohio, Prather, Read of Clark, Read of Monroe, Smith of Ripley, Stevenson, Walpole, Watts, Wheeler, and Wolfe—29.

So the amendment was laid on the table.

Mr. MAGUIRE. I have no wish, sir, to discuss the resolution of the gentleman from Owen, nor do I intend to make any reference to the comparative advantages of occupying the Masonic Hall or the Concert Hall. I have no desire to meddle with any of these questions. I wish, however, in compliance with the request of several gentlemen in this part of the Hall, to repeat what I said on a former occasion, when this subject was before the Conven-

tion; and in what I said formerly, or shall say now, I can freely declare that I had and have no other motive save a desire to consult the convenience and comfort of the Convention. I presented, on a former occasion, a communication from several citizens of Indianapolis, proposing, in consideration of the advantages derived from the Convention remaining in this city, to become responsible for the amount charged by the proprietors of the Masonic Hall, over and above what this Convention should deem a fair and liberal allowance. That communication is still on file, and I take the responsibility of saying that the proposition, if desired, shall still be made good. I trust that this proposal, made from the best of motives, and with a view to accommodation, will not offend the sensibility of any member of this Convention—that all prejudice and excitement, if any remain in the minds of members, will be permitted to subside, and that the whole matter will be viewed as a plain business transaction.

Mr. WOLFE. When the proposition for the removal to Madison was before the Convention I opposed it, because I thought we could make better progress with our business here than we could if we were to go anywhere else. But the condition of affairs is now changed. At that time we did not suppose that we were going to remain until the Legislature met, and we believed that we should be interrupted until we had concluded our labors.

As to the remarks of the gentleman from Decatur, if he chooses to condescend to use language that is not becoming in a place like this, I have only to say—and I wish him distinctly to understand it—that I am not to be put down in that way. Gentlemen may understand, once for all, if they calculate to put me down by such a course of proceeding, they have got hold of the wrong man. I have occupied but little of the time of the Convention; but I am not to be prevented from doing my duty to my constituents on this floor, either by ridicule or by abuse.

Mr. ROBINSON. If the gentleman imagines that it is not becoming in me to allow him the credit of being exceedingly careful of the interests, not only of his constituents, but of the State, why, all I have to say is, that I take it all back. [A laugh.] I regard the gentleman as one to whose hands the rights of the people may be safely confided at all times.

The question being on the resolution of the gentleman from Owen, viz.: "That we will remain in this Hall,"

Mr. MOORE moved to amend the resolution by adding the words "until our labors are concluded."

Mr. DOBSON accepted the amendment as a modification of his resolution.

The question being upon the resolution as amended,

Mr. PETTIT demanded the previous question.

The demand for the previous question was not seconded.

Mr. FOSTER moved to amend the resolution so that it would read thus:

"When the Convention adjourns on Friday, the 20th instant, it will adjourn to meet in the city of Madison on Monday, the 23d instant."

Mr. BORDEN moved that the amendment be laid upon the table.

On this motion the yeas and nays were ordered, and being taken, were—yeas 93, nays 36—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Borden, Brookbank, Bryant, Butler, Carter, Chandler, Chapman, Chenoweth, Clark of Hamilton, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Edmonston, Elliott, Farrow, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall; Hamilton, Harbolt, Hardin, Hendricks, Hitt, Hogin, Johnson, Kendall of Wabash, Kinley, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Clark, Ristine, Ritchey, Robinson, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Tague, Taylor, Thornton, Trimble, Wallace, Walpole, Wiley, Wolfe, Wunderlich, and Yocum—92.

NAYS.—Messrs. Blythe, Bourne, Bowers, Bracken, Bright, Carr, Clark of Tippecanoe, Dunn of Jefferson, Fisher, Foster, Frisbie, Gregg, Helmer, Holman, Howe, Huff, Jones, Kelso, Kendall of White, Kilgore, Logan, Mooney, Morgan, Mowrer, Prather, Read of Monroe, Schoonover, Smith of Scott, Spann, Tannehill, Thomas, Todd, Watts, Wheeler, Work, Zenor, and Mr. President—37.

So the amendment was laid on the table.

Mr. NEWMAN moved to amend the resolution so as to make it read as follows:

"That the Convention will continue its sessions in this Hall until the Saturday before the meeting of the General Assembly."

There certainly can be no necessity, said **Mr. N.**, for leaving this Hall before the meeting of the Legislature.

Mr. WATTS moved to amend the amendment by adding the words:

"And then this Convention will adjourn *sine die*."

Mr. FARROW. It appears to me, sir, that there has been a sufficient expression of opinion in regard to this matter in the different attitudes which it has assumed, and I think the Convention has clearly expressed a determination to remain in this house, and therefore it

seems to me that it is only a waste of time for gentlemen to continue to present amendments for consideration, when the views of the Convention have been so clearly indicated. I, for one, at least, am disposed, whenever called upon to give my vote, to record it in favor of remaining in this place until we complete our labors.

Mr. SMITH of Ripley. When this question was brought up this morning, I thought that it would be decided in a few moments, and consequently I said nothing. But I discover that there is a disposition to settle the question more definitely. This being the case, I wish to say a few words. I wish it to be distinctly understood, that I am opposed to sitting in this house after the meeting of the Legislature. It is true that we may have the right to retain possession of this Hall, but I do not wish that any controversy should arise between this body and the Legislature; and I am satisfied that if we remain here, hostility will arise between the two bodies.

Sir, I judge of this matter by my own feelings. If I were elected a Representative, and came here to attend a session of the General Assembly, I should expect to be permitted to occupy the place that was designed for the use of the Representatives of the people. Therefore, I am opposed to the Convention remaining here. In regard to occupying the Masonic Hall or the Concert Hall, in this city, I will remark that I have no preference for either. I am no Mason, and therefore have no particular predilection for Masonic Hall. I cannot sing, and therefore I have no very great inclination to go to Concert Hall. But if either of them should be offered to us on reasonable terms, I see no reason why we should not accept the offer. I am decidedly of opinion, at all events, that we should procure some other place.

Mr. DUNN of Perry moved that the amendments be laid upon the table.

The motion was agreed to.

Mr. BORDEN. I desire to make a single remark. It seems that an impression has gone abroad that the opinion is entertained by this body that it would be improper for us to remain here during the session of the Legislature. But, sir, although there are several precedents for such a course, I am in favor of surrendering this room and procuring some other.

I have a word to say in regard to the Masonic Hall. Some remarks have been made here in reference to the gentleman who has charge of that Hall, which appear to me to be altogether out of place. I think there is no reason why he should be censured for having refused the offer that was made to him for the use of the Hall. This he had a perfect right to do. The committee did not come to his terms. He was bound to consult the interests of the Stockholders. Was there anything wrong in that? I do not think that any prejudice that gentlemen

may have permitted to arise in their minds should prevent us from consulting our own convenience by taking the Masonic Hall, where we can proceed and accomplish our work without an adjournment.

Mr. KELSO. There are two inconveniences, one of which we must encounter. If we adjourn over, we should adjourn to meet after the adjournment of the Circuit Court of the Spring term. We shall then accommodate those members of the Convention who are members of the Legislature, and we shall also accommodate members of the Convention who are members of the bar, and who have business to attend to during the sitting of the Court. I think, that if we adjourn at all—if we adjourn for any length of time whatever—before the completion of our labors here, we should adjourn until the first of June; and in the mean time let the people consider of what we have already done, and express their wishes as to what we shall do. But, sir, if we are to meet the other inconvenience, that is, the assembling of all these bodies together in the same building, let us meet it just where we are now. We should be no better off at Concert Hall or Masonic Hall than we are here. The officers appointed by law for that purpose have assigned to us this room. We may sit here as long as we choose, or at least as long as our money lasts.

A MEMBER. "It is exhausted already."

Mr. KELSO. Well, sir, we must keep on good terms with the Legislature until we get a new appropriation. But if we drive them out, I do not know whether we shall get any money or not. [Laughter.]

Now, by sitting here we shall accommodate those gentlemen who are members both of the Convention and of the Legislature, and enable them to receive six dollars a day instead of three; and we shall render an essential service to those gentlemen who are candidates for the office of United States Senator. They will be able to attend slightly to their business in this body while they attend to it a good deal in the other. [A laugh.]

Let us, then, keep as close to the Legislature as possible. We may learn something from them, and I am vain enough to suppose that they may learn a little something from us. ["Consent."] I am for remaining here, and for that reason, I now propose, under the circumstances, to vote for the resolution of the gentleman from Owen, although it is rather an impudent proceeding on our part; but, perhaps, all things considered, we cannot do any better.

Mr. BASCOM. A single word, sir, before the question is taken. I am surprised at the remarks of the gentleman from Tippecanoe, a gentleman who is aspiring to one of the highest offices in the gift of this Government. I am surprised that he should propose to occupy this Hall to the exclusion of the Legislature, and

that we should request the State officers to provide another room for their use. The question is not whether we shall provide a place for them, but that we shall provide a place for ourselves. As to providing for them, it is a matter over which we have no control.

In regard to adjournment, I have no such fears as my colleague seems to have about going home. If gentlemen discharge their duties faithfully here, they need have no fears of going before the people. The question for us to decide is: What is best for the interests of the public?

Gentlemen seem to apprehend that there will be no business done after the meeting of the Legislature; but go to what place you please—the Lunatic Asylum, if you choose—perhaps the most fit place—there will still be gentlemen of this body, not only those who are aspirants for a seat in the Senate of the United States, but those who are seeking for judgeships and other minor offices, with their adherents and supporters, who must necessarily have constant intercourse with the Legislature. I have no doubt but that we shall be subjected to a good deal of inconvenience wherever we may be.

On motion,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the resolution offered by Mr. DOBSON.

Mr. DUNN of Jefferson proposed to amend the resolution by striking out all after the word "resolved," and inserting a provision to the effect that the Secretary of the Convention be directed to inform the Governor, Auditor, and Treasurer of State, that the Convention could not complete their labors previous to the next meeting of the General Assembly, and that said officers of State be respectfully requested to procure for the use of the Convention some other suitable room in the city of Indianapolis.

Mr. D. said that his object in offering this resolution was to relieve the Convention from some of the embarrassments of their present situation. The law by which the Convention was convened evidently contemplated that their labors would be completed prior to the meeting of the Legislature, and that body in surrendering the Hall, in which they were now assembled, to the use of the Convention, did not suppose that they were depriving their successors of the use of the place in which the Legislature was accustomed to hold its deliberations. It would be necessary, even as a matter of courtesy, to resign to the members of the House of Representatives the use of their accustomed place of meeting, otherwise they would be apt to say that the Convention being on the spot might have procured a place of meeting for themselves. But whether that were a good reason or not, he could not but

think that if the Convention retained the use of the Hall it would have a tendency to generate a bad state of feeling between that body and the Legislature. It was always the case where two bodies of that sort came in contact that a kind of *esprit du corps* was generated between them; and men in a collective capacity would do, in the maintenance of their rights, what individuals in many instances would decline to do.

It had been said that the Supreme Court room might accommodate one or the other of the branches of the Legislature, but he did not believe it was large enough for either; and even supposing that it was, it was known that there were occasions on which it was necessary for both branches to meet in one Hall, and neither the Senate Chamber nor the Supreme Court room was large enough for this purpose. His own idea was that the Convention should take the Masonic Hall. He was willing however to leave the matter entirely with the officers of the State, and to let them decide upon it. If these officers should provide a room which was not suitable for the deliberations of the Convention, they could decline its occupancy; but he thought the better way would be to request these officers to inquire about the matter, and he had no doubt whatever that they would procure a room that would be suitable in all respects. As to the price which was to be paid for such a room it was known that the Convention could not involve the State in any additional debt on that score, because the utmost amount to which they could go was already fixed by law. He understood that when this matter was under consideration on a former occasion the agent of the Hall had offered to let the Convention have the use of it, and to leave the question of compensation to the next General Assembly, so that the matter would be entirely under the control of the Legislature. He believed that one of the delegates from Posey county had intimated that the Convention might designate their own price, and that they could have the Hall. He thought, however, that the better plan would be to leave it to the officers of State to find a place; and should they fix upon the Masonic Hall the Legislature would have it in their power to decide upon the amount of compensation to be paid for it.

Mr. EDMONSTON said he had an amendment to offer which he thought the gentleman from Jefferson (Mr. Dunn) would perhaps accept. It was "that the said officers be requested to have said room prepared for the use of the Convention by Monday the thirtieth instant.

The amendment was accepted.

Mr. BASCOM moved further to amend by striking out all after the word "resolved," and inserting "that the select committee appointed to procure a room for the sittings of the Convention be authorized to contract with William

Sheets for the Masonic Hall, at the rate of one hundred dollars per month, and that they be requested to prepare the same for the use of this body."

The question being taken on the amendment of Mr. BASCOM, it was rejected.

The question was then taken on the resolution as amended by Mr. DUNN, and it was adopted.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day, the question being on the final passage of sections ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, of report number 12, being a report from the committee on the legislative department. Sections from ten to fourteen were read, when,

Mr. MILROY moved to re-commit section fourteen to the committee on the legislative department, with instructions to report the following:

"When the office of any person elected to either branch of the General Assembly is vacated by death or otherwise, or when any board of canvassers at its meeting after an election for one or more members of the General Assembly, that may be elected in any one county, shall certify that there is no election for any one or more of such offices, by reason of a tie, or for any other cause, the Governor shall issue writs of election to fill such vacancies. And the General Assembly shall provide by law for empowering boards of canvassers to hear and determine all contested elections for the General Assembly, and for all county offices; and shall also provide a mode by which persons feeling themselves aggrieved by the decisions of any such board, may appeal to the circuit court, and for empowering such court or any such board, when justice cannot otherwise be done, to refer such elections back to the people."

Mr. MILROY said:

Mr. PRESIDENT—It will be perceived that this instruction is in substance the same as that of an amendment that I offered on yesterday, as a substitute for the original section while on its second reading; and I must believe, sir, that had that amendment been properly examined and understood by the Convention, it would not have been laid on the table. Now, sir, I am not in the habit of troubling the Convention in the way of speeches, but I think I have observed a disposition here to vote down or lay on the table without examination, all motions or amendments that are not seconded or enforced by long speeches. I am not a practiced speaker, and would at all times much rather listen to others than to speak myself; and as we have many practiced speakers here who are always ready, anxious, and able to discuss and

elucidate all questions that arise among us, I had determined to be a silent listener to all the discussions in this body, and a silent voter upon all the subjects submitted for its decision; but as this is an amendment which I deem of much importance, and one too which if adopted would not only greatly promote wholesome legislation by often keeping party spirit out of our legislative halls, but one which would save the State thousands of dollars, that will otherwise be spent by the Legislature in settling contested elections, I believe it to be my duty to endeavor to present a few considerations in favor of its adoption.

In the first place, sir, I think the original section is defective from its providing that the Governor shall only issue writs to fill vacancies in the *General Assembly*. It reads as follows:

"When vacancies happen in either branch of the General Assembly, the Governor shall issue writs to fill such vacancies."

Now, sir, I am of the opinion that if this section is strictly construed, as all Constitutional law should be, it will preclude the Governor in every case, from issuing writs of election prior to the meeting of the General Assembly; for I conceive that there cannot properly be a *General Assembly* until the members elected to seats in that body, *assemble together* at the place designated, and are found to possess the proper constitutional qualifications, and are sworn into office; then, if this be the case, it makes no difference how many vacancies occur in the offices of members elected to the General Assembly, between the time of their election and the meeting of that body; the Governor would have no power to issue writs of election to fill these vacancies until after its meeting, and thus counties would be disfranchised and deprived of representation for perhaps the greater part of a session. I think the section should also provide specifically for cases where there may be no election, by reason of a tie, or from any other cause. But, sir, the reason why I consider the original section most defective is, that it does not provide any mode for settling *contested elections*, prior to the meeting of the General Assembly; but permits all such contests to be delayed until after the meeting of that body, and then to be settled by it at an immense cost to the State; when all such contests could be much better and much more speedily settled, in the counties where they originate, by the boards of canvassers, at little or no cost. And, sir, there could not be selected more proper, just, and competent tribunals to settle contested elections, than the boards of canvassers in the respective counties, where such contests originate; for the reason that these boards are always composed of steady, honest, intelligent men, from every part of the county, who are selected by the people in their respective townships or election precincts, with reference to their honesty and integrity, irrespective of their party doctrines; and

men, too, in whom the people have entire confidence, which is manifested by them, placing in their hands the sacred trust of the ballot box.

Among some of the disadvantages, or rather evils that flow from the General Assembly settling contested elections for seats in its own body, may be enumerated, 1st. They always engender a bitter partizan feeling in the Legislature, very injurious to the enactment of good laws, for, in ninety-nine cases out of a hundred, these contests are between individuals of the two great opposite parties of our country; and the members of the General Assembly, knowing nothing of the real merits of the contest where it originated, will take sides with one or the other of the contestants, according to the party to which they belong; thus the two parties square off against each other, and become excited, and will stop at no means, fair or fowl, to carry their point; and the examination into the respective claims of the two disputants, which should be conducted with coolness and impartiality, results in a death struggle between the two parties, in which the real merits are entirely lost sight of; the parties become embittered against each other, and the breach between them widened, and members become so blinded that every subsequent measure or proposition that may come before the Legislature, will take a party cast, and they will vote for or against it, according to the politics of the person who may have introduced it, regardless of its merits, and thus wholesome legislation is sacrificed upon the altar of partyism. For the proof of this, I need only refer to the history of such contests, both in our National and State Legislatures. 2d. The county or counties in which such a contest may originate, are disfranchised and deprived of representation until the contest is settled, which may not be till a large portion of the session has passed. We had an example of this in the contest that came up here from Union county, for a seat in this body, at the commencement of this Convention, which was, after some time, referred back to the people of that county for settlement, and it was thus deprived, for several weeks, of a delegate upon this floor. 3d. The settlement of such contests by the General Assembly, always costs the State a large amount of money, not only in the pay of members, clerks, door-keepers, and all other expenses incidental to a session of the General Assembly; but in sending for witnesses and procuring testimony perhaps from a distant part of the State, and the people of every county in the State are taxed to raise this money which is squandered in settling contests, each one of which only interests the people of the county where it originates, and could be settled by the board of canvassers, or the people of that county in one-tenth part of the time, and at a hundredth part of the cost. It does seem to me that the retention of such a system of settling such contests,

is not only impolitic, but unjust and absurd. 4th. The settlement of such contests by the General Assembly, takes up the time of that body from its proper legitimate business, in deciding matters purely local. It is the general determination here, that the new Constitution shall prohibit local legislation, and yet gentlemen seem disposed to leave with the Legislature the determination of all contested elections for seats in its own body, which contests are necessarily local questions, and questions, too, which must always distract, and have a most baneful influence upon wholesome legislation. Why it is that such a system, so pernicious to pure legislation, so costly in its operation, and so inadequate to do justice, is sought to be retained, to me is incomprehensible.

Among some of the advantages and benefits that would result from having contested elections settled by boards of canvassers, may be enumerated—1st. All such contests would be settled prior to the meeting of the General Assembly, and every member would come up here with a clear and an undisputed right to his seat; and no county would be without its due representation, save by resignation or the dispensation of Providence. 2d. If the settlement of contested elections was given to boards of canvassers, such contests would be heard and determined by much smaller juries, or bodies of men, than if left to the Senate, to consist of fifty men, or the House of Representatives, to consist of one hundred men. Such boards seldom exceed fifteen men, and could, therefore, act with greater promptness and dispatch; for it is an old and a true saying, which we see clearly demonstrated by our snail-like progress in business, that "large bodies move slow." 3d. Every such contest would be settled in the county where it originated, and where the witnesses reside, and the cost would therefore be comparatively but trifling, and would be a tax only upon the people interested in the settlement of such contest. I might mention many other advantages that would result from settling contested elections by the board of canvassers; leaving the disputants the right of appeal to the circuit court; but, sir, I think it will be apparent to every person, upon reflection, that this is the most reasonable, practicable, and just method of settling such controversies. And, sir, this method could be extended to the settling of contested elections for the offices of Representatives or Senators, from districts composed of two or more counties; and, indeed, sir, I see no reason why it may not be extended, with equal facility, to the settlement of all contested elections, both for district and State offices, as well as to those of a single county. For it very seldom happens that the cause or causes for contesting an election for any State office, originates in more than one county of such district, or the State; and if the board of canvassers in that county were authorized to re-assemble, and determine the

exact number of votes that each of the contesting parties was entitled to in such county, it would end the contest. And if the causes for contesting any such election should originate in two or more counties, the boards of canvassers in each of such counties could be re-assembled in the same way, and each determine the vote of their respective counties, and thus settle the contest.

This section which I propose, also requires the Legislature to provide a mode by which any person, feeling himself aggrieved by the decision of any such boards, may take an appeal from such decision to the circuit court. And to provide methods by which such courts and boards of canvassers may, where justice cannot otherwise be done, refer contested elections back to the people; from whose decision, when clearly expressed, there is no appeal, and to which every aspirant must bow with submission.

I look upon this plan for deciding contested elections, Mr. President, as a very important reform, and I do hope that the Convention will not pass it by without giving it that consideration that it deserves.

The question was then taken on the motion to re-commit the fourteenth section, with instructions, and it was decided in the negative.

Sections fifteen, sixteen, seventeen, and eighteen, were then read a third time, when

Mr. BRIGHT moved to re-commit section 17, with instructions to strike out the additions which had been made to the section by the Convention, and to report it back as it was originally reported. He said he had strong objections to the proviso which had been added to the section—that so much of any law which was not expressed in the title, should be void. Here it was provided that the title of an act should express all that was contained in it. If gentlemen would reflect for a moment, they would perceive that it was scarcely possible that any general law could be passed, which would not be made void, for the reason that the title could seldom comprise all that was contained in the act. Gentlemen could not find a single law on the statute book that would not be rendered void by such a Constitutional provision. He could see no good that would grow out of such a measure, while he believed, on the other hand, that it was fraught with much mischief. When the Convention had provided that a bill should be read on three different days, by sections, and that on its final passage the yeas and nays should be required, he thought they had thrown around it sufficient safe-guards to protect the people from fraudulent legislation. He hoped therefore, that the Convention would not finally pass the section as it had been amended, but that they would consent to its re-committal with instructions to report it back to the Convention as originally reported.

Mr. STEVENSON said, he thought the fears expressed by the gentleman from Jefferson, (Mr.

Bright,) were not well founded. He could see no difficulty at all which was likely to arise from this provision. It merely provided that each law should embrace but one subject, which should be expressed in the title. There could be no difficulty about this. If it was necessary for the Legislature to pass laws relating to a variety of subjects, they could all be provided for in separate bills; and one great advantage resulting from this practice, would be to enable the ordinary reader to understand the laws which were enacted. Now, as to the next part of the amendment, which provided that every law should embrace but one subject, which subject should be expressed in the title, he could see no difficulty in it. All that was necessary, was to put a clear expression in the title, of what the object of the bill was. He thought that gentlemen were alarmed unnecessarily. This provision had been adopted in other States, and for aught he had heard to the contrary, had worked well.

Mr. CLARK of Tippecanoe. I would ask the gentleman from Putnam, in what other States this provision has been adopted?

Mr. STEVENSON. In the State of Wisconsin, and I believe, also, in the State of New York.

Mr. CLARK. Like the gentleman from Jefferson, (Mr. Bright,) I have many and great objections to this clause. The gentleman from Putnam thinks that no difficulty can arise under it; but it does not so appear to me. I understood him to say it has been adopted in the Constitutions of some other States, but I believe it has not been adopted in any but the Constitutions of Michigan and California. Our courts have not been called upon to decide upon questions arising under a clause of this kind, and therefore we cannot be said to have any experience upon the subject at all. Now, I think I can show the gentleman from Putnam that this provision means something more than he supposes. It is:—

“Provided, that if any subject should be embraced in any law which is not expressed in the title, such law shall only be void in so far as regards that portion of it which is not expressed in the title.”

These may not, perhaps, be the exact words, but at any rate that is the substance. Now this is an imperative provision; and it just amounts to this—that if all that is in a bill is to be expressed in its title, then the title must be as specific as the bill itself. That is my opinion of it. Courts will be called upon to decide in innumerable instances as to the conformity or the provisions of a bill with its title, which in itself, is a very unimportant matter, but which, when regarded in connection with a Constitutional provision of this kind, becomes all-important, for in nine cases of ten, it will have the effect of making a bill void in all its main provisions. It seems to me that no good can

accrue to the people from such a provision and that many salutary provisions of law, if this provision is retained in the Constitution, will be rendered entirely nugatory.

Now, although we should find a provision of this kind in the Constitution of California, or in that of any other State, it does not follow that it is therefore right, or that it would be suitable to our situation, and proper for us to adopt it. I take it, that as intelligent men—as those who are framing the basis on which future legislation is to be built—we ought to have a reason furnished to us why we should adopt any particular measure, and adopt it, merely because somebody else, whose situation may be entirely different from ours, has said it was right. Men must exercise their reason, and judgment, and prudence in matters of government. No man ought to perform any act without being able to give a good reason for it, much less any act of government which is to affect all the people of a State. Sir, I should be ashamed of my State if we, in matters of this high importance, are not to exercise our reason, but are blindly to take up with every proposition which has been adopted in the Constitutions of other States. I think that on a question of this kind we may trust as safely to the intelligence of future legislatures, as we may to our own. We must trust a great deal to their prudence and discretion. We trust them to decide upon grave principles of legislation, and yet we are afraid to trust them as to the details of a bill. We are so minute and specific as to compel the Legislature to describe in the title of a bill, everything which it contains on pain of its being rendered of none effect. Sir, this would be a very convenient mode of procedure, if men could read books by their titles; but we know that a man will never gain much knowledge by merely reading the title of a book, neither is it to be expected that we should be able to tell what is in a law by merely reading its title, unless the title is a transcript of the law itself. I hope, therefore, that this section of the article will be referred back to the committee, and that the original section as reported will be left untrammelled by this very doubtful amendment.

Mr. STEVENSON said, from the remarks made by the gentleman from Tippecanoe, he felt himself placed in such a position as to render it necessary that he should, in part, repeat what he had said on a former occasion upon this subject. That gentleman had intimated, in pretty broad terms, that the only reason which had been urged in favor of the passage of this amendment was, that a similar principle had been embodied in the Constitutions of other States. This was far from being the case; and he thought he had urged reasons of a most substantial character, why such amendment should be ingrafted in the Constitution. Take the case of revenue bills. It was usually the case that a majority in both Houses could be found

to pass such bills, but if a majority of one House desired to pass a bill which was obnoxious to the other, then it was generally tacked on to a revenue bill and passed in that way. Now, he would ask the gentleman from Tippecanoe (Mr. Clark) how he would remedy evils of this kind? They were evils, it was admitted on all hands, and such as should be remedied. Bills of this kind should not be forced upon the country against the will of the majority, and the Convention ought to provide some means by which a stop could be put to the practice. There was another thing which gentlemen had, doubtless, frequently seen in legislative bodies. A certain set of gentlemen might have a bill which they wished to have passed, but that could not pass upon its own merits. There might, at the same time, be another bill pending, which had merits, but which was yet weak, and the friends of the two measures would join together and pass two measures conjointly, neither of which had merit sufficient to sustain themselves separately. These were some of the reasons why he was in favor of this amendment, which had been added to the section, and he thought they were sufficient to induce the Convention to carry the measure. He did not approve of the proviso which was attached to the section by the gentleman from Jefferson, (Mr. Dunn,) but he thought it could do no harm. Perhaps it might be well to re-commit the section and strike off the proviso, but he still contended that the provision that each bill should contain but one subject which was to be expressed in the title, was a good one, and would result beneficially in legislation. There was no need whatever, to entertain the fears which some gentlemen entertained. He thought that all the difficulties that were likely to arise from such a provision would be found to exist only the imaginations of gentlemen.

Mr. GIBSON. The section under consideration is, in my opinion, certain to do mischief, and equally certain not to do good: nor does the amendment of the gentleman from Jefferson (Mr. Dunn) in the slightest degree guard against the evils necessarily and certainly resulting from its incorporation in the organic law of the State. That amendment cannot by any possibility ever prevent any law from being declared unconstitutional, which is in contravention of this section; for the simple reason that if a law would be unconstitutional, because all the subjects in it were not embraced in the title, it would also be void for another reason, that the body of the law embraced more than one subject, and this the amendment does not reach.

The first time my attention was attracted to this subject was during the debates in the United States Senate on the omnibus bill. Some of the opponents of that measure, in arguing against it the objection of multifariousness, had adverted to the fact that a provision similar to the one now under consideration had been

adopted as a Constitutional provision in many of the States. To this, it was replied, I think by Mr. Downs of Louisiana, that unmixed mischief had resulted from its adoption; and that a large number of most important laws of Louisiana had been or would be declared void by the courts as embracing more than one object in their provisions.

Instead of being a means of the prevention of legislative fraud, it would, in the hands of a dishonest legislator, be one of the most convenient instruments for its perpetration. Nothing could be easier than in the haste of legislation, and at the close of a session, to smuggle some trifling section into the most necessary and, perhaps, important law of the session, and thus defeat the action of the Legislature and perhaps the will of the people.

Under the stringent restrictions which will be imposed on legislation in the New Constitution there is not the slightest necessity for the section. It is powerless for good and mighty for evil—I am opposed to it in all shapes it may assume.

Mr. NEWMAN. Mr. President, I desire to say a few words in regard to the provision under consideration. It provides that no law shall embrace more than one subject, and that subject shall be referred to in the title.

Now take the provisions of a law similar to one we now have, which shall provide that when, hereafter, any person shall agree, in the body of a promissory note or bill of exchange that he will pay the same without any relief from valuation or appraisal laws, and that upon judgment being rendered on such note or bill, the court shall award execution to be levied with such relief, and that upon execution issued on such judgment, the sheriff or other officer shall make sale of property, without any valuation or appraisal.

Now, there are three distinct subjects which may be all embraced in one section—first in relation to the execution of the contract, secondly, in relation to the judgment of the court upon that contract, and thirdly, with regard to the duty of the officer in executing the judgment of the court. Thus there are three distinct provisions that may be contained in a single section. Now, if you take your statute book and read over a few pages, you will find innumerable instances of just the same character. It does seem to me, Mr. President, that the adoption of this provision will work incalculable mischief, that the bar, with all its discrimination would be unable to frame a simple statute of a few sections without almost unavoidably including more than one subject within the provisions.

Why, sir, if you want a bill upon any single subject, you must either have it all in one section, or, if it has a number of separate provisions then you must have a number of small bills, because you can scarcely make more than one

section without referring to some other subject that ought to be embraced under some other head. I think those who have made this provision with a general regard to the public good are mistaken in the amount of the good they would accomplish. And, I verily believe, if they succeed in adopting this provision they will inflict an injury upon this country they little wot of at this time.

Mr. NILES. I desire to submit an amendment to the instructions. I will confess that when this matter was first broached yesterday, I was inclined to favor the amendment proposed by the gentleman from Putnam (Mr. Stevenson) in its full length and breadth; but I have since become satisfied in my own mind that it may lead to difficulty and danger. It is highly desirable that litigation should be avoided, and that laws, when passed, should be operative and without mistake. I propose then to amend the instructions by adding the following:

“Every law shall embrace but one subject, and matters reasonably connected therewith, which shall be expressed in the title; but no act shall be rendered void by reason of any defect in the title.”

I do conceive, Mr. President, that no essential difficulty need result from confining a bill to one single subject and matters reasonably connected therewith. That would include all such matters as those referred to by the gentleman from Wayne, while at the same time it would exclude all matters which might be entirely foreign or irrelevant to the main subject of the bill. For example it would preclude the possibility of a bill of divorce being attached to a bill providing for the appropriation of money, or for any other specific or private purpose. Then I apprehend that it would not be either necessary or prudent to require that a perfect epitome of a bill should be included in the title. With such a provision as that proposed by the gentleman from Putnam, it would certainly require the careful examination of a good lawyer in nine cases out of ten, to say what law is constitutional and what is not constitutional. It is true that under the provision I have suggested it would be obligatory on the consciences of the Legislature to specify as carefully as they could the subject of every bill in its title; but with the provision of the gentleman from Putnam, I ask whether, if the Legislature should err in judgment in this matter, such error would not open the door to endless litigation! It is certainly desirable that this should be avoided; and the amendment which I have proposed will, I think, answer that purpose.

Mr. KELSO. On yesterday we debated this question from morning till night, when it was got into such a shape as many gentlemen on this floor supposed was just the very shape it ought to wear. And now the very men who introduced it and contended for its passage, are anxious to get behind their own work, and send the

section back to the committee, in order that that work may be either improved or annihilated. Now this is just of a piece with all that we have done; and I hope that as we have decided upon this question by vote after vote, and have said that the provision is right, we will let it pass and let the people take it as it is.

The question was then taken on the amendment offered by Mr. Niles, and it was adopted.

The PRESIDENT. The question is now on re-committing the section with the proposed instructions.

Mr. KELSO contended that the instructions, if carried into effect, would result in the Convention reporting a section exactly like one in the old Constitution. Now he was of opinion that if any amendment was necessary at all, that which had been introduced by the gentleman from Putnam (Mr. Stevenson) was the right kind of amendment, and all that had been added by way of proviso was useless and could not do either good or harm. He thought that the proviso had better be taken away entirely.

Mr. BRACKEN moved the previous question, which was not sustained.

Mr. DOBSON said, that if the amendment of the gentleman from Laporte (Mr. Niles) were adopted, it would be saying emphatically to the Legislature, "You shall not at any time put more than one subject in a law; yet if you should happen to do so it makes no earthly difference." The latter part of the amendment destroyed the first. It was no kind of use, and he hoped the Convention would not agree to refer the section with the amended instructions.

Mr. OWEN. Notwithstanding the criticism of the gentleman behind me (Mr. Dobson) and the remarks of the gentleman from Switzerland, I must assert that the amendment proposed by the gentleman from Laporte has an essential meaning, and that it is a useful and important amendment. Now I have heard no reply made to the argument of the gentleman on my right (Mr. Stevenson), that it is a thing in itself injurious that two or more subjects having no connection with each other, should be embraced in the same bill, or that one bill having merit should be made to carry another one on its back having no merit. I admit, that to the section as it originally stood, there were some objections; but because it was passed in a form which was too stringent, and to which there were objections, that is no reason why we should not now pass it in a modified form. Now the proposition is that every bill shall embrace but one subject, and matters reasonably connected therewith; and that the mere circumstance of a defect in the title shall not invalidate the law. I regard this as one of the most important reforms which the Convention can establish, and with the amendment of the gentleman from Laporte, (Mr. Niles,) I cannot conceive that there can be any danger of well digested laws

being pronounced unconstitutional, or that two, three, four, or five, incongruous subjects will ever be embraced in one bill. This is certainly an important question, for nothing can be more necessary than that we should take every proper step to prevent fraudulent or ill-digested legislation. I hope the motion to refer with the amended instructions will prevail.

Mr. SMITH of Ripley. I do not know how our courts would construe the words "reasonably connected therewith," but I presume that they would, in most instances, decide that whatever the Legislature had done, was "reasonable."

In regard to the remarks made by the gentleman who was last up, (Mr. Owen,) he observed that it was improper to make a bill having merit carry another one on its back which had no merit. Why, sir, I contend that if there is anything wrong in the world it is that a meritorious bill should be made the hack-horse or vehicle to carry an injurious measure along with it. I should most certainly wish to see all bills embrace but one subject which should be expressed in the title. We have adopted a provision in the Constitution, or if we have not yet adopted it there, there is every probability that we will do so, that all laws shall be general; and is there any great impropriety, or will there be any great inconvenience in expressing in its title the provisions of a general law? You cannot ingraft upon a general law any private matter under such a provision; and I do think that the idea, as it has been suggested here, that our courts will determine our laws to be unconstitutional in consequence of the title being defective, and not clearly pointing out the body of the bill, is all "gammon," and I am in favor of retaining the original section.

Mr. KELSO. When this proposition was under consideration yesterday, I took no part in the debate, but contented myself with voting against it at the time. Now what is the evil which is sought to be remedied by this proposition? It is that when a bill is introduced, and the title expresses the character of the bill, it should not, by way of amendment, be loaded with other subject matter differing from that originally introduced, and made part and parcel of it, or that the merits of one bill should not be made to carry the demerits of another.

Now the gentleman from Posey (Mr. Owen) gets up, and with much assurance—I mean nothing offensive to that gentleman—gives us his views in regard to the matter, and says, in effect if not in words, "You have adopted a correct idea, and if you don't follow it out it is no fault of mine." And he further expresses his surprise at the remarks made by myself and the "witticism" of the gentleman from Owen (Mr. Dobson). Now neither of us said much, but I feel quite satisfied that what we did say was as much to the point as the remarks that fell from the gentleman from Posey. Now the

object of this provision is to prevent the covering up, by a title, in one law, matters which do not appertain to its true character, and are not legitimately part and parcel of it; and the gentleman from Posey says that no difficulty can arise if you provide that a law shall embrace but one subject, and matters reasonably connected therewith. Now we all know that under the old Constitution laws were sometimes passed of an incongruous character, the incongruity being covered up sometimes by the words "and for other purposes," these words being part of the title. But, sir, let me ask, how was this done? I undertake to say that no man who ever came to this Hall with a desire to legislate honestly, and for the good of the people, ever attempted to palm a provision upon the Legislature in this sly and insidious manner. No honest man would do it. No man would do it who was willing to stand up before the Legislature with a fair, honest proposition. It is only dishonest men that make such attempts, and to be always expressing fears that this will be done, is saying but very little for the judgment of the people in choosing their representatives. I maintain that there is but one good reason why the amendment of the gentleman from Laporte (Mr. Niles) should be adopted: and that is, that the Legislature may put into any bill "one subject;" and having done that, that they may then put into it as may more as they please. [Laughter.] The gentleman from Posey is mistaken if he supposes this amendment would effect his object. What would be the result of it? We have corporations out of number already in existence, and we cannot destroy them. They have vested rights, and neither this Convention nor any other body, can disturb those vested rights. And these men would eternally be seeking opportunities of slipping in little matters to subserve their interests, now that we have forbidden special legislation, the very thing which almost to a man we have come here to prevent. Yes, sir, under this provision they will always be slipping in amendment after amendment, and having them carried through on the credit of the title. They will effect in that way, the very things which the Legislature would not touch if proposed to them in their true character. That, sir, is doubtless the reason why the section was introduced.

Mr. NAVE said he regretted very much to see the excitement which appeared to pervade the Convention, on a question of so much importance. Gentlemen had spoken of impositions that had been practiced upon the people heretofore, by introducing matters into bills which were irrelevant, and had instanced two or three cases of the kind to show that the section as amended on yesterday ought to be adopted. Now admitting that all the cases referred to had occurred, would all of them put together amount to as great an injury to the

country as to have one general law declared to be unconstitutional? It seemed to him that they would not, for in their whole operation they could only affect a few individuals at most. The arguments adduced to the Convention, therefore, in support of the provision which had been contended for, seemed to him to fall far short of being sufficient to sustain it. He believed that the amendment offered by the gentleman from Laporte, if carried out, would do away with all the objections which had been urged against the proposition of the gentleman from Putnam. Why then not compromise the question, and let it be incorporated in the Constitution? Why not re-commit the section, with the proposed instructions? He would call upon gentlemen to reflect for a moment upon the consequences which would result from general laws being declared unconstitutional in consequence of a mere defect in their title. It would affect every portion of the State, and in many instances would impose the additional duty upon the Executive of calling an extra session of the Legislature for the purpose of amending the law, so as to have it enforced upon the people.

Mr. MORRISON of Marion. I move to amend the instructions, by adding the following:

"Every law and joint resolution shall be plainly worded, in the English language, and shall not refer to any other law or joint resolution in explanation or extension of its provisions."

Mr. CLARK of Tippecanoe. There is a section already reported by the committee, which I think obviates the necessity of the amendment suggested by the gentleman from Marion. I will read it, for his information.

"No act of the General Assembly shall ever be revised or amended by a reference to its title, but in such case the act revised or section amended shall be re-enacted, and published at full length."

I think that will remedy the evil sought to be removed by the gentleman from Marion.

Mr. MORRISON. That section does not cover the ground I take at all. It says nothing whatever about the mode in which laws shall be worded.

Mr. CLARK. I do not anticipate that we shall be entirely overrun by the Dutch, and why should we enact laws in any other language than the English? I think such a provision would be a reproach, both to all future Legislatures and to our posterity. Surely we do not contemplate that the English is to be superseded by any other in this country? But if such a misfortune should happen, if the State of Indiana should become entirely French or Dutch, why then I suppose their legislators would be of the same nations, and doubtless they would provide for the wording of the laws

in that language which they were best able to understand.

Mr. MORRISON. The gentleman from Tippecanoe misapprehends my meaning. I would ask him whether "ne exeat," or "ex post facto," or "capias ad respondendum," or "capias ad satisfaciendum," with a variety of other law phrases, are plain English, and whether words could not be found which would equally express their meaning to the ordinary understanding?

Mr. CLARK. I will answer —

The PRESIDENT. The gentleman from Vanderburgh (Mr. Lockhart) has the floor.

Mr. LOCKHART. I have thus far been a listener to the debates upon this question, and would not at this time presume to trespass upon the patience of the Convention a single moment, were it not that honorable members in different parts of the Hall have pronounced the introduction of the section under consideration, an innovation—something new. It may be new, sir, to those who are not familiar with the proceedings of many of the Constitutional Conventions held in sister States; but to the anxious inquirer who seeks information wherever he can find it, this proposition is not new. The gentleman from Allen (Mr. Borden) read to the Convention, a section from the Constitution of California, substantially the same as the one now under consideration. From an examination it will be found that the new Constitution of Kentucky has the same provision in it. [Several voices—"yes, and a half dozen other States."] Several gentlemen say half a dozen other States have adopted the same provision in their Constitution; this then, sir, is not as new a proposition as gentlemen who oppose it seem to imagine. But whether it be old or new, is not the question. Our inquiry ought to be, is it proper to ingraft the provisions of this section in our organic law? That some such provisions ought to form a part of the Constitutional law of the State I have no doubt. Whether this section is the best that we could adopt, I am not prepared to say; I am however willing to vote for it. It will do much to produce uniformity in our laws, and in many instances prevent ruinous litigation. There are numerous instances where laws have been stealthily repealed, or stealthily enacted, that could never have received the sanction of the Legislature, had this section been in the Constitution. The gentleman from Posey (Mr. Owen) referred to a case, where this species of legislation was prevented. The gentleman from Putnam (Mr. Stevenson) referred to another case. It may not, sir, be amiss for me to refer to the scene that was enacted in this Capitol, I believe during the session of 1839—'40. I allude to the difficulty between the two Houses of the General Assembly, in passing the revenue bill. The House of Representatives became satisfied that

there was something wrong in the conduct of one of our fund commissioners, and made every laudable effort to displace that officer. In the Senate equally strong efforts were made to retain Milton Stapp in office. Between the friends of Stapp in the Senate, and the friends of the State in the House of Representatives, the revenue bill was defeated. So great was the excitement, sir, in the Halls of legislation at the period to which I refer, that it became necessary in order to raise any revenue, that the law of the preceding year should be continued in force by a joint resolution. Had this section been in our present Constitution, none of these difficulties would have occurred. But sir, it is said that the practical effect of this section will be to render legislation uncertain, and that it will be productive of endless litigation. I cannot believe, sir, that the fears entertained by gentlemen who oppose this section, on this ground, will be realized. I feel confident, sir, that there can be no difficulty in framing laws under this section. The section provides that

"No law shall relate to more than one subject, and that shall be expressed in the title."

Is there any difficulty in understanding this language. For example, an act is passed relative to the State University; the subject matter is easily understood, and can without difficulty be expressed in the title. If the title of the act should be "*an act relating to the State University*," would any one pretend that all necessary provisions relating to the State University could not be embraced under this comprehensive title? So, sir, with every other "*subject*." I believe, sir, that this section can do no harm, but that it will be productive of much good. I repeat, sir, that I have no doubt, but that this section will prove a valuable check upon improvident legislation. I therefore yield it a hearty support.

The question being taken on the amendment offered by Mr. Morrison, it was adopted.

The PRESIDENT. The question is now on re-committing the section, with instructions as amended.

Mr. KILGORE. So far as regards a portion of these instructions I cannot but think that they are right; and I am far from supposing that difficulties will occur which many gentlemen seem to suppose will result from their adoption. The Legislature will unquestionably be governed by the provisions of the Constitution, which may be adopted; and if we adopt the principle that no law shall contain more than one subject, each member, having been sworn to support the Constitution, will support that as well as its other provisions. Every gentleman, therefore, who might be sent to the Legislature, would feel bound to see that there was but one subject embraced in any act. Not only so, but if a law was passed embrac-

ing more than one subject, it would be in violation of the provisions embraced in the first part of the instructions, and would be declared unconstitutional by the Supreme Court. It is perfectly immaterial what gentlemen may say in regard to the title, I think the provision unnecessary. If the provision of the gentlemen from Laporte is adopted, I think it might do good, because it would not operate so as to make a law unconstitutional, as in the instance cited by the gentleman from Wayne (Mr. Newman). I do not think that part of the instructions which relates to the title, would make the matter any worse, but I look upon it as being wholly useless.

The question was then taken on the motion to re-commit the section, with the instructions as amended, and the yeas and nays being demanded and ordered, were taken, with the following result—yeas 57, nays 66:

YEAS.—Messrs. Anthony, Balingall, Beard, Biddle, Blythe, Bourne, Bright, Bryant, Butler, Carr, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Cookerly, Davis of Madison, Davis of Parke, Dunn of Jefferson, Foster, Gibson, Gordon, Gregg, Hall, Hitt, Holman, Howe, Huff, Johnson, Jones, Kendall of White, Kilgore, Maguire, Mather, May, Miller of Fulton, Miller of Gibson, Mooney, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Clark, Ristine, Robinson, Shannon, Sherrod, Sims, Snook, Spann, Tannehill, Taylor, Walpole, Watts, and Zeno—57.

NAYS.—Messrs. Alexander, Allen, Badger, Bascom, Beeson, Berry, Borden, Bowers, Bracken, Carter, Chandler, Chapman, Chenoweth, Coats, Crawford, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Frisbie, Garvin, Gootee, Graham of Warrick, Haddon, Hamilton, Hardin, Helm, Helmer, Hendricks, Hogin, Kelso, Kendall of Wabash, Kinley, Lockhart, Logan, March, McClelland, McLean, Milroy, Moore, Morgan, Morrison of Marion, Mower, Pettit, Read of Monroe, Ritchey, Schoonover, Smiley, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Thornton, Trimble, Elliott, Wallace, Wiley, Wolfe, Work, Wundelich, and Yocum—66.

So the motion to re-commit the section with instructions did not prevail.

Mr. DOBSON moved to re-commit the section, with instructions to strike out the proviso. The proviso was, that if any subject was embraced in a law which was not expressed in the title, the law should only be void in regard to so much of it as was not so expressed. Now there seemed to be a difficulty about this matter, and men's minds did not appear to come to a satisfactory conclusion concerning it. He believed that the section was right previous to the adoption of that proviso, although he had no doubt that it was introduced by the gentleman from Jefferson (Mr. Dunn) with the best inten-

tion. The object of the proviso was undoubtedly to avoid difficulties in carrying out the law, but it appeared to him that it would have a directly contrary effect, and would create difficulties rather than obviate them; for this reason he moved to recommit the section, with the view of getting rid of this proviso. The balance of the section, he thought, was all right.

Mr. DUNN of Jefferson said, that he had moved to insert that proviso in order that the other portion of the section might be made as harmless as possible. He considered the whole of the addition to the section as being full of evil, and had voted for its recommitment, with the instructions offered by the gentleman from Laporte (Mr. Niles). He was sorry that that motion did not prevail; and if he was right in his view of the matter, he could not but believe that when gentlemen had had a few years experience of the workings of the provision introduced by the gentleman from Putnam, (Mr. Stevenson,) they would regret that they had not voted with the minority on this question. The object of the proviso was to save the general features of an act; and that the only part of an act that should be deemed unconstitutional, should be that which was not expressed in the title, so that frauds might not be committed.

Mr. PETTIT. I listened all day yesterday, and I have listened all this afternoon, to the discussion which has been held on this subject. I have said nothing myself, nor is it my intention to say a great deal now. I want this question of legislation to be fixed up precisely to suit those who are in the habit of finding fault with lawyers. However, I have no doubt that many of us might obtain certificates from our judges, (myself included,) that we are no lawyers at all. ["Consent! Consent!" and laughter]. I say that I am not disposed to quarrel with the section as it now stands. I hope it may be allowed to be passed as it is. The Convention have evidently determined to pass it as it is, as well as the following one, which I think is still more objectionable. Sir, I have no hesitation in saying that if we pass this section as it now stands, requiring that but one subject shall be embraced in an act and that that subject shall be designated in the title, it will cause more litigation than all the other provisions of the Constitution put together. Now I say this deliberately, and upon reflection. I, however, understand gentlemen to say that they want it so any how; and if they want it so, why so let it be; I am willing that they should have it. I am not disposed to offer any resistance to it, for I clearly perceive that it would be useless; but I tell gentlemen that if we live to see this Constitution in operation for five years, we will see the Supreme Court crowded with cases, to determine whether one or two or more subjects are embraced in a bill. That is precisely what we will see. Now I go further, and say that there is no necessity for

this provision at all. If we were going to continue to legislate under the old Constitution, then this provision might perhaps have been necessary. But what is the necessity for it now? What *can* be the necessity for it? You have determined, and already declared, that each bill shall be read three times by sections, and that three several votes shall be taken upon it by yeas and nays, unless a majority of two-thirds of either House in which it may happen to be, shall decide to dispense with the yeas and nays upon two of the readings, but that no power on earth shall suspend the law requiring the yeas and nays on its third reading. Now in addition to this, you must have sixty-seven men in the House of Representatives and thirty-four in the Senate, before you can pass a bill. This is determined by another provision upon which you have agreed; and besides this, you have a further provision that it shall require not only a majority of each body to form a constitutional quorum, but that a majority of all those elected to each House shall be required to pass a bill. Now with all these precautions and restrictions, let me ask whether there is any necessity for saying that bills that are read three different times on three different days, and voted upon each time by yeas and nays, and every man thus made responsible, shall need this provision to embrace in them only one subject to be expressed in the title, in order to guard the interests of the public? Sir, whatever necessity other gentlemen may perceive for such a provision, I must confess that I can see none whatever. Now I say to gentlemen who are in favor of this proposition, that they are only drawing upon themselves a steel trap, into which they will eventually get their feet. I do not know how much credit for integrity and honesty of purpose those gentlemen may be disposed to accord to me, but I tell them in all candor, that they are injuring themselves. The thing is plain to be seen. Suppose that a law is passed securing some right to a man in this or that part of the State; his neighbor violates that right, and is sued for the violation. He replies, "I will contest that matter with you; the law securing what you call your right is no law at all, for it embraces more than one subject, and consequently it fails in its effect." If the provision were to pass at all, the amendment offered by the gentleman from Jefferson would be a good one. But if it should pass as amended, the result would be litigation arising out of almost every act of the General Assembly. The first question would be, are there two subjects embraced in the bill? and a long argument would have to be gone into to decide that matter. That being determined the next question would be—if there were two subjects, which of them was covered by the title of the bill? Thus an everlasting scramble would be going on, involving interminable law suits. There seemed to be a dis-

position on the part of the House yesterday, as well as there has been to-day, to incorporate this provision into the new Constitution. All I have to say is, that if others can live under it I can; but I know very well that those gentlemen who argue so strenuously for it now, will find out its evil effects before they have lived under it many years.

Mr. PEPPER of Crawford. Judging from the vote just taken upon the subject under consideration, we must presume that the *title* of the law is to override and abrogate the *law itself*. Strip the question of the veil of sophistry, which its friends have thrown around it, and it means just *that*, and nothing more nor less.

Sir, what is the language of the proposed section? It is that, "Every law shall embrace but one subject, which shall be expressed in the title."

Now, sir, what does this really mean? Clearly this, that if the *title* of the law, and the *law* itself, cannot both stand together, the title shall prevail over the law, or in other words, that the whole is unconstitutional and void.

Can it, I ask in all soberness, be possible, that in the middle of the nineteenth century, under the meridian splendor of political and literary attainments, in the age of progress and reform, a wise Constitutional Convention will ingraft so silly a section on the organic law?

I hope not. It cannot be seriously intended that if the draftsmen of a law should from any cause, fail to perfect in every particular, the mere *title*, while the *law* may be entirely perfect, and imperiously demanded by the country, shall, owing to the defect of the *title*, which amounts to nothing, be held unconstitutional.

For the purpose then, of testing whether the *title* of the law, or the *law* shall stand, if both cannot harmonize together, I move to recommit the section with the following instructions:

"Provided, however, that if the *title* and law cannot both stand, the title shall not defeat the law."

Mr. BRACKEN. It is very evident that the Convention cannot come to any satisfactory decision upon this question to-night, and I therefore move that the Convention adjourn.

A division on the motion being called for, there were for the motion, ayes 46, against it noes 47.

So the Convention did not adjourn.

Mr. RITCHEY. I am anxious to have a vote taken upon this section; and after the lengthy discussion we have had upon it both yesterday and to-day, and believing that every gentleman has now made up his mind, I will endeavor to put a stop to it, and therefore, with the view of testing the feeling of the Convention, I will move the previous question.

The call for the previous question was not sustained.

Mr. BERRY. As this section appears to be regarded as a very important one, and as gentlemen do not appear to have made up their minds entirely upon it, I think it would be better that the Convention should not act hastily. I will therefore move to re-consider the vote taken on the engrossment of the section.

The motion to re-consider was adopted.

Mr. BERRY. I now move to re-commit the section to the committee on the legislative department.

Mr. READ of Clark, moved to amend the motion by adding the following instructions:

"No private or local bill which may be passed by the Legislature, shall embrace more than one subject, and that that shall be expressed in the title."

Pending the question on the motion of Mr. Read,

The Convention adjourned.

FRIDAY, DEC. 13, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. HULL.

The journal of yesterday was read and approved.

Mr. HALL moved a suspension of the order of business for the purpose of enabling him to offer a resolution to rescind the rule setting apart Saturday for the introduction of resolutions.

The question being put, a division was called for, and by ayes 58, noes 19, the order of business was suspended.

The question being on the adoption of the resolution of the gentleman from Gibson—

Mr. BORDEN said, that it seemed to him that this rule ought not to be rescinded. Saturday was the only day upon which gentlemen could, by resolutions, lay before the Convention the views and wishes of their constituents.

The PRESIDENT. The resolution must necessarily lie over until to-morrow.

The Convention then proceeded to the consideration of the

ORDERS OF THE DAY,

The first thing in order being the motion to re-commit section sixteen of the report of the committee on the legislative department, with instructions to amend so as to provide that every private or local bill shall embrace but one subject, and that to be expressed in the title.

Mr. NILES moved to amend the instructions by directing the committee to insert the same provision which he had submitted yesterday under another aspect of the case, namely: that every law shall embrace but one subject, and the matters reasonably connected therewith, which shall be expressed in the title, but no act

shall be rendered void by reason of any defect in the title.

Mr. PRATHER moved that the instructions be laid on the table.

Mr. NILES requested the gentleman to withdraw his motion for a moment to enable him to make a few remarks.

Mr. PRATHER withdrew the motion.

Mr. NILES. It seems, sir, that there are two parties upon this question, both of whom, it appears to me, are inclined to go to extremes. The one party seems to have a kind of horror of all manner of legislation, and to be desirous to place upon it every check and trammel within their power—even to the extent of making the validity of every act a subject of litigation in the courts. The other party seems to think that our prosperity depends very much upon the abundance of our legislation.

Now, sir, I do not agree with either of these parties, I do hold—the opinion of the gentleman from Tippecanoe (Mr. Pettit) to the contrary notwithstanding—that it is wise and proper to require the votes of a majority of all the members elected to each branch of the General Assembly to pass a bill. I look upon that as a truly conservative measure—a reasonable check upon hasty and indiscriminate action. It is true, sir, that under the operation of such a rule useful legislation may sometimes be postponed. But it is also true that it will tend to prevent the repeal or modification of laws before their usefulness has been tested. The good resulting from the greater permanency which will be given to our legislation will, in my judgment, outweigh any temporary inconvenience which may be anticipated from the stringency of such a rule. Our laws should not change with every change of the moon. I cannot anticipate from it the serious danger which some gentlemen seem to apprehend. A similar rule has prevailed in the State of New York for several years past, and no essential evil seems to have resulted. Indeed, by their former Constitution a majority of two-thirds was required to pass bills of a certain class, and even that did not operate very injuriously.

Then again, in opposition to a large number of the members upon this floor, I hold that it is important to make our legislation direct and simple, and that every law should embrace but one subject, and matters naturally and reasonably connected therewith. The exemption of a certain amount of property from sale is reasonably connected with the subject of executions, and though an act might not be declared void under the original section, for connecting such a matter with a provision subjecting real and personal property to sale on execution, it would seem desirable to avoid all grounds for litigation upon any such points. If it be objected that the word "reasonably" is too indefinite, I answer that it would be obligatory upon the consciences of the Legislature, and that it would

certainly prevent all danger of utterly incongruous matters ever being associated. It would not have permitted a bill settling the boundary of Texas to be connected with one for the admission of California. I think it clear that we should not permit a system of legislation, such as has sometimes, and to some extent prevailed, under which parties in different portions of the State, or different interests, could combine together to carry through two measures, neither of which could succeed upon its own merits. Neither should we permit an important and useful measure to carry through an obnoxious one. Indeed, sir—to use a term which has recently come into vogue—I am opposed to all omnibuses in legislation.

While I believe all this, I do not believe that it is consistent with the interests of the people that the validity of a bill should be made, as under the original section, to depend upon its title. Such a rule would flood the country with litigation, and benefit only lawyers. It would, as was well said by the gentleman from Crawford, (Mr. Pepper,) make the title overrule the bill. It is, doubtless, wise to require of the Legislature, in good faith, to express the subject of a law in its title, but I would not adopt a rule which would oblige them to call in the best lawyers in the State to determine what title would be sufficient, or which would render the judgment of the most discriminating lawyer in the world uncertain. By adopting the proviso which I have suggested we avoid all incidental evils of this kind, and may safely presume that the Legislature will carry out the spirit of the section in good faith.

Mr. RITCHEY. I have some doubts as to the propriety of adopting the amendment of the gentleman from Laporte. If I recollect the language of the instructions moved by him it is that the bill itself shall not be vitiated by a defect in the title. Now I presume that it is within the recollection of almost every member of the Convention that a few years since a certain bill was passed relating to the settlers on the Wabash and Erie Canal—and a most infamous bill it was—and one which required the exertion of extraordinary power on the part of the Governor of Indiana to prevent being carried into effect. And, sir, if the proposition of the gentleman had been in force at that time that law would have gone into effect. There would have been no possibility of preventing it. The title of the bill was good enough; but it was so specious and so deceptive that members were not aware of the nature of the bill. Under such a provision as this such a bill might pass again, and it would be beyond the power of the Governor to interpose a barrier, because the title might be thrown aside, and still the provisions of the law would be operative and binding.

Mr. BASCOM moved to lay the instructions upon the table.

The motion was not agreed to.

The question was then taken on the amendment to the instructions, and decided in the affirmative.

The question being on the instructions as amended—

Mr. WATTS inquired if it would be in order further to amend the instructions.

The PRESIDENT replied that he was informed—not having been in the Chair yesterday when the original instructions were moved—that the motion to re-commit was made separately, and this being the case the question must be first taken upon the motion to re-commit.

Mr. KELSO demanded the yeas and nays.

Mr. EDMONSTON. I rise merely to request the gentleman from Franklin to withdraw the motion to re-commit, for the reason that if the committee report back all the amendments referred we shall have the same ground to travel over. In order to save time I ask the gentleman to withdraw his motion to re-commit. He can then move any proposition that he chooses as an amendment, and let the Convention take a direct vote upon it.

Mr. WATTS. I shall go against re-committing, believing that the section is just as it should be—that there is just enough of it as it is.

Mr. KELSO. I shall vote against re-committing for the reason offered by the gentleman from Dearborn, and that is, that we have the section here ready for amendment, and that re-commitment is not necessary.

Mr. BERRY. No question having been taken, I believe I have a right to withdraw my motion to re-commit. I made the motion to re-commit without instructions, in order that the committee might perfect the section and then report it back, thus saving the time of the Convention. But as gentlemen are not content that this course should be taken, I withdraw the motion.

Mr. BORDEN. I renew the motion to re-commit without instructions.

Mr. BERRY. The motion being renewed, in order to make the matter as short as possible, I demand the previous question.

The question being upon seconding the demand for the previous question—

Mr. RITCHEY asked for the yeas and nays, and they were ordered.

Mr. EDMONSTON. I would like to know what will be the effect of the previous question.

The PRESIDENT. The previous question, if sustained, will bring the Convention to a direct vote upon the engrossment of the section.

Mr. WALPOLE. I understand that the question will be first upon re-committing. The order of putting the questions being first on re-committing, then on amending, and if there be no amendment, then on engrossing.

The PRESIDENT. If the gentleman will look at the rule he will see that the motion to re-commit is the last in the catalogue but one.

The motions, according to their order of precedence, are to adjourn, to lay on the table, to postpone indefinitely, to postpone to a certain day, to commit or amend.

The question is, will the Convention second the demand for the previous question?

Mr. OWEN. I ask if it be now in order to introduce a resolution of which I gave notice yesterday, and which has reference to this very matter?

The PRESIDENT. The Chair thinks it will not be in order, as the previous question has been demanded.

Mr. BORDEN. I would like to have the yeas and nays on seconding the demand for the previous question.

Mr. BERRY. I withdraw the demand for the previous question.

Mr. MOWRER. I renew it.

The demand for the previous question was seconded by the Convention, and the main question ordered to be now put.

The question being upon the re-commitment of the section, a division was called for and there were yeas 50, noes 35.

So the section was re-committed.

The question then recurred on the adoption of the instructions as amended.

Mr. PETTIT moved to lay the instructions on the table.

Mr. DOBSON. I merely wish to ask what have become of the instructions which I sent up.

The PRESIDENT. The Chair was not aware that the gentleman had offered any.

Mr. DOBSON. Yes, sir, I proposed to instruct the committee to strike out the proviso.

The PRESIDENT. The Chair would remark, that perhaps the gentleman's instructions were offered at a different stage of the section.

Mr. DOBSON. I suppose that my instructions have gone to the dead letter-box.

Mr. PEPPER of Crawford. Mr. President, what has become of the instructions which I sent up.

The PRESIDENT. I suppose, sir, they have shared the fate of the instructions of the gentleman from Owen.

Mr. PETTIT. I move to lay *all* the instructions on the table. That will include the instructions of the gentleman from Owen, and the gentleman from Crawford, if any such instructions are before the Convention.

The PRESIDENT. Gentlemen must perceive that this conversation is entirely out of order.

The question being on laying the instructions on the table, a division was called for, and by yeas 58, noes 19, it was decided in the affirmative.

Mr. DOBSON. I now move the instruc-

tions that I have heretofore proposed, viz., to strike out the proviso.

The PRESIDENT. The gentleman will please send up his instructions in writing.

Mr. DOBSON. They are there in writing now.

The PRESIDENT. The gentleman will send up his instructions in writing if he wishes them to be attended to.

Mr. DOBSON. Certainly, I will do so in a moment.

Mr. PETTIT. I arise to a question of order. The subject has been committed without any instructions, and a separate motion is now made to instruct the committee. My point of order is, that the instructions must lie over for one day. It is a separate resolution, and an imperative one.

The PRESIDENT. The Chair would remark, that a resolution referring a subject to a committee must lie over one day, but it is within the province of all deliberative bodies, to instruct a committee at any time, and such is the motion now made.

Mr. PETTIT. All deliberative bodies have not such rules as we have.

Mr. WALPOLE. This I understand to be the point of order: that inasmuch as the subject has been re-committed, it has passed from the possession of the House. As long as it is before the House, a motion may be made to re-commit with instructions, but having passed out of the possession of the House, the gentleman now cannot follow it up and move instructions in reference to it.

The PRESIDENT. The Chair will remark to the gentleman from Hancock, that it is the practice in all deliberative bodies, to instruct their committees after subjects have been referred to them.

Mr. WALPOLE. That is unquestionably true.

The PRESIDENT. That is the present case, and laying one set of instructions on the table, does not preclude the offering of another.

Mr. KELSO. Will the Court indulge me in making a remark. [A laugh.] Pardon me, I mean the Convention; but, sir, it is more like a Court than a Convention, and more like a mob than either. ["Consent."]

Now I understand this to be the true condition of the question. While a motion to re-commit is before the Convention, we may accompany it with instructions, and you cannot under our rules, divide the instructions from a motion to re-commit. But if there is a motion made to re-commit without instructions being connected with the motion at the time, you cannot afterwards instruct the committee. The question that I put is: can the instructions assume any other character than that of an independent resolution?

The PRESIDENT. The Chair has already

decided that it is within the province of the Convention to instruct the committee.

Mr. KELSO. Not by separate resolution I think.

Mr. DOBSON withdrew his motion to instruct the committee.

Mr. OWEN. Is it now in order to introduce a resolution upon the subject, of which I gave notice yesterday?

The PRESIDENT. It is in order.

Mr. OWEN. Then I offer the following:

"The previous question shall not cut off a motion to commit previously made."

I remind the Convention, that upon the engrossment of a section, a member has a right to move to amend it. If the previous question be called at that stage, the effect is to bring the Convention to a vote, first on the pending amendment, and then on the engrossment of the section; so that when debate is closed, we have a right to select from among the various propositions before the body, that which we prefer; but a section being upon its final passage, if the previous question is moved, it not only arrests debate, but cuts off also all motions to re-commit. Then we must either suffer debate to go on interminably or be deprived of the opportunity to vote upon the only form of amendment that can be offered at that stage. The Convention has refused, again and again to order the previous question, not because it was unwilling to put a period to debate, but because under its operation there would be no opportunity to vote upon the instructions by which it was proposed to amend. I think the Convention is prepared to alter the rule.

Mr. KELSO. I am, perhaps, as much opposed to the use of the previous question as any member of this Convention. If there is anything that I despise above another on the face of the earth, it is that which presents itself in the shape of a rule to suppress debate here or elsewhere. I am for the fullest latitude of debate; but there are many gentlemen here who, when they get tired of debating themselves, are ready to call the previous question; and we have an iron rule by which we are governed, that when a bill is upon its second reading and amendments are pending, if the previous question is called, the vote shall be taken upon the amendment then pending; and we are prohibited from offering other amendments. The pending amendments having been disposed of, we are then brought to a vote upon ordering the bill to be engrossed for a third reading. But these very gentlemen who are so willing to call the previous question, and stop debate, after sleeping for a night, perceive their error and come back here in the morning and move to re-commit the bill, and, without giving time for a moment's explanation, demand the previous question, and take a vote upon the proposition.

The bill is afterwards reported back and subjected to a second consideration, which, together with the delay incident upon these forms of proceeding, occupies more time than would have been sufficient to perfect the bill in the first instance, if opportunity had been afforded to effect the necessary amendments.

Mr. OWEN. It is quite true, as the gentleman says, and as we all know, that the previous question will cut off debate—what is the remedy? It is to vote against the previous question. I believe I have not voted for the previous question more than once since we have been in session. But let me put this case: Suppose a bill is upon its third reading; a motion is made to re-commit; a large majority are in favor of the motion; but suppose a certain number of members are resolved that they will debate it until the patience of the House is utterly exhausted; what remedy is there, under our rules, except to move the previous question, which, in such a case, as the rule stands, defeats the will of a majority of the Convention? Gentlemen may complain of the effect of the previous question just as much upon the engrossment of a bill. If the principle of voting first on amendments be right upon the engrossment, it is certainly right upon the final passage, also.

Mr. BORDEN. I understand the purpose of the rule to be this: when a section is upon its final passage, and a motion is made to re-commit with instructions, and the previous question is moved and seconded, it will not cut off the motion to re-commit with instructions, but the Convention will proceed to vote upon that motion as upon the main question. It seems to me that the rule is very proper, and that it ought to be adopted.

The question being taken on the amendment to the rule, it was adopted.

The Convention then took up on their third reading the several sections from ten to eighteen inclusive.

Mr. KELSO moved to re-commit the 18th section with instructions to strike out that part of it which required the votes of a majority of the members elected to each House to pass bills.

Upon this motion the yeas and nays were demanded, and being taken were—yeas 39, nays 91—as follows:

YEAS.—Messrs. Alexander, Allen, Beach, Bidle, Blythe, Bourne, Bowers, Bright, Clark of Hamilton, Clark of Tippecanoe, Conduit, Crawford, Davis of Madison, Dunn of Jefferson, Edmonston, Gootee, Gordon, Graham of Warrick, Gregg, Hogan, Howe, Huff, Kelso, Kendall of White, Lockhart, Mather, Miller of Fulton, Mooney, Mowrer, Newman, Pepper of Crawford, Pettit, Rariden, Robinson, Spann, Tannehill, Walpole, Watts, and Zenor—39.

NAYS.—Messrs. Anthony, Badger, Balingall,

Barbour, Bascom, Beard, Beeson, Berry, Borden, Bracken, Bookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Elliot, Farrow, Fisher, Foster, Garvin, Gibson, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Johnson, Jones, Kendall of Wabash, Kilgore, Kinley, Logan, Maguire, March, May, McClelland, McLean, Miller of Gibson, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Thornton, Trimble, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—91.

So the section was not re-committed.

Mr. HOLMAN moved to re-commit the 16th section with instructions to strike out as much of the section as exempts members of the Legislature from civil process during the session, and for fifteen days previous thereto, and upon this motion he asked the yeas and nays.

I will remark, said Mr. H., that if the section be amended as I have proposed, it will then be left precisely as the section stands in the old Constitution. I presume there is no gentleman who can imagine an instance of hardship which has resulted from the provision that members of the General Assembly are exempted from arrest except for breaches of the peace. I can enumerate instances where the exemption would operate as a great hardship upon the citizen who has a demand against a member of the General Assembly; but as I have already, on a former day, referred to this subject, I shall not at this time detain the Convention with any lengthened remarks.

It will be recollected that according to the policy which prevails in Indiana, no courts are held between December and April, so that a case can hardly be thought of while a member of the General Assembly would be interrupted in the discharge of his duties here during the session of the Legislature; and the right to serve the process prior to commencement of the session, may be a matter of the utmost importance. I am of opinion that the convenience and advantage resulting from the privilege of serving the process upon the member compared with the inconvenience, would be as ninety-nine to one. If no serious inconvenience has resulted from this provision in the old Constitution, I do insist that the provision should not be changed.

Mr. EDMONSTON. The gentleman from Dearborn says that no inconvenience has grown out of this provision in the old Constitution. I can tell that gentleman that I have seen great inconvenience occasioned to a Senator from Spencer county, as honest a man and as prompt

in the discharge of his obligations as any man in the State. Some difficulty had arisen between him and a man in New Albany, concerning a claim which was set up against him, while he was of opinion that he owed the man nothing. The New Albany man, instead of going to Spencer county to commence his suit, waited until he came here and then had process served on him, and he was subjected to the inconvenience, when the time for trial came on, of traveling all the way from Spencer county to attend court here.

Mr. HOLMAN. That case came on after the adjournment of the Legislature.

Mr. EDMONSTON. That is true; and the disadvantage is, that he was subjected to the service of process at this inconvenient distance from his own county, where the trial ought to have been had.

Mr. READ of Clark. I am satisfied that the provision ought not to be adopted. If it affected the interest of members of the General Assembly only, I should have no objection. But if I understand it, it is to operate to the disadvantage of the constituents of members, by preventing their representatives from discharging the important duties entrusted to them. I think it is proper to throw this protection around the representative; not on his account, but on account of those who send him here. I am opposed, therefore, to the amendment of the gentleman from Dearborn.

Mr. RITCHEY. I was once fool enough to purchase a patent right; afterwards the people sent me up to serve in the Legislature. A man with whom I had had some business transactions, found out by the newspapers that I had been elected a member of the General Assembly. He came on here, and one day I was invited out of the Hall and served with a process by a person who I did not know. I found out that a suit had been commenced against me for debt, and you may be sure that I felt somewhat disconcerted. I was here among strangers; there was no one who knew me, or was acquainted with my circumstances at home, and I had not the money to satisfy the demand. I did not know to whom I should apply to become my security. It was really an awkward predicament. The suit might just as well been instituted against me at home. I was ready there, to meet any demand, and to satisfy any demand that was just. But in consequence of the circumstance that the suit was prosecuted here, I was obliged subsequently to come back and attend the trial. And I was subjected to all this inconvenience to gratify the malice of an individual who, perhaps, imagined that he could extort money from me by proceeding in that way.

The gentleman from Clark has well said that a man who is elected to the Legislature owes a duty to the people. His services belong to them, and they have a right to demand that he

shall be exempted from everything that will interfere with a discharge of that duty.

Mr. HOLMAN. It is well known that there are several gentlemen in this Convention who have served in the Legislature, and who have had experience in matters of this kind. And what is the testimony that they furnish us? Let me call the attention of gentlemen to these two cases: the gentleman from Dubois has said that he knew of a case where a member of the Senate was served with process, and after the adjournment of the Legislature was obliged to come from Spencer county for the purpose of defending the suit. The case is the same with every private citizen trading through the State. He is subject to civil process, under certain circumstances. But mark the fact in this case: the trial did not come off until after the adjournment. Now the gentleman from Johnson admits that in his case the debt was a just one, but he had not the money. The effect of the proposition that is proposed to be incorporated in the section, will be this: that the right of action for the recovery of a just demand, shall be suspended during the time that the Legislature is in session, and for fifteen days preceding the commencement of the session.

Mr. RITCHEY. Will the gentleman allow me to correct him in regard to the case that I mentioned? I did not say that the demand was just; I said that I was driven to the necessity of either paying the demand or of entering a defense to a suit commenced in this county, and having a trial here, and perhaps having an appeal from the decision of the circuit court, and rather than be subjected to such inconvenience, I paid the amount which ought never to have been paid. I was driven to this necessity from the fact of the suit being instituted in this county, when it might as easily have been commenced in the county where I resided.

Mr. HOLMAN. The gentleman had not the same conveniences here that he had at home. But had he came for the purpose of the transaction of his own or any other business he could have been equally liable to any civil process. I will however say this, that in a very large majority of instances the circuit court will not be in session during the time that the General Assembly is sitting, so that no man will be compelled to answer to civil process until after the adjournment of the General Assembly, when his public duties are ended. But I can suppose numerous cases where the service of civil process is necessary for the protection of private rights.

Besides, sir, it does not always happen that the people elect men who are honest. They sometimes may elect a man who would be desirous of enjoying this peculiar exemption; and, also, when the exemption is terminated, would be out of the way; who just before the adjournment of the General Assembly would take care to remove himself from the jurisdiction of

the courts, and great injustice could be done to his creditors.

Mr. ALLEN. I am opposed to the re-commitment of the section, and as gentlemen are relating instances, I will mention one which occurred to one of our senators; and it furnishes one of the reasons that induce me to go against the re-committing of the section. A senator from our county started on his way to the capital. He staid all night at a village on the way, and although he started before day next morning the constable was after him, and he arrested him. The senator was obliged either to go back and answer the claim, or give security. He stopped at a good old democrat's house—the very last individual in the State who should have been victimized. The old gentleman went his security, and the result was that just previous to the adjournment of the Legislature the senator left for parts unknown, and his poor old democratic friend had to pay the debt. I think that if such a provision as this had been in existence, this occurrence would never have taken place, because the senator would at that time, it being within fifteen days prior to the meeting of the Legislature, have been exempted from arrest. And I think it would have been better for his creditors to have lost their debt than that this good old democrat should have been obliged to pay it. I think it is proper and right that when a man is elected to the Legislature he should be exempted from arrest for at least fifteen days before the meeting of the Legislature in order that he may prepare himself for the discharge of his duties, and proceed to the capital without being molested by the constable. ["Consent."]

Mr. WATTS. In corroboration of the remarks of the gentleman, and to show the propriety of putting this provision into the Constitution, I will continue the history of the said Senator a little further. He claimed an exemption, not only from civil process, but exemption from the payment of his board bills, and left Indianapolis without paying them. I therefore hope this provision will be incorporated in the Constitution for the purpose of securing the rights of the people here.

Mr. MOWRER moved to strike out.

Mr. MURRAY. A single word. I hold that in addition to the inconvenience to the members themselves in being subjected to process, I hold that every member has a deep interest in the reputation of the body in which he serves. I think the section is precisely right as it stands, I think it will have a happy effect in disembarassing the Representatives, so that they may be free to attend to their public business.

Mr. KELSO. I have a few words to say as to what may probably be the result of the adoption of a provision of this kind. Let us suppose a case: Suppose a man to be elected to the Legislature, and it becomes known far

and wide that he is a member. Suppose that he has one hundred and fifty miles to travel to reach the seat of government, and it is known to a creditor of his, that he has but a certain time in which he has to get here, and he takes that occasion to commence his suit. He follows him up here, [a voice, "or catches him half way,"] or overtakes him half way, if you please, and arrests him. Does not every one perceive the inconvenience to which he is subjected in consequence of having a process served upon him at a distance from home? whereas if the suit had been commenced in his own county, where all the circumstances attending the creation of the obligation were well understood, he would have been subjected to no inconvenience, whatever. But when the suit is commenced here, the member is reduced to the necessity of sending all the way home and bringing his witnesses. Now I ask if he should be subjected to all this inconvenience? I think he ought not. I am satisfied with the section as it is. It seems to me that it ought to be adopted.

Mr. BARBOUR. I was about to make the same motion which the gentleman from Dearborn has made. I hope that motion will prevail. I do not know what right a member of the Legislature has to be exempted from the payment of his debts. There may be particular cases of hardship, but that is the fate of any man in the community now. I do not know why a member of the General Assembly should enjoy any peculiar privileges over any other citizen. His body should be exempted from arrest. That is all well enough. But when he comes here, I am not for giving him exclusive privileges in regard to the payment of debts. I do not think he ought to have any such right. When the people elect a man to the Legislature let them elect such a man as will do them no discredit.

The question being taken on the amendment, it was not agreed to.

The question recurred on the motion to re-commit with instructions.

The Convention refused to re-commit.

The question being, Shall the section pass? the yeas and nays were taken, and resulted—yeas 105, nays 20—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Bascom, Beach, Beard, Berry, Biddle, Blythe, Borden, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chenowith, Clark of Tippecanoe, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Huff, Johnson, Jones, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, March, May, McClelland, McLean, Miller of Clinton,

Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mower, Murray, Nave, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Shoup, Simms, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimby, Elliott, Wallace, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—105.

NAYS.—Messrs. Barbour, Bourne, Bowers, Chapman, Clark of Hamilton, Conduit, Crawford, Davis of Madison, Dunn of Jefferson, Edmonston, Gootee, Holman, Howe, Kelso, Kilgore, Maguire, Newman, Rariden, Spann, and Walpole—20.

Mr. NEWMAN. Pursuant to notice, I move to amend the rules as follows:

"No section of the Constitution shall pass unless voted for by a majority of the members elected to the Convention."

The PRESIDENT. The amendment lies over one day.

Mr. NEWMAN. I gave notice of it on a former day.

The PRESIDENT. No notice has been entered upon the journal.

THE VETO POWER.

The section providing that a bill, when passed, shall be presented to the Governor for his signature—if he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall proceed to re-consider it; if, after such re-consideration, it again pass both Houses by yeas and nays, by a majority of two-thirds of each House present, it shall become a law, notwithstanding the Governor's objections was taken up on its second reading.

The section having been read,

Mr. PEPPER of Crawford moved to strike out the whole section, and insert the section contained in the present Constitution, which provides that "bills vetoed by the Governor may be passed by a majority of the members elected," instead of "two-thirds present," as provided in the section under consideration.

Mr. STEVENSON. This section, sir, properly belongs to another article. It belongs to the article reported by the committee on the executive department. This subject was referred to that committee by the Convention, and the committee have reported a section, which will come up for consideration at the proper time. I therefore move that this section be laid upon the table.

The question being put, a division was called for, and by ayes 53, noes 45, the motion was agreed to, and the section was laid upon the table.

The Secretary then read the next section,

which provides that every resolution, to which the concurrence of both Houses may be necessary, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be re-passed, according to the rules and limitations prescribed in case of bills.

On motion by Mr. MORRISON of Marion, the section was laid upon the table.

Mr. MORRISON of Marion. Is it now in order to introduce an additional section?

The PRESIDENT. It is in order.

Mr. MORRISON. I move, then, the following as an additional section:

"Every bill and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms in the Latin, or in any other than the English language."

[Cries of "No! no!" and "Consent."]

I hear a slight murmur of "no," in regard to this section, and I shall ask permission, therefore, to say a few words in reference to it. From the use of verbiage, with which the law is encumbered, and technical terms in Latin and other languages, it requires a lawyer to interpret every enactment that is made by the Legislature. I need only refer to almost every chapter of the law to prove this fact. Now, sir, I want that kind of language made use of which will put the meaning of those laws within the reach of justices of the peace and private citizens. I desire that such language shall be employed as may be readily understood by every citizen who is bound to obey the laws.

[Mr. MORRISON then referred to and read various clauses in which Latin phrases are used.]

Now I would like to know, (continued Mr. M.) why plain English would not do just as well. There is no language more copious than the English language. I think we should lend our aid, at least, to bring this matter to the consideration of the Legislature. The laws ought to be so plain that every man can interpret them for himself, without the aid of a law dictionary. This is a reform that has been called for by the people. They are loudly complaining of the complexity of the laws, as well as of the manner in which they are administered—of the pleadings in the courts, and of the use of terms which are not comprehended by the unprofessional. I hope that this provision will be adopted.

Mr. NILES. I do not pretend to controvert the proposition, that it is desirable, as far as possible, not only in legislation and in constitution making, but in all writings of whatever character, to use simple, plain, old Anglo-Saxon household words. But, sir, I do not, for that reason, hold that it is proper to expunge from what the gentleman calls the copious English language, one-half of that language itself. I do not hold that it is well because a portion of our people, at the present moment, may not

perfectly understand the meaning of words which, by common, universal use, for centuries past, have become part and parcel of the English language, to forbid their use in future. It is one thing for the Legislature or for constitution makers, to use the simplest and plainest words that they can use, and another to say to the people of Indiana, that for all time to come they shall be prohibited from using, in the law, certain words, which are as appropriate as any words in the language can be, and which have acquired a definite technical signification, merely because they have a Latin prefix or termination.

Mr. MORRISON of Marion. I ask the gentleman to refer to the section which I have proposed. It does not require any such thing as the gentleman seems to infer.

[Mr. MORRISON read the section.]

Mr. NILES, I beg pardon of the gentleman. I did not notice the precise phraseology of the section when it was read a few moments since, and I inferred its character chiefly from his remarks. I supposed it to be imperative, otherwise I should not have risen to say a word on the subject. But while I am on the floor, I must be permitted to say that I am inclined to oppose it, even in its present form, as a useless incumbrance upon the Constitution. I do not imagine that such a provision can be necessary or useful. If it means nothing we ought to reject it. If it means anything more than what common sense and common honesty would dictate to every legislator, it is so far pernicious. It is no more necessary than it would be to require that the professors in your State University should teach their pupils to write in good, plain, strait forward English. You might with equal propriety reject the technical names which are used in Chemistry and the arts, because they are derived chiefly and with slight modifications from the Greek. The very copiousness of our language, which the gentleman so justly and so highly values, as is known has grown out of the contributions it has received from the Latin and Greek and other foreign tongues. As you elevate the standard of education, and send up to these Halls competent men, they will adopt the simplest language they can use, as a matter of course. I do not think there is any propriety in our sitting here as school masters, to teach our contemporaries or more especially our successors what kind of words they ought to use.

By carrying out the policy suggested by the gentleman, of excluding Latin words, you would only introduce endless confusion instead of securing simplicity. Most of the Latin words used in our statutes are merely names, and the difficulty is in understanding the thing, not the name. The word subpoena is Latin in form. The word action is Latin with the simple addition of the letter n. There is an hundred times more difficulty in understanding the word Action as a

legal term than in understanding the word *sub-pœna*. Both words are convenient, appropriate and useful. *Certiorari* is a somewhat long and hard sounding name. But why abolish a name which has been used for centuries, and the meaning of which is definite and certain, for the sake of introducing a long and awkward circumlocution, which would be no more intelligible? Most of these Latin words, such for example as *viva voce*, are as well understood by all as any words in the language. Why then reject them? We might as well, instead of calling George Washington by the name by which we have always known him, require a brief description of his person and history of his life whenever he is spoken of. By rejecting the arbitrary name which has been long and universally adopted you sacrifice both brevity and certainty. The same thing would be true of many of the words and phrases used in our statutes. Certainty of all things is most important in the law. Let us not then deface the Constitution by introducing a provision that will produce confusion instead of doing good.

The question being on the adoption of the section proposed by the gentleman from Marion;

The yeas and nays were taken and resulted—yeas 109, nays 21—as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Balingall, Bascom, Beach, Beard, Beeson, Borden, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chenowith, Clark of Hamilton, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Foster, Garvin, Gootee, Graham of Warrick, Gregg, Haddon, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Hitt, Hogin, Howe, Johnson, Jones, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, May, McClelland, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Trimble, Elliot, Wallace, Walpole, Watts, Wheeler, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—109.

NAYS.—Messrs. Allen, Barbour, Biddle, Blythe, Bourne, Clark of Tippecanoe, Conduit, Davis of Madison, Dunn of Jefferson, Frisbie, Gibson, Gordon, Hall, Holman, Huff, Kelso, Kilgore, Nave, Niles, Robinson, Thornton, and Wiley—21.

So the section was adopted.

Mr. PEPPER of Crawford then moved to amend the section by adding a proviso, to the effect that the laws may be published in the

German and French language for the benefit of those who cannot read English.

Mr. PEPPER. It will be observed that it is not made compulsory upon the Legislature that they must publish the laws in the German and French language, but it gives them the right, if they think proper to do so. The section which has just been adopted precludes that right.

Mr. MORRISON of Marion. Notwithstanding all the gentleman's legal attainments, I beg leave to dissent from his opinion; the amendment that has just been adopted contains no such prohibition. It does not preclude the publication of the laws in such manner as they may see fit to direct.

The question being on the adoption of the proviso,

Mr. PEPPER of Crawford asked for the yeas and nays.

They were ordered, and being taken, were—yeas 98, nays 25—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beard, Beeson, Berry, Blythe, Borden, Bowers, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Colfax, Crawford, Crumbacker, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliot, Farrow, Frisbie, Gibson, Gootee, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hitt, Hogin, Holman, Howe, Huff, Johnson, Kelso, Kendall of Wabash, Kilgore, Kinley, Lockhart, Maguire, March, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Taylor, Thornton, Trimble, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—98.

NAYS.—Messrs. Badger, Balingall, Barbour, Beach, Bourne, Clark of Tippecanoe, Coats, Conduit, Davis of Parke, Dick, Duzan, Fisher, Foster, Garvin, Helmer, Kendall of White, Logan, Morgan, Murray, Schoonover, Snook, Steele, Thomas, Wiley, and Mr. President—25.

The question then being on ordering the section to be engrossed for the third reading—

Mr. KELSO. I do not believe that gentlemen have sufficiently reflected upon the character of the section which has just been adopted. We shall soon come to the section which prohibits the passage of an *ex post facto* law. I can hardly suppose that gentlemen will be in favor of striking out that term and supplying its place by English words that will have the same meaning. It would require three or four lines to do it. In fact words enough can hardly be strung together to supply the place of

that brief phrase. Well now if they would retain this, why may we not as well retain the word "*certiorari*," and other Latin words. There is scarcely a farmer that does not know their meaning as well as we do.

Mr. MORRISON of Marion. (*Sotto voce*.) There are scarcely fifty who do.

Mr. KELSO. To express the same in English would require quite a number of words. For instance, instead of saying a writ of *certiorari*, we would be compelled to say a writ to certify the record up to a superior court. There certainly can be no utility in abandoning the use of these well-understood phrases.

Mr. BASCOM. I did hope that this matter would pass over without debate. But there are a few lawyers here and they must always have something to say. They tell us that if the Latin phrases are stricken out it will take a great many English words to supply their place. Sir, I care not how many words are requisite, I want language employed that men who are not versed in law can understand. I know that it will be resisted by the members of the legal profession, for it will steal a little of the trade of those lawyers who hang around the county seats. [A voice. "That is it exactly."] But we have been long enough governed by lawyers. I am not in favor of compelling an honest and plain citizen, who understands nothing about legal phrases, to travel up to the county seat and pay a lawyer five dollars to explain a provision of the law. The whole system requires changing. The people throughout the State demand that all these technical terms—all these absurd and antiquated phrases shall be abandoned. Why, you might just as well put in Dutch phrases. Dutch will be more readily understood by the people of my county, than Latin. In my district we have no Latin scholars, but we have a good many Dutch.

A MEMBER. What is *viva voce* in Dutch?

Mr. BASCOM. The Dutch for *viva voce* is *lebendige sprach*.

SEVERAL VOICES. "Repeat it again."

Mr. BASCOM. Why, sir, a mere glance at these technical terms is sufficient to show that there is no necessity for using them, that they may be easily interpreted into good plain and intelligible English; then every man may be aware precisely what the law is.

On motion, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day, the pending question being on ordering the following section to be engrossed for a third reading:

"Every bill and joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms in the Latin or any other than the English language: *Provided*, that the Legislature may publish the laws in

the French and German languages for the benefit of those who cannot read English."

Mr. STEELE. When the Convention adjourned this morning I desired to offer a few remarks in relation to the section, and also relative to the manner in which the Convention has voted upon it. We well recollect the vivid remarks made by the gentleman from LaPorte; and that he anticipated too much in the offset—namely, that he supposed the section itself contained something more restrictive upon the Legislature of the State of Indiana than it really does. I would further notice that, in voting for the original proposition, the vote of the Convention stood quite different to what it stood in relation to the amendment. The cause of this difference must be obvious to every gentleman. In the section as introduced by the gentleman from Marion, (Mr. Morrison,) it cannot but be recollected that, on calling the yeas and nays, almost every gentleman within the bar voted against the section; and when the amendment came from the gentleman from Crawford, which in itself contains nothing—for I hold it to be a provision that means nothing, and which can only encumber the section itself—we find those very gentlemen who opposed the section voting directly for the amendment. Now this proves something. At least it is obvious to my mind that the section contains a great deal that counteracts the feelings, and the interests, and the practice of the gentlemen of the bar, while the proviso itself contains nothing—and they know it. [Laughter and great applause, and "say that over again."] Yes, sir, I have no hesitation in repeating it—they knew that it contained nothing. We all know that the gentlemen of the bar are supported by those very technicalities which the gentleman from Marion wishes to abolish—those foreign terms which are the very idioms of the bar. The gentlemen of the bar well know it; and for that very reason they voted against the section and for the amendment, with the view of breaking the section down. Yes, sir, they well know—for they are gentlemen of quick understanding, and I will give them credit for all they deserve—that the amendment of the gentleman from Crawford contains nothing, and therefore they could easily vote for it. Now, sir, in proceeding, I will remark that the great object of our assembling here is to effect a reform in every particular, and that assertion has dropped from the mouth of almost every gentleman on this floor during our proceedings. We want a reform in the executive, the legislative and the judiciary departments. Yes, sir, no reform is more greatly needed than a reform in the judiciary department. Such has been the language, such the motto, of the gentleman from Tippecanoe (Mr. Pettit); and I have no doubt that when we come to the subject of our courts, he will show you that he goes for very extensive re-

forms. Well, if this is the great object of our assembling here and remaining here so long, I will say to the gentlemen of this Convention, that in the short section offered by the gentleman from Marion there is the germ of a most complete reform—that is, the simplification of our laws; to write and indite them in plain English that can easily be understood by the yeomanry of the country. We are all well persuaded—every intellect on this floor, and more particularly the gentlemen of the bar who have had so much practice, and who boast of so much learning—and I regret that I am not able to keep tally with them on that score—I fall very far short indeed, although I have had some small experience in law reading, some small practical knowledge—I say that we are all aware—I have been aware of it for these last twenty years—that these “jaw-breakers,” as we call them—[a voice—“that’s the word,” and “go ahead,” and “knock ‘em down”]—these jaw-breakers are put into our statutes to prevent the honest yeomanry of the country from understanding them. [Ironical cheers.] They cannot understand what the law is; and the object of the gentleman from Marion is to effect a reform in that particular. His proposition is one that is easily understood; it is rational in itself; it is reasonable in every direction of the human mind, that we should have our laws written in our own language. Perhaps, at this point, in order that I may better explain my views, I may give an anecdote. [“Consent, consent,” and “let’s have it.”] The circumstance took place in a fire-proof office in the town of Wabash. I won’t say that it was in the Recorder’s office, but it was very near it. The conversation happened to turn upon the manner of doing business in the Senate of the United States; and a gentleman of the bar said that the mode of doing business in Congress was shorter and easier than that adopted by our Legislature. Being asked to explain the reason why this was so, he replied that they worked there altogether by “quassi” committee. [Great laughter.] “Quassi committee,” replied a gentleman who was standing by, and whom you would not have supposed was over-intelligent, “quassi committee!” said he, “in the name of God, what’s that?” [Roars of laughter.] I have heard of standing committees, and of select committees, and of committees of vigilance, but I never, in all my life, heard of a committee of “quassi” before.” [Uprorious applause and laughter.] “Why,” said the gentleman of the bar, turning round to the man, “the thing is very plain; ‘quassi’ means as if; that is, ‘as if in committee.’” “O,” said the man, “if that is the meaning of the word, it is very plain; but it would have been quite as well to have used the plain English words ‘as if,’ and it would have been shorter, too, for you would have saved a letter in the operation.” [Bursts of laughter.] Now this

simple fact—this one occurrence—proves to me the necessity, as far as practicable, of giving the laws of the country in plain English to the people. For this reason I go against the indefinite postponement of this section. I am very sorry—and my vote proved it at the time I gave it—that gentlemen have embarrassed this section with the amendment of the gentleman from Crawford.

Gentlemen, I usually sit here very passively, but I am not blind, either naturally or in the eye of the mind; and during the investigating of this amendment, I could see some chuckling in this Hall, that proved to me that the object of that amendment was to break down the original section. But, sir, I would even take the section with the amendment rather than lose it. And if it has friends in this Hall—men who intend to progress in the work of reform—I hope they will sustain the section as proposed by the gentleman from Marion, even if it should go with the amendment itself upon it, for that amendment can do neither harm nor good. With these remarks, I will conclude by simply saying, that I expect the friends of the section will support it through evil and through good report. [“Consent, consent,” and applause.]

Mr. PRATHER. I have not made many speeches in this Convention, and it is not my purpose at this time to make a very long one. The question is on the indefinite postponement of the section now under consideration, and I hope it will not prevail. I cordially agree with the views entertained by my young friend over the way (Mr. Bascom) on this question. He thinks that it is important that these technical terms should be dispensed with, and I would go with him that far. And it may be further said, they are unnecessary to a large portion of the people. And why should they be so tenaciously adhered to? There are a great many technical terms used in all associations, as well among professional men, as among mechanics and farmers. Now I want it distinctly understood that I am down on all these technicalities. Were I a scholar, I would read and give the definition of some of the technical law terms, I will however leave this to some one learned in the law. I will however read a paragraph from a newspaper, which will I think put this matter in its proper light, at least so far as the printers technicalities are concerned. It appears that they have a singular set of technical terms which must trouble plain men very much to understand. Here is the paragraph, and by permission of the Convention I will read. [Cries of “read,” “read.”]

“PRINTER’S LANGUAGE.—Every profession has its technical terms and of course the printers have a smart smattering which is intelligible only to the craft. The following, says the Delaware Republican is a specimen; it does not mean, however, as much as would seem to the uninitiated:

Tom put General Washington on the galley, and then finish the murder of the young girl you commenced yesterday. Set up the ruins of Herculeñeum—distribute the small-pox, and you need not finish that runaway match—nave the high water in the paper this week. Let the pie alone till after dinner—put the barbecue to press, and then go to the devil and he will tell you about the work for the morning.”

Now, I hold that it is just as important that these technical terms should be dispensed with as that we should dispense with legal technicalities. I am a farmer, and am quite willing to abandon all those old words that I have been raised on, and become so familiar with. They too may be called technical phrases. If the lawyers and the printers will agree to do the same, and will make a kind of compromise of the whole concern. Now we farmers, when we drive our teams are willing to dispense with “gee,” and “haw,” and to say “go right,” or “go left.” [Great laughter.] These are plain terms and easy understood. We will dispense with “wo,” and say “stop,” or ——— [The nearest the reporter can get at the expression is *zie, zie, zie,* and to use the words “go along.”] [Renewed laughter.] These are all technicalities, and must be troublesome. I hope the matter may not be indefinitely postponed; but that we may have a kind of compromise of the whole subject. Without jesting, Mr. President, I see no good reason why these Latin law phrases could not be dispensed with, and the English used in their places. A simplification of our common law practice, is loudly called for, it is one of the principal reforms demanded by the people; that, together with a few other reforms were all they did demand or expect. It was never expected when this Convention was called by the people, that when it met, it would make an entire new Constitution, but that such amendments as had been spoken of through the papers, and discussed before the people by the candidates for the Convention, would be as amendments to the old Constitution. If this course had been adopted, we could have been through long ago, and saved a large sum of money to the people. I hope this question may be duly considered, and not indefinitely postponed.

Mr. McCLELLAND. I am not in the habit, Mr. President, of making speeches to this Convention, for I am one of those who entertain the opinion that they do not effect much good; but I cannot refrain from expressing the opinion that this section ought not to be indefinitely postponed. Gentlemen may turn it into ridicule, and make fun of it as they please, but I conceive that it is a measure of great importance. It is a question, sir, in which my constituents, and those of many other gentlemen on this floor feel no small degree of interest.

Mr. PRATHER. I hope the gentleman

from Randolph does not mean to insinuate that I would ridicule a measure of this kind.

Mr. McCLELLAND. I have not said that the gentleman from Jennings would do anything of the kind; but the Convention will of course entertain its own opinion of the matter after hearing the speech with which that gentleman has just favored the Convention. He being a farmer would doubtless speak in *earnest* on the subject, knowing as he must know, that the farmers have to pay the cost of a great many of these Latin phrases.

Now what is the proposition before the Convention? It is simply that the laws of the State shall be written and published in the English language, so that men who have received an English education may understand them. That is the simple question, whether you will let every man set up for himself, and understand the laws, or whether you will write your laws, or a portion of them so as to prevent those who are not educated in *Latin and Norman French* from understanding them, and thereby make it the business of a certain class of men to expound these mysterious expressions.

Now, sir, it has been objected that there are some phrases which cannot be turned into English; and that they convey a meaning which the English language is too meagre to supply. “*Ex post facto*,” for example, is said to have a legal meaning which cannot be rendered into English. Then, sir, if it cannot be explained, do for heaven’s sake, let us keep it in Latin, and let it *stay there*. [Laughter, and applause.] But if it can be rendered into English, (and I think it can,) why then let us have it in that language, so that the common stock of the country may understand what it means. Now, sir, we have been referred to Nero, to Lucius, Stolo, to Nicholas of Russia, &c., and a hundred others, as well as to various parts of the world, in times past and present, in order to obtain illustrations of the workings of different systems of laws. Sir, I regard this as being all wrong—utterly erroneous. The only thing which it is our business to contemplate here is the practical effect of a measure in the State of Indiana, and not what it was in England, in the reign of Queen Anne, or in Rome in the days of Nero, or in the days of the heathen empires long gone by. The question is, how will any measure affect the people of the State of Indiana; and the simple fact for us now to consider is, will the measure proposed by the gentleman from Marion, be beneficial to the people or not? Sir, we have nothing to do with other countries; our business is to make a Constitution for our State alone. Shall the laws be published in the English language or not? Gentlemen say that there is not power enough in the English language to explain the meaning of many terms that are used in the law, and they give us the word “*certiorari*” as an example. Well, sir, what does that mean? [Cries of

"hear him," "hear him."] We all know that it means "to be certified." ["Hear, hear."] Sir, my constituents understand English, but they have neither time nor inclination to learn Latin, and they want the laws by which they are to be governed written in English. Some of them it is true understand *Dutch*, and probably others French; and it would be more reasonable, if *foreign* words are to be used, they should be selected from one or other of these languages. I want to see the man who is capable of holding a conversation in Latin, and then ascertain whether even he would understand these barbarous phrases. Now it is said that the word "*certiorari*" as applied to a certain writ, is a word which cannot be explained. Why not, I should like to know? Would it not be quite as easy to say "a writ to be certified?" I think so; and I trust that some gentleman eminent for his classical attainments, will give us a little further explanation of some of these hard terms.

Blackstone tells us that the pleadings used to be always in *law Latin*, but that in the course of time, they were changed to Norman French. Now gentlemen do not contend for the Norman French, but for the Latin, for the simple reason that there is not perhaps one man in the State, who is acquainted with Norman French, although there may be a few who have passed through a college, and have learned a little Latin. Blackstone also gives us a long reason why the judges of the land should be clothed with dignity; why the sheriff of a county should attend him with a great display, and his jurisdiction be secured from contempt, with a great deal of stuff about learning and dignity forsooth! Sir, the reason assigned is, that all this pomp, novelty, and display, has "no small influence on the multitude." Why, sir, do gentlemen tell us that they intend to retain this Latin, and Norman French for the purpose of "influencing the multitude," or awing the masses of the people of the State of Indiana? I think such an assertion will not be ventured *here*; and yet I hold it that the same reason which requires the retention of these barbarisms would apply equally to all the pomp and parade which attaches to the office of Judge in European countries in the days of Blackstone. Yes, sir, it may do to "awe the vulgar" and "influence the multitude."

Now, sir, in that same law Latin, according to the old books, they used to call a "declaration" a "*narratio*." Well, sir, has the change injured the community? [Applause.]

Mr. GIBSON. That is a Norman French word.

Mr. McCLELLAND. I am very much obliged to the gentleman from Clark for the information, and hope he will teach us a little more.

Blackstone further says, on the subject of using foreign languages:

"*Gallia caesidicos docuit facunda Britannos.*"

Will the learned gentleman from Clark (Mr. Gibson) give us this in English? Probably the classical gentleman from Switzerland will favor us with a translation? or perhaps the "Delaware Chief" will do us the favor?

I ask you, ye sticklers for Latin, you men learned in "*law Latin*" to give us a translation. ["Hear, Hear."]

Now what does it all mean? You cannot answer. I am always willing to learn. Probably the learned Delegate from Decatur can explain it? I must own that it is a peg above me. Now there are a great many terms which it is said cannot be rendered into English. For example, "*nisi prius*." What does that mean? I should say it meant "unless before." Then there is a plea called "*nunquam indebitatus*." What does it mean? It means "never indebted;" and is it not just as well to say "never indebted" as to say "*nunquam indebitatus*?" [Applause. I think it is.]

Sir, is it conceivable that men sitting on your judicial benches, with the lives and property of their fellow-men in their hands, and these books before them full of these barbarisms which they say cannot be rendered into English—is it conceivable that such a system should be continued? They surely will not say that they do not understand these expressions. And if they do understand them, is the English language so meagre, so poor that words cannot be found to express those ideas? I do not profess to be a *learned* man, but I hope that those gentlemen who desire to adhere to technicalities, and to have them placed in the Constitution and laws, will explain them to us as we go along, in order that when we go home with the new Constitution to our constituents, we may be able to explain them in our turn. [Applause.]

Now let us turn to another passage. Here is a definition of a yeoman:

"A yeoman is he that hath free lands of the value of forty shillings by the year, qualified to serve as jurors, where the law requires one that is '*probus et legales homo*.'"

What does this mean? A man that owns a horse or so much land? [Laughter.] Is it capable of being rendered into English? If so, I wish to have it translated into English so that it can be understood.

Mr. KELSO. It signifies "a good and lawful man."

Mr. McCLELLAND. Sir, it is just as easy, and I think a little easier, to say "a good and lawful man," as to say "*probus et legalis homo*." [Applause.] In the same book I find—

"It is further to be remarked with respect to an action for seduction, that none can be maintained in any case by the daughter herself for '*volenti non fit injuria*.'"

Now what does "*volenti non fit injuria*" mean? [Laughter and applause.] Let it mean what it

will, I want to have it placed on the statute book in English. Sir, if we are to have these technicalities placed in the Constitution and laws, I want to have a translation of them there also; because, as every body is to be bound by the law, every one should be in a position to understand the law. Sir, unless this is the case you may as well do as Draco did; that is, print your laws, and then place them so high that nobody can read them. [Applause.]

Again we find it said—

"The words must be sufficient in law to bind the parties; as if a man grant *"omnes terras certa sua,"* a lease for years passes not, but freehold only at least *"nec per omnia bona sua."*"

What does this mean? You do not answer. I suppose you can't tell.

Now where is there a jury, sitting on a case where such law is quoted, who can understand its meaning? Nevertheless juries are required to pass upon the merits of a case when addressed in this kind of jargon.

Here is another—

"Cujus est dare, ejus est disponere."

And another—

"Summum jus, summa injuria." [Laughter.]

Mr. President, gentlemen may well laugh at it, and it may be a matter of laughter to many gentlemen present, but I tell you that with the people this is no laughing matter. It is they who pay for all this. It is out of their pockets that the money comes to pay for translations. Sir, these expressions, if they are necessary, can be as well placed in English as in this miserable Latin; and allow me to hope that this section will be passed as it is. Before I take my seat I would like to say that I should be happy to learn from some learned gentleman why we should retain this barbarous Latin, for I have been informed that it is not *real genuine* Latin, but even miserable corruptions of that language, and hence we have the distinction of "College Latin," "Medical Latin," "Law Latin," and "Dog Latin." [Great applause and laughter.]

Mr. READ of Monroe. My friend over the way, (Mr. McClelland,) I am informed, is one of the best classical scholars in our body, and in the speech he has just made has been playing off the wag upon us. As a Professor of Latin, I certainly do not feel, in any manner, called upon to defend the Latin of the law books. There are indeed many terms and phrases of law Latin, which I suppose the study of Cicero and other classic authors, pursued however extensively, would hardly enable the student to understand. My friend, I presume, has felt his classic taste offended, and has been disposed to vent a little just indignation at the use of such shocking bad Latin.

I have no objection to the section in the form proposed by the gentleman from Marion—certainly not to it as a rule of taste. The practice of interlarding sentences with words or

phrases from the Latin, where they can be avoided, I have never admired. It is much more indicative of pedantry than of scholarship.

But, sir, I do not agree with those who fancy that if technical terms were abolished the difficulty in understanding the subject to which they belong, would in any degree be removed. The difficulty is always in understanding the subject itself, and not in understanding the technical terms connected with it. That is but a small matter. If we are told that air is composed of *oxygen*, as one of its elements, would it be any plainer if we should translate the word *oxygen* and say that *sour making* is one of the elements of the air. If, instead of saying water is composed of *oxygen* and *hydrogen*, we say *sour making* and *water making* are the elements which form water, how much plainer or better understood would the subject be? If you call a *capias* *a you may catch him*, or *a take him*, there is still the same difficulty in understanding when it may be issued, and you might still be obliged to apply to the lawyer. Just the same difficulty exists if you call a *procedendo* the writ of *go ahead*, and a *ne exeat*, *a no go*, &c.

Our English is made of all the languages under the sun, oriental and occidental; and if we reject all words of foreign origin, we shall have left us a very slender stock.

We have two classes of words; those which have gone through with the forms of naturalization, and those which are dwelling among us as mere foreigners, and have not yet been recognized as liege citizens.

The word constitution itself is nothing but a Latin word, naturalized by the addition of the final letter. What shall we do with it? [A Voice. Strike it out.] Well, we will take the section before us and see how we will get along without the Latin words, which have been *anglicised* by slight changes. Here is the word *resolution*. [A Voice. Strike it out.] The striking out process then will have to go pretty far. We may have some trouble in making a Constitution at all. You have in this short section the words *necessary*, *effect*, *approved*, *disapproved*, *according*, *rules*, *limitations*, *prescribed*, and *case*, all Latin words adopted into English. [A Voice. Well strike them all out.]

Now, sir, there are words which are pure Latin words which we are much in the habit of using. Here is *viva voce* in the next section. I prefer as a matter of taste the words, living voice, and instead of a *viva voce* vote, I would say a vote with the living voice—not that one expression would be any better understood than the other.

Here is the phrase *ex post facto* on the next page which could not be safely displaced. It has a fixed, definite, well established, and adjudicated legal meaning.

The gentleman has mentioned the word *certiorari*, and says its meaning is *to certify*. Well,

the word *certify* is still Latin, adopted into our language with hardly a change. That, indeed, is the mode in which our language has been enriched. We take in foreign words, grant them a domicile among us, and at length adopt them as citizens.

But, sir, as a rule of taste, I hold that the use of Latin words ought to be avoided in the laws and Constitution wherever it can be, and that the simplest and most perspicuous language should be used.

Mr. KELSO. I cannot believe but that there is a common sense side of this question.

A MEMBER. That's right, Kelso, let's have it.

Mr. KELSO. Now, sir, my friend in the rear (Mr. McClelland)—and I think they do him injustice when they say he is not a Latin scholar—has told us that this section is in regard to laws that are hereafter to be passed in the State of Indiana.

Now, you may take up the statute laws of the State and examine them, and you will occasionally see a Latin term used. But what is it? Why, sir, it is a mere name. Now, sir, what is the difference, if you call a certain writ by one name or another, if by that name it is equally well understood? Now, if a man wants a *capias ad faciendum*, every man knows he wants a writ by which he may seize a man's body, in order to satisfy him for a debt.

That writ, sir, has happily gone into disuse in the State of Indiana. Or, if he wants a *capias ad respondendum*, that is a mere Latin term, admitted to be technical; but we all know enough about it to know that it is a writ that requires a man to answer. Now, sir, these are mere names, and if you search the statutes all through, you will find no harder terms. Take for instance, the writ called *Ne exeat*, which means, preventing a person from leaving the State.

Well, sir, these are short and convenient terms, and if they are to be dispensed with, I would ask whether it would not be equally as reasonable to require of the Legislature, when they are writing a law in regard to trespassing animals, that, instead of using the word "cow," which is a short and convenient name which everybody understands, they should describe the animal, and say: "animal with horns, which gives milk, and has a long tail," [laughter] so as to make the definition perfectly clear? Or take another case: Suppose that, instead of using the word "hog," they should say: "an animal with bristles, which has a strong disposition to grunt." [Laughter.]

Sir, I ask whether it is not as necessary to change these names, as to change the name of a writ of *Certiorari*, or any other writ, and thus dispense with these short and convenient terms? This certainly would be carrying the matter out just like the man who had a sign painted with a bear upon it, and, for fear the

people wouldn't understand what it meant, he had the word "bear" written under it. [Great laughter.]

But gentlemen say we should dispense with technical terms as far as practicable. I would agree with those gentlemen, so far as regards dispensing with terms that are not convenient; but I will undertake to say that there is not in the statute books of the State of Indiana any term to be found that is not short, and convenient, and useful, and perfectly adapted to convey its meaning. Now, if my friend here had understood the question as he ought to have understood it—or perhaps I might use other words, and say: If he had dealt honestly by us, and had acted honestly as he did understand it, and had gone to the statute books and had examined for himself, instead of "playing the baboon for us"—then he might have given us some information that might have been useful. But instead of doing that, the gentleman has referred to Blackstone, a book which nobody uses but lawyers. We don't expect to make a Constitution out of Blackstone's Commentaries. If he had gone to Chitty, and Story, and Kent, and others, I think he would have both thought and acted differently. We expect that when men come here to make laws for the State of Indiana, they will use as little Latin as possible; and whether they have done so or not, let the legislation of the last fifteen years attest. Had the gentleman from Marion (Mr. Morrison) thought of this, I think, without incurring the Constitution with that section, or attempting to incur it—for I have no idea it will pass—he would have been content to let the matter remain as it is. Sir, there is no use whatever in that section. Every man knows it. It is a common sense proposition, that we need not, in the formation of this Constitution, file section upon section, for the sake of dispensing with these short and convenient terms; that we ought not to leave out that which is useful, in order to put something in the place of it which requires twice as much language to make it understood, and when done, in many instances, will not be half so well understood. That is the reason I shall move to dispense with the section entirely. I have done so in serious earnestness; for I believe that the Constitution will be better without it, as well as without many other of its provisions.

Mr. President, one other word. Here is my friend, too, finding a good deal of fault with the law, because, sometimes Latin phrases are used. If he wants to study law without much trouble, he had better fall in with the plan of my friend from Hancock, (Mr. Tague,) and abolish the common law. [Laughter.] I can tell him that he may search the statute book from beginning to end, and he will find nothing of this kind that he need make it a matter of complaint. Sir, let me ask, what does a lawyer gain by it? We, who know the law, must read these books

if we would fully understand it. If we can understand these terms, well and good; if we cannot understand them, then that is our misfortune. We all know well enough that a man usually goes to a lawyer for advice, because he does not want the trouble and the labor of going to the books himself to find out what the law really is. If he will go to the statute book, he will never find himself in the least bothered with the Latin that he will find there. But he does not go to the statute book, because he knows that he would not find there more than a five-hundredth part of the law. No man, who wants to be a lawyer, ever thinks of looking into the statute book until he has read enough of common law to teach him the fundamental principles on which all laws should be based. The statute book is resorted to only when you wish to learn the provisions of any given law. What, then, can the legal profession gain by the retention of these Latin phrases? Nothing whatever, in a pecuniary point of view. We do not ask to have the statutes published in Latin. Nothing of the kind. I know as little about Latin as any man here.

Mr. McCLELLAND. I don't know that.

Mr. KELSO. If you know anything at all, you might know it. Now, what can we gain by the retention of these Latin phrases? I have been a lawyer for some years, and I have no hesitation in telling gentlemen that I never studied Latin; and I will tell them further, that any man who studies Latin for the purpose of making himself a lawyer, is a fool for his pains. [A voice—"How do you know that if you don't understand Latin?"] I say that it is of no use. So little of it is used, that a man need not trouble himself with it; and he had much better spend his time in studying the law as it is written now, and the money that it would cost him to learn Latin, in the purchase of books necessary to learn practice. I say again that the profession can gain nothing by it, for nothing can be put into the statute book in English that I cannot understand as well as my more learned friends of the profession. Then, sir, if I understand the law sufficiently without a knowledge of Latin, I apprehend that those who choose to employ a lawyer would come to me as readily as they would go to those gentlemen who have burned the midnight oil in reading Horace, or studying the Orations of Cicero. Would I, then, lose any of my practice by it? Certainly not. If a man comes to a lawyer, and wants to sue a man who has got his property, and who refuses to pay for it, would he sit down in the office and ask him what kind of a writ he would send? If a man were to ask me that question, I should tell him at once I should send a *capias ad respondendum*. And does any man suppose that a man, asking a question of that sort, would be blockhead enough to say: "O, you can't collect

my money with a writ of that sort, because it has a Latin name?" [Laughter and applause.] Does a man come to you and want to know what sort of a writ you will send? No, sir; he comes to you, because he thinks you can get his money for him sooner than he can get it himself. He doesn't care a fig whether you send a *certiorari*, a *ne exeat*, a *capias ad respondendum*, or a *capias ad satisfaciendum*, or a *scire facias*, or anything else, so that you get his money. That is all he wants, and he does not trouble himself about the name of the writ you send. I say, then, that this is a matter that ought to be left to the Legislature. If they find it convenient to use a short technical term, let them have the right to do so, and let us not attempt to tie up their hands by such an unnecessary and absurd provision as this. [Applause.]

Mr. MURRAY said that the people whom he represented, had instructed him to vote for a provision in the Constitution, abolishing the use of latin terms in the law. They conceived that the English language was not so barren as to require the use of words from another language. And even if it should require a few more English words to express what might be more concisely expressed in latin, they were of opinion it was still better to take even that circumlocutory method rather than to use terms which the generality of men could not understand. If it was desirable to study perspicuity only then it might often happen that terms and phrases might be borrowed from the Greek or Hebrew languages that would be still more concise than those borrowed from Latin. This however was not the main object to be attained, but rather that the laws should be written in language so plain that "he who runs may read." This was a matter that was as much thought of in his region as any other; and although he did not wish to be understood as opposing science or literature, he could not think but that in a matter of this importance, where the people were to be bound by the laws that were made for them, every technicality should be avoided which might tend to prevent those laws from being thoroughly understood.

The PRESIDENT. The question is upon postponing the question indefinitely.

The yeas and nays being demanded and ordered, were taken with the following result:

YEAS.—Messrs. Barbour, Berry, Blythe, Bourne, Clark of Tippecanoe, Conduit, Crumbacker, Dobson, Frisbie, Gibson, Gordon, Hall, Helmer, Hovey, Kelso, Kilgore, Logan, Nave, Newman, Niles, Rariden, Robinson, Schoonover, Thornton, Todd, and Wiley—26.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Borden, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chero-with, Clark of Hamilton, Coats, Colfax, Cook-erly, Crawford, Davis of Madison, Davis of

Parke, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Garvin, Graham of Warrick, Haddon, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hitt, Holman, Huff, Johnson, Jones, Kendall of Wabash, Kendall of White, Lockhart, Maguire, March, Mather, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Trimble, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—98.

So the motion to postpone the question indefinitely did not prevail.

The PRESIDENT. The question now is on ordering the section to be engrossed for a third reading.

Mr. BARBOUR offered the following amendment:

"The Legislature shall provide by law for the election of a committee of revision to correct the phraseology of acts passed by the Legislature, so as to conform to the Constitution."

On motion the amendment was laid upon the table—ayes 59, noes not counted.

Mr. NILES. I voted in the affirmative on the amendment submitted by the gentleman from Crawford, but I must say in regard to the whole of the amendment proposed to this section, that I think it is entirely unnecessary, and that we had better not incur the Constitution with that which ought not to be there. No man perhaps would have any serious objection to the section submitted by the gentleman from Marion, (Mr. Morrison,) except from the fact that it is utterly useless, and cannot serve any purpose unless it be the purpose of Buncombe. There is no man on this floor but is conscious of the fact, for a sensible Legislature would never be governed by any other rule. If however we are to have it, I hope we will have it in the plainest and simplest form. I, therefore, move a re-consideration of the vote by which the last amendment was adopted.

After some conversation the motion of Mr. NILES was—

Mr. HELMER. I move to amend the section by adding the following:

"And every Buncombe speech shall be made not only in the English language, but also in the French and German languages, so that all those persons who belong to either of these classes of inhabitants may have an opportunity of reading them in their own language, and of judging for themselves of their respective merits." [Roars of laughter and applause.]

Mr. NEWMAN. I move to amend the

amendment just offered, by adding the following:

"And all names commencing with 'Mac' shall be hereafter rendered into good English." [Continued laughter and applause.]

A motion being made to lay the amendment and the amendment to the amendment on the table,

Mr. KELSO asked for a division of the question, and hoped the question might be taken first on the amendment offered by the gentleman from Wayne.

The question was then taken on laying the amendment of Mr. NEWMAN on the table.

Which was decided in the affirmative.

The question then re-occurred on the motion to lay the amendment of Mr. HOLMAN upon the table, and it was decided in the affirmative.

Mr. RITCHEY. I voted for the amendment of the gentleman from Crawford, and I now move for a re-consideration of that vote, and I ask the yeas and nays.

The yeas and nays were ordered.

Mr. RITCHEY. A gentleman here has asked me why I have made this motion to reconsider, and as other gentlemen may be disposed to ask the same question, I will answer them all at once, by stating my reason to the Convention. I believe that a majority of the members of the Convention are determined to insert the proposition offered by the gentleman from Marion, or something similar to it in the Constitution; and I see a disposition on the part of many members of the Convention to render the proposition as ridiculous as they can make it. If it is to go into the Constitution at all, I wish to see it go there in as proper a shape as possible. Any man who knows anything of legislation must know that the Legislature will have the power to print the laws of the State, either in the French or the German, or any other language if the population of the State requires it, and there is no necessity, therefore, for such a provision in the Constitution.

Mr. KELSO. Now in reply to the remark of the gentleman who was last upon the floor, that some of us were anxious to make this provision as ridiculous as possible, I must be allowed to say to him, that he is entirely mistaken, for I declare it to be beyond the ingenuity of man to make the proposition more ridiculous than it is. [Laughter.] Now if that section is adopted, with the proviso stricken out of it, we shall be compelled to render all our laws in English, and where then will be your Dutchmen and Frenchmen? Sir, I think it is the best possible thing we can do to print our laws in the language of these foreigners. We ought to make them acquainted with the law as early as possible.

They come here, and we make them voters in six months after they arrive, and yet at the same time we refuse to furnish them with the

laws in a language which they can understand, while we require of them obedience to those laws. Now if it is all to be in plain English, and we are to strike out all technical terms, how much of it may be in French or German? Clearly none at all, for you provide that the Legislature shall be bound to render all laws in the plainest English. [A voice—"that is right."] I say that the Frenchman and the Dutchman should be furnished with the laws which are to govern him in his own language. An old Dutchman comes here who has been educated in his own language, and you cannot expect him in the decline of life to go to school and learn a language which he did not acquire in his youth. He might learn the laws and the Constitution of the State of Indiana if he had them furnished to him in his own language. The same then may be said of Frenchmen and other foreigners, who are in the country. I say it is unreasonable to expect them to obey your laws unless you furnish them with the means of knowing what they are. But seriously, Mr. President, I would ask what necessity for all this being engrafted in the Constitution? Sir, gentlemen act and talk here as if all our legislative bodies for the future were to be composed of a set of unmitigated scoundrels—men who do not intend to pay the least regard to the wishes of the people, but to act just as they themselves may please. Sir, I think there is no reason to apprehend that in future we may not have good, and honest, and intelligent men to perform the business of legislation. We have nothing whatever to fear on that score. We are safe without this section, and if it is to be adopted, I say let the proviso go with it.

Mr. MORRISON of Marion. Mr. PRESIDENT: I would wish to approach this subject without any excited feeling. I most seriously considered it to be my duty to introduce this matter, and I now most particularly disavow the intentions of making Buncombe, any further than as such a thing may naturally accrue to a man who may do a good action, and who may, therefore, be entitled to the credit of it, if it results in good to the community. The gentleman from Laporte, (Mr. Niles,) for whom I have always felt the greatest respect, both in regard to his legal and philosophical opinions, seems to think that no good can come of my proposition except for Buncombe. Now, if that gentleman will look to the Constitution of the State of New York, he will find that the language used in that instrument in regard to this point, is almost precisely the same as that which I have offered. Sir, is it merely for Buncombe, or is it to effect a practical and useful improvement in the verbiage of the laws, so as to accommodate them to the language of the people? This is all that I desire—all that I am at; and yet I see a proneness on the part of gentlemen (probably unintentional), to imagine the words in the section to contain more than they really do. The gen-

tleman from Switzerland thinks that the words of the section are so broad as to require that everything in the shape of a Latin word should be expunged from a statute. No such thing; he is entirely under a misapprehension. They require only that the Legislature shall, as far as practicable, use English words in preference to Latin words.

Now, sir, let me allude to another argument against the section which was offered in another part of this Hall—that is, that because certain courts use technical terms, and printers and physicians, and members of other crafts and professions do likewise, it is not, therefore, within the purview of our duty to provide that the laws of the land shall be made in such a way as to be plainly understood by the people. Why, sir, these technicalities affect none but those who are perfectly acquainted with the terms of their trade. I am a printer, and when I go into a printing office, I understand all the technical terms appertaining thereto; but, so far as that is concerned, I am the only person benefited thereby. But these technicalities in the law affect the whole country. It is not to be supposed that men would ordinarily desire to understand all the technicalities of a printer, or of an apothecary—but the distinction is widely different in regard to law making. The gentleman from Jennings (Mr. Prather), says, that he is a farmer, and that if these words are to be changed in the statute book, on the same principle he might be required to change the terms which he uses in driving his cattle. I should be sorry, sir, if the gentleman should be under the necessity of changing his farming vocabulary, and of finding more lengthy substitutes for "Gee," and "Haw," and "Wo;" I assure the gentleman that I had no such intention in my proposition, nor do I think it would bring out such a result.

Mr. PRATHER. The gentleman from Marion did not understand me.

Mr. MORRISON. Perhaps I did not; but that was the impression made upon my mind by the gentleman's remarks. Now, in regard to the amendment offered by the gentleman from Crawford, I think it is irrelevant, but not of such a character as to destroy the effect of my proposition. It is mere surplusage; but even with that amendment upon it, I prefer to have the section engrossed and passed and made a part of the Constitution. I hope that gentlemen will not suffer the trickery of any set of men, who may attempt, insidiously, to defeat the section, to effect that purpose. I believe that there is a determination on the part of the Convention to pass the measure as a matter of principle; and I think that a majority of gentlemen here, have too much good sense to allow dust to be thrown in their eyes, for the purpose of defeating their object.

Mr. WALPOLE. I am one of those who voted for the amendment of the gentleman from

Crawford, and I think it is a very proper amendment. During the time that I have had the honor of serving my constituents, both in the Senate and the House of Representatives, I have encountered not a little obloquy in the efforts that I made to have the laws of the General Assembly published in such form as to be available to the foreign population of the State. There are in my county about five hundred Germans, who are wholly unacquainted with the language of their adopted country. Year after year have I introduced a proposition of this kind in the Legislature, though without success. Not only from my county, but from various other counties in the State, have petitions been sent to the General Assembly, praying for the publication of the laws in the German language. In the State of Indiana, I suppose there are about ten thousand Germans unlearned in the English language, and for the last ten or fifteen years, they have been petitioning the Legislature to publish the laws in the German language, and they have as constantly been refused. From all the experience that I have had, I see no other way to obtain this right, unless it be provided for by a Constitutional injunction. As the amendment now stands, it is an absolute direction to the Legislature to publish the laws in the French and German languages. When the gentleman employs the word "may," it is equivalent to a positive direction in regard to all public acts, although, in regard to private acts, it is discretionary with the Legislature.

Then, sir, the gentleman from Marion is mistaken with regard to the spirit that has governed certain gentlemen in rendering their votes; and I was astonished that the gentleman from Johnson (Mr. Ritchey), should have regarded this proposition as a humbug, and evinced a desire to retrace his steps. If you are to accommodate your English population with a translation of every Norman French, Latin, or Greek word that may be used, why not, at the same time, have your laws published in a language spoken by ten thousand people in the State, who cannot read English? It may be contended that these people are not interested in the administration of public justice, and that a thousand things have been enacted by the Legislature, that have a bearing only upon private individuals. However forcible this argument may have been as to the past, it has no force in regard to the future, for our legislation henceforth is to be general, and applicable alike to all our citizens. And, although there may have been a thousand laws of a private character, passed in former years, in which these people could feel no interest; others have been passed in which they were deeply interested—as, for instance, in the mode of acquiring property, the assessment and collection of taxes, and a variety of other important matters connected with the administration of the government which they will desire to understand, without being

obliged to go to a lawyer. I shall, therefore, stand by the vote which I gave this morning, that we should have the laws published, for the benefit of that portion of the population who cannot read English, in their own language. Seeing that the Legislature has, year after year, refused to do this, I hope the amendment will stand so as to impose this duty upon them by Constitutional obligation.

Mr. NAVE. I must confess that I have been astonished at the course which gentlemen have taken to-day in regard to this proposition. Sir, what is the supposition which it implies? Why, sir, it supposes that if these Latin phrases are expunged, the entire community of the State of Indiana, learned and unlearned, will become acquainted with the laws, so as to dispense with the necessity of consulting a lawyer. The absurdity of such a supposition is so obvious that it need not be dwelt upon, for I maintain that if every technicality were swept from our law books this very moment, there would not one man more understand law than now understands it. On the other hand, so far from the change hurting those who follow the profession of the law, it would do them a positive good; for the change would inevitably result in so much confusion and misapprehension on the part of the ordinary reader, that he would find it absolutely necessary to resort to a lawyer, and the fees of the gentlemen of the bar would consequently be greatly increased. Every lawyer understands this perfectly well; so that no charge of interested motives on their part in opposing the proposed change can be sustained against them with anything like a show of justice.

Now in regard to publishing the laws in the German language, I would simply remark that I am opposed to striking out the proviso; because I hold that it is unjust to punish men for violating the laws, when you give them no opportunity of understanding what those laws require. Sir, you might just as well adopt the plan of Draco—to print your laws and then place them so high that no man can read them, and yet punish men for their disobedience. I am in favor of publishing the laws in German and French, in order that these people may have an opportunity of reading them in their own language, and of thus acquiring a knowledge of what they provide. If then they violate them, they violate them knowingly, and they are without excuse. I trust, therefore, that the proviso will not be expunged from the section.

Mr. FOSTER. I am in hopes that the motion of the gentleman from Johnson, (Mr. Ritchey,) to re-consider the vote, will prevail. I have been fully convinced of the necessity of this by the remarks of the gentleman from Hancock (Mr. Walpole). That gentleman has informed the Convention that he made many unsuccessful efforts in the Legislature to have the

laws of the State published in the German language. Now I am opposed to having the laws of the State published in any other language than our own, for if we encourage this cultivation of another language, we never can become an homogenous people. What is the course adopted in other countries? Do we find the laws of France published in English for the benefit of the crowds of Englishmen who flock to that country, or the laws of England published in French for the benefit of the Frenchmen in England? No, sir; nothing of the kind; and to do so in our country is only to create, and foster, and sustain those national prejudices which foreigners always bring with them to this country. This country, sir, is regarded as the asylum of the oppressed. So I would ever wish it to be; and when we open the hand of benevolence, and greet the foreigner with a hearty welcome, I think he can do little less than endeavor to learn our language. Sir, we do not want to create a sort of *imperium in imperio*, by having a nation of Germans or of Frenchmen within the United States; and I hope that no measure will ever emanate from any legislative body to print the laws in any other language than our own.

I contend that it shows a want of patriotism thus to attempt to disfranchise our own language, either in favor of French, or Dutch, or any other. This is all I have to say. I hope the vote will be re-considered, and the amendment rejected; for I should almost despise myself if such a disgraceful provision ever emanated from this Convention.

Mr. HOLMAN. The chief argument which I have heard in favor of the section offered by the gentleman from Marion, is that we should abandon the use of technical terms in our laws, because they are not generally understood by the masses of the people. Now I think the same argument operates with equal, if not with greater force, in regard to the proviso of the gentleman from Crawford. There are in the State of Indiana perhaps ten thousand German voters. There are in the State, entire townships in which none but Germans reside. These townships have all their local business to transact as well as those townships peopled by our native born citizens, and as all laws relating to the management of township business are to be general, it is a matter of importance to these Germans to know what these laws are. In my own county there are one or two townships that are almost entirely filled with a German population; and it is well known that the German emigrant coming to the United States late in life, seldom becomes acquainted with our language. If the object is to make the people familiar with the laws of the country, we should adopt this proviso for the benefit of those who come among us from other countries, and from whom we require the same obedience that we require from our own people. It was

well remarked by a gentleman upon this floor, that the law should be brought within the knowledge of every citizen, in order to render just the punishment of disobedience. In that remark I most cordially concur; and I trust the proviso will not be stricken out. I hope that the section will not only be adopted as it now stands, but that the Legislature will put the same construction upon the word "may" as has heretofore been placed upon it in such connection.

The question was then taken on the motion to re-consider, and there were yeas 35, nays 83—~~as follows~~:

YEAS.—Messrs. Badger, Bourne, Bracken, Bright, Brookbank, Clark of Hamilton, Clark of Tippecanoe, Coats, Conduit, Cookerly, Duzan, Foster, Garvin, Gootee, Gregg, Haddon, Helmer, Hitt, Kendall of White, Kinley, Logan, McLean, Morgan, Mower, Murray, Niles, Ritchey, Schoonover, Shannon, Snook, Steele, Stevenson, Thomas, Watts, and Mr. President—35.

NAYS.—Messrs. Alexander, Anthony Barbour, Bascom, Beach, Beard, Beeson, Berry, Blythe, Borden, Bowers, Bryant, Butler, Carr, Chandler, Chenowith, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Edmonston, Eliott, Farrow, Fisher, Frisbie, Gibson, Gordon, Graham of Warrick, Hall, Hamilton, Harbott, Helm, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kelso, Kilgore, Lockhart, Maguire, March, Mather, McClelland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Nave, Newman, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Ristine, Robinson, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Steele, Tague, Tannehill, Taylor, Thornton, Trimble, Wallace, Walpole, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—88.

So the motion to re-consider the vote on the proviso did not prevail.

Mr. WATTS. I move to amend the proviso by inserting the following in the proper place:

"And the Constitution, and the decisions of the Supreme Court."

I am in hopes, if it is determined to publish the laws in the German and French languages, that my amendment will be adopted, for the Constitution and the Supreme Court are the paramount law of the land.

By giving these people the Statutes only, we would only be likely to lead them astray. It would be like giving them the law by piecemeal. I am for going the whole figure.

Mr. DUNN of Perry moved to lay the amendment on the table.

The motion was agreed to on a division—there being yeas 75, noes 44

Mr. MORRISON of Marion moved the previous question, which was sustained.

Mr. KELSO. If it is not too late, I respectfully ask that we may have the yeas and nays on the question of engrossing the section for a third reading.

The yeas and nays were ordered, and being taken, resulted as follows:

AYES.—Messrs. Alexander, Anthony, Badger, Balingall, Bascom, Beach, Beard, Beeson, Berry, Bowers, Bracken, Bright, Brookbank, Bryant, Chandler, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Elliott, Farrow, Fisher, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hitt, Holman, Huff, Johnson, Jones, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Read of Clark, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimble, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—104.

NAYS.—Messrs. Barbour, Blythe, Bourne, Clark of Hamilton, Clark of Tippecanoe, Dunn of Jefferson, Foster, Gibson, Gootee, Helmer, Hovey, Kelso, Kendall of White, Kilgore, Logan, Niles, Read of Monroe, Robinson, Schoonover, and Mr. President—19.

Mr. BORDEN. I wish to have my vote recorded in favor of the section.

The PRESIDENT. Was the gentleman from Allen within the bar when his name was called?

Mr. BORDEN. No, I was conversing with a gentleman outside the bar.

The PRESIDENT. The gentleman is too late. His vote cannot be recorded.

Mr. STEVENSON. I offer the following as an additional section:

"The Legislature may confer upon the boards doing county business in the several counties in the State, such powers of a local, legislative, and administrative character, as they shall from time to time prescribe."

Mr. NILES. I would suggest the propriety of this section being referred to the committee on local and special legislation, and move that it be so referred.

The motion to refer was agreed to.

On motion, the Convention adjourned.

SATURDAY, DEC. 14, 1850.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. Crumbacker, a Delegate from the county of Lake.

The Journal of yesterday was read and approved.

The PRESIDENT laid before the Convention a communication from the Governor, enclosing a letter from a joint committee of the Legislature of Kentucky appointed to forward to this body a copy of certain resolutions of the Kentucky Legislature in reference to the resolutions adopted by the Convention in relation to the death of Col. Richard M. Johnson, expressive of their high appreciation of the course pursued by this body on that melancholy occasion.

The communication and resolutions were read, and

On motion by Mr. THORNTON, they were ordered to be spread upon the Journal and published with the debates.

RESOLUTIONS.

The PRESIDENT. This being Saturday resolutions are in order.

The Convention will first take up the resolutions that have been laid over.

The first resolution is that offered by the gentleman from Lake, (Mr. Crumbacker.) The Chair is uncertain whether this resolution has been acted upon or not.

Mr. CRUMBACKER. It has not been acted upon. I am willing to leave it to the action of the Convention without any remarks, for I do not wish to consume time, but I would like to have the yeas and nays upon it.

The resolution was read. It directs that the first section of the first article of the present Constitution, which declares that all men are born free and equal, &c., be inserted in the new Constitution.

Mr. PETTIT. My recollection is, that that resolution was laid upon the table.

A VOICE. "Certainly it was."

Mr. CRUMBACKER. The gentleman from Tippecanoe, I think, is mistaken. The resolution being imperative it was laid over until the following Saturday, and on that day the resolutions of the gentleman from Wayne were brought up, and occupied the whole day, as will be recollected.

Mr. PETTIT. When the first section of the Constitution was up for consideration, the corresponding section in the present Constitution was proposed to be inserted, and it was, I believe, laid upon the table. I do not design to discuss this question again; it has been fully discussed already. I have on a former occasion, endeavored to point out that the section in the old Constitution is not true in fact, if true in theory. I do not believe it is true in theory. Men are not created equal. I said,

probably, on that occasion, that men were not born or created equal. Perhaps I should have employed the word "persons," to make myself more clearly understood. Persons are not created equal. The declaration in that section is not true, and I protest against putting anything in the Constitution that is not true in fact as well as in theory. I move that the resolution be laid upon the table.

Mr. CRUMBACKER demanded the yeas and nays, and they were ordered.

Mr. DOBSON. I wish merely to make a short explanation.

The PRESIDENT. The Chair would remark —

Mr. DOBSON. I know, sir, that debate is not in order, but this subject has all been acted upon already —

Mr. BORDEN (interposing). Is it in order to debate the question? If so, I wish to take part in it.

The PRESIDENT. It is not in order.

The yeas and nays were then taken on the motion to lay the resolution on the table, with the following result—yeas 81, nays 35—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Bascom, Berry, Blythe, Bourne, Bowers, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Coats, Cookerly, Crawford, Davis of Parke, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Garvin, Gibson, Gootee, Graham of Warrick, Haddon, Hall, Harbolt, Hardin, Helm, Helmer, Hendricks, Holman, Huff, Johnson, Kelso, Kendall of Wabash, Kendall of White, Lockhart, Logan, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison, Marion, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Tannehill, Thomas, Trimble, Wiley, Wolfe, Yocum, Zenor, and Mr. President—81.

NAYS.—Messrs. Anthony, Ballingall, Beach, Beard, Beeson, Borden, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Crumbacker, Davis of Madison, Dunn of Jefferson, Frisbie, Gregg, Hamilton, Hitt, Kilgore, Kinley, Maguire, March, Mather, May, McClelland, Morgan, Mowrer, Newman, Rariden, Smith of Ripley, Thornton, Wallace, Walpole, Watts, Work, and Wunderlich—35.

A resolution heretofore offered, requiring the committee on public institutions to report an article to be inserted in the Constitution directing the Legislature to provide for the deaf and dumb, the blind and insane, was then taken up.

The question was taken upon its adoption, and decided in the affirmative.

A resolution heretofore offered by Mr. Chapman, instructing the committee on criminal law to report a section to be inserted in the Consti-

tution providing that embezzlement of public funds by any public officer shall be deemed a felony, and shall subject the offender to such punishment in the penitentiary as the General Assembly may provide, was taken up for consideration.

The resolution having been read by the Secretary,

The question was taken upon its adoption, and decided in the affirmative.

A resolution heretofore offered by Mr. Hendricks, instructing the committee on miscellaneous provisions to report a section to be inserted in the new Constitution providing that all county officers shall continue to hold their respective offices until the expiration of their several terms, provided that no officer shall continue in office after the adoption of the new Constitution for a longer time than a term of the office under the same, was taken up for consideration.

The question being on the adoption of the resolution, the yeas and nays were demanded, and they were ordered.

Mr. WALPOLE moved to amend, by striking out all after the word "resolved," and inserting the following:

"That the present incumbents shall perform the duties of their respective offices until superseded under the authority of the new Constitution."

Mr. EDMONSTON moved that the amendment be laid upon the table.

Mr. WALPOLE demanded the yeas and nays, and they were ordered.

Mr. GIBSON (addressing the Chair). Is it in order to amend the motion, by including the original resolution?

The PRESIDENT. The Chair is inclined to think that it is not in order to amend the motion.

The yeas and nays were then taken, and resulted—yeas 91, nays 31—as follows.

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Berry, Blythe, Borden, Bourne, Bowers, Brookbank, Brayant, Carter, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Gregg, Haddon, Hall, Hamilton, Helmer, Hendricks, Hitt, Hovey, Huff, Kelso, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Morgan, Morrison of Marion, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Monroe, Ristine, Shannon, Shoup, Sims, Smiley, Snook, Spann, Steele, Tague, Tannehill, Taylor, Todd, Trimble, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—91.

NAYS.—Messrs. Barbour, Bracken, Butler,

Carr, Davis of Madison, Davis of Parke, Dobbson, Dunn of Perry, &c., Gibson, Graham of Warrick, Harbott, Holman, Johnson, Mooney, Moore, Mowrer, Nave, Nofsinger, Rariden, Read of Clark, Schoonover, Sherrod, Smith of Ripley, Smith of Scott, Stevenson, Taylor, Thornton, Wallace, Walpole, Work, and Mr. President—31.

So the amendment was laid on the table.

The question being on the adoption of the resolution.

Mr. BRACKEN. It would seem, Mr. President, to be in vain, after the overwhelming vote that has just been given to lay the amendment of my friend from Hancock on the table, to undertake to argue against the evident determination of the Convention. Yet I think it will be well enough before we proceed with such haste, that we should pause and consider what it is that we are doing. This resolution is an imperative resolution, requiring the committee to report specifically the provision contained in the resolution. I for one, sir, believe that we came up here to make a Constitution, to be submitted to the free electors of Indiana, for their approval or rejection. But the people never expected that we were coming up here to create officers for them. No one ever dreamed when this Convention was called, that we were going to keep those old hunkers in office, forever. But as soon as we come up here, we set to work, not only to make a Constitution, but to create officers under it. It is certainly a most extraordinary course for this Convention to pursue. I, for one, believe that offices are made for the benefit of the people, and not for the benefit of the officers. Sir, it is a perfect outrage upon the community, to stand up here and say that we will designate the officers who shall serve under the Constitution that we are making; for it amounts to that. It is the same as if you were to say that A. B. & C. shall be the men who shall fill the offices. You make it an imperative matter. I submit to this body that we were never sent here for such a purpose as this. I am not for legislating people into office. We were never sent here for any such purpose, and if you adopt a proposition like this you will place yourselves in a false position, you will force the people, when they come to vote upon the question of the adoption or rejection of the Constitution, either to vote for its rejection, or else to give their votes for retaining in office these old hunkers. Why, sir, one of the chief objects of calling this Convention was to get rid of the old office holders, those who hold their offices in perpetuity. You have adopted a provision declaring that hereafter offices shall be held, some for four years, and some for a shorter period, and now you propose to let those who already fill the offices, continue to hold them, you make them by your vote, officers under the new Constitution. Sir, you might as well declare who shall be the first

Senators and Representatives, under the new Constitution. You have just as much right to do the one as you have the other. It is all wrong. I submit to gentlemen, with due deference, that it is a thing which we were never sent here to do. I for one, protest against it. When the proper time comes, I expect to take part in the election of these officers, but I shall most assuredly decline taking part, as a member of this Convention, in the creation of officers to serve under the new Constitution. I shall not so far interfere with the rights of the people—those rights which we came here to secure to and protect. I call upon gentlemen to reflect before they adopt a proposition of that character.

Mr. SMITH of Scott. I move to amend the resolution by adding the following:

"Said term to be estimated from the date of his election."

Mr. EDMONSTON. I cannot see for my life, the force of the argument of the gentleman from Rush. The gentleman says that we are about to legislate men into office for an indefinite period. Now I appeal to gentlemen on this floor, if the people have not put these officers into office with the expectation that they would continue to serve during the period for which they were elected—during the term of their respective offices as prescribed in the old Constitution.

Mr. BRACKEN. If the gentleman will permit me to set him right, the remark I made was this: That one of the chief motives for calling this Convention was to get rid of these interminable office holders.

Mr. EDMONSTON. Precisely so. But what does this amendment propose? It proposes that no man who now holds an office under the present Constitution, shall serve for a longer period than the term of office provided by this Constitution. Now I submit to gentlemen whether, if the people had anticipated that we were coming up here to legislate all officers under the present Constitution, out of office, to turn out all those whom the people had themselves entrusted with office—I submit to gentlemen whether, if the people had supposed this, this Convention would have been called or not? I think it would not. And I submit, also that if they adopt, with a provision, it may have the effect of raising up a formidable opposition to the Constitution, and may occasion its rejection. You will, at all events, have all these office holders and those who elected them to office, bringing all the influence that they can exert to bear against the Constitution, and the influence they can bring to bear will not be inconsiderable. Having canvassed their districts for the office they hold, and having been elected for a certain period of time, if they should now be summarily ejected from office, and thrown back upon the people for their suffrages again, they will, undoubtedly, raise up a

powerful faction against you, and will probably be able to defeat the adoption of your Constitution by the people. And in another view it is not right. The freemen of the various counties having chosen men to fill certain offices for a definite period of time; what right have we to say to those men they shall not serve? What right have you to throw them back to canvass the district again, at a heavy expense, and at much cost and trouble to the people? Would it be right and proper? I think it would not, and I think we should not do it. If we adopt this resolution, we say that these men shall serve during the term for which they were elected, or, until the expiration of the term prescribed by the new Constitution. No matter which Constitution they serve under, the old or the new. Their obligation to serve the people faithfully is the same. The gentleman from Rush asks how officers under the old Constitution can be officers under the new. Will the fact of the adoption of a new Constitution change the obligation of the oath they have taken under the old, so far as these officers are concerned? Why the idea is preposterous in the extreme: That a man is absolved by the adoption of the new Constitution, from the obligation which he incurred when appointed to office under the old Constitution, to serve the people faithfully.

Mr. WALPOLE. The sentiments of gentlemen seem to be somewhat changed within a few days. There was not long ago, evidently a majority of this body in favor of removing the old incumbents from office. In my opinion the gentleman from Rush has assumed the correct ground, that when you adopt this provision you are legislating men into office. How do they get office? They derive it from the existing Constitution. When the old Constitution passes away, those who were constituted officers under it, cease to be officers, they pass away along with it. When the Constitution under which they received office ceases to exist, their offices of course, also cease. This provision if adopted into the new Constitution, will confer powers upon them which were heretofore conferred by the old. When an individual has a right conferred upon him under the provisions of the law, he can enjoy that right only so long as the law which confers it continues in existence; but the moment the law is repealed, or otherwise ceases to exist, his right ceases. So it is with the present incumbents of offices, derived from the present Constitution. The moment that Constitution ceases to be the supreme law of the land all the rights they enjoy as such officers, all the emoluments of their offices pass away with it. What does the gentleman from Dubois propose? He proposes that, although the Constitution shall have passed away, yet those who derived their offices from it shall continue in office. To that I object, because it is anti-republican. We declare that all power resides

in the people, and the moment you declare in your written Constitution that a certain class of persons shall hold office, that moment you deny to the people the right of sovereignty. You might as well declare in the new Constitution that the present Governor shall continue to exercise the functions of his office for six years, as to declare that the clerk of a county shall be an officer under the new Constitution for a certain period of time. The principle is the same. You deny the sovereign power of the people, and say that you will act for them until a given period. But what further does the gentleman's amendment propose? One of the articles in the new Constitution provides that there shall be biennial elections. You do not then make the same provision in regard to elections that is contained in the old Constitution, and the gentleman's proposition is, that sheriffs and other officers shall continue to hold their offices under the new Constitution not exceeding a term of office under the same. Suppose that before the adoption of your Constitution, a sheriff should be elected and should serve his year nearly out; then under this provision of the gentleman from Shelby, if adopted, he would continue in office and serve a year longer, without a re-election; and at the expiration of the several twelve months—there being only biennial elections and consequently no election until the second year—the office would necessarily become vacant, or if a provision be inserted, as will probably be the case, that all incumbents of office shall continue to hold their respective offices until their successors are elected and qualified, you then make this individual hold the office of sheriff for three years, whereas the people elected him but for one; and there are a hundred cases in which the same thing may happen. I take this ground, that the calling of this Convention to remodel the Constitution of Indiana is a revolution in our government, that the old Constitution is passing away, and that we are sent here to do as if there were no existing Constitution for the State at all; and that we were commencing to form a government *ab initio*. Suppose there was no Constitution, and you was about to establish a paramount law for the State, would you think of putting in a provision that men who derive office from some former authority which had existed but which had passed away, should fill the offices created by your organic law? Then why should you declare that those men shall continue in office, the authority which conferred power upon them having been abrogated? It is urged by the gentleman from Dubois that if you adopt a provision sweeping away the present incumbents you will call to the ballot box an irresistible power against your Constitution. And this, sir, is an argument addressed to an intelligent body of men engaged in the formation of an organic law! That there is an out-door pressure which must be guarded against and

prevented. Ah! I am afraid, sir, that county officers have an influence in this body that gentlemen are not fully aware of. That I apprehend is the out-door pressure that is acting in this case. Their right to retain office is in question. Has it come to this, that this body cannot freely deliberate and determine upon a question like this, without the influence of the public functionaries being brought to bear against the adoption of the Constitution that we are making? If this is the argument I desire to know whether the people of the State are prepared to submit to such a state of things. I want to know whether four or five hundred office holders have the whole government in their hands? It is worth the experiment, it is worth the enquiry to know whether these official gentlemen, with the influence and patronage of four or five hundred county officers, can deprive the people of their just rights? Sir, your Constitution is not worth a bawbee if it can be voted down by the influence of four or five hundred officers. If it can be voted down in that way it ought to be voted down.

I, for one, would like to see these official gentlemen, with their mercenary considerations, endeavoring to act upon the independent will of the elector to induce him to do contrary to what his judgment dictates as being right. It is an argument that is unworthy the place, and it shall have no influence on my mind. Instead of holding his place as the creature of mercenary motives and self-ambition, you would see a hundred who would fail. But I have no desire to enter into a struggle with these officials for the adoption of the law of the land. As was said by the gentleman from Marion, our Constitution should depend upon its inherent merits, and not upon any such influences to induce the people of Indiana to adopt it. The people of Indiana who act, not wholly from selfish motives, but for the public good. They desire to have those persons in office who act with some degree of independence. They do not put men in office on account of the personal influence that they may possess. If the man is worthy, if he has the requisite qualifications, he will be elected. The people will be sure to select such men. Do not, then, by constitutional provision, preclude the electors of this country from electing their own officers. Do not make one provision in regard to one class of officers, and another provision in regard to another. You say that a county clerk elected under this Constitution, shall be in office a certain number of years, yet A, B, and C, the present clerks, shall continue in office for that length of time after the adoption of this Constitution, although they were elected for a shorter period, and may have served the greater part of the term for which they were elected. Let our government be a new government. Let all things become new. It is our duty to carry out reform in every department of the government, and to remove

those officers whose duties and functions are limited under the old Constitution. Why should you retain such officers when the people have determined that the government shall be revolutionized? If you reform the government, let it be reformed in every particular. The out-door pressure which has been spoken of, and which the gentleman from Dubois says will be brought to bear upon the adoption of the Constitution at the ballot box, I hope will not have any effect here. Perhaps I should not say it, but I was going to make the remark, that the men who dread this out-door pressure so much, are the very men who feel it the most.

Mr. KELSO. The other day when this question was before the Convention, I made a few brief remarks. I then favored the same kind of provision that is now proposed, and I am now decidedly in favor of the adoption of this resolution. I have listened attentively to the remarks of the gentleman from Hancock, and I suppose he has traveled over all the tenable ground in favor of throwing all the present officers out, by the action of this Convention. I apprehend that it is a question that he has studied well; and he has made, to be sure, a very able effort, considering that he is on the wrong side of the question. And now if he was a man who had ever been charged with trickery in political life in any way, I should feel safe in saying that his only object in this instance, was to break down the dominant party and to undertake to build up his own. [A laugh.] But I suppose that is not the case. Now he says that if we undertake to create county officers for the people of Indiana, they will put us down, and they ought to do it. The gentleman says that we have not come here to create offices. That is true. We do not come here to legislate men into office. But I ask, on the other hand, in answer to his appeal, do we come here to remove those that are in office? Do we come here to annihilate offices any more than to create them? I say we do not. How did these men get their offices? Were the offices created for them? By no means. Did they acquire them by any inherent right? Certainly not. They have been chosen by the people to fill these offices, for the benefit of the people, and they hold their offices by the will of the people—by the will of a majority, or at least of a plurality. Then why should we take upon ourselves to strike them out of existence, when a majority of the people have chosen them? I say that not one-fifth of the people of Indiana ever entertained the idea that we would do so. They never dreamed of any such thing. The gentleman says we were sent here to organize an entirely new government. Such may have been his instructions, but they were not mine.

Mr. WALPOLE. I said we have the power to do so.

Mr. KELSO. Ah! we have the power, but

I hope we have sense enough, if we have the power, not to abuse it. [Consent.] I will tell you what I believe is our duty: We are to make amendments to the Constitution. The people expect us so to amend it as to have less legislation; at least, less local and special legislation. There should not be so frequent sessions of the Legislature. The people expect that we will alter the judicial system in some respects: more especially the Supreme and Probate Courts. That there shall be a different application of the Seminary Funds: that it shall be given to common schools; and many expect that we will reduce the number of Senators and Representatives.

Now I ask for a precedent, whereby the action of a State Convention, called to amend the existing Constitution, men, whom the people have elected, have been turned out of their offices. It was asserted the other day, in debate, that New York had done so. Here is what was done in New York, and we have it as part and parcel of their Constitution.

Mr. Kelso here read an extract from the Constitution of the State of New York, as follows:

"Sheriffs, clerks of counties, (including the clerk and register of the city of New York,) and justices of the peace, and coroners, in office when this Constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected."

That is what New York did in respect to her then existing officers. Now, sir, there is no precedent, or I am greatly mistaken, where a Convention, acting under the then existing Constitution, have turned men out of office.

It is true, that, upon the organization of a territory into a State, officers appointed by the proper authorities for the territory, go out of office when a Constitution is adopted, and the territory becomes a State. A new system is then commenced, and then, for the first time, under the new Constitution, they fill the offices by new appointments, and the men who held the offices under previous appointment, go out of office, as a matter of course. But I cannot see the utility of proceeding in that way in a case like the present. I cannot see what justice there could be in it. The people have filled these offices; it is with their will and consent that the present incumbents hold them. And if they hold them in that way, I ask, by what right we, a hundred and fifty delegates, assembled here, by the suffrages of a hundred and eighty thousand voters of this State, have to drive these men out of office. If there is any propriety in it, I confess I am unable to see it. Well, the gentleman says that if we turn out these officers, we have nothing to fear from their influence, because those who do not hold office are three or four to one of those who do. Now, that is an argument that I care little about.

But it is, perhaps, worthy of remark, that, if you take the officer who has been elected under the old Constitution, he is able, perhaps, to command a majority of the votes in his county; and if you turn him out, I ask you, does that not introduce this difficulty—there will be not only the influence of the officer who has been rudely and ruthlessly thrust from his place, but you have the influence of that majority who elected him, brought to bear against your new Constitution? I ask you, if we have not more to fear from turning him out than from letting him continue in office? I say if we leave them in office, we shall be doing just what the people expect us to do, and it will not furnish a single vote against the new Constitution. If we adopt such a provision as proposed by the resolution, we have little to fear in submitting the Constitution to the people. I am for leaving these officers where the people have placed them. Let them fulfil the term for which they were elected. And, sir, another remark of the gentleman from Hancock, is, perhaps, worthy, of an answer. The gentleman says that the Convention have determined that the elections shall be held biennially. This is a great mistake. There has been no such determination on the part of the Convention; nor has there been any direct intimation that such will be the determination; that we will not have annual elections. It has been determined also, that there shall be biennial sessions of the Legislature, and that the members of the Legislature shall be elected every two years. But it does not follow, as a matter of course, that if we elect the members of the Legislature for two years, and the Governor for four years, and judges, perhaps, for six years—it does not, I say, follow that we will not have annual elections authorized by law, so that if there is a case of necessity for electing officers between the two general or regular elections, we can do so. It seems to me, if we make such provision, it would be the height of folly, on our part. It would be acting very imprudently, unless we provide that elections shall be held once in each year.

Now one word for the benefit of my friend from Rush. He is a first-rate, clever fellow, in his way, and I only desire to say this—and I do it in all kindness—I think he takes altogether an erroneous view of this matter. It appears to me that an officer who is qualified for the duties of his office, and has been placed in office by the people, ought, at least, to be permitted to remain in office for the period for which the people have elected him. I think the gentleman is greatly mistaken in supposing that the men who are in office under the old Constitution should be relieved from the discharge of their duties under the new. As I have had occasion to say heretofore, I repeat, that the State will not be, for a single moment, without a Constitution. The old Constitution will be in force and effect up to the time when

the new Constitution is adopted by the people. If we were to be without a Constitution, we should cease to be a State; and an officer who continues to serve is as much bound by the obligation of the oath he took originally to support the Constitution of the State of Indiana—he is as much bound, I say, to support the new Constitution which the people have substituted for the old, as if he had taken an oath fifty times over to support the new Constitution. That is my opinion of the subject, and I am decidedly in favor of adopting the original resolution, without any of the amendments.

Mr. MAGUIRE. I have not studied the operation which this measure may have upon political parties, nor the effect it may produce in reference to the adoption or rejection of the new Constitution. I must say, however, that I think the resolution is about right. The proposition is such a one as I intended to introduce in the proper place, if it should not be proposed by any other member. It provides that county officers, elected by the people, shall serve out the term for which they were elected, provided the time shall not run beyond the term established by the new Constitution. The gentleman from Rush (Mr. Bracken) argues that this will legislate into office one-half of the county officers in the State. Now, Mr. President, I do not so understand it. We legislate no man into office. The officers whom this proposition will reach were elected by the people. We only declare that the action of the people shall not be disturbed, except so far as to curtail the terms of officers, so that they shall conform to the terms of the new Constitution. The gentleman says we did not come here to keep old hunkers in office. To this, I have to reply, that, if the individuals who hold the county offices throughout the State be old hunkers, they are such hunkers as the people themselves have elected. So far as I am concerned, I feel perfectly disinterested on this subject. I have no relative in any office in Marion county or anywhere else that I know of. A majority of those holding office in Marion county are opposed to me in politics. My object is to do what is fair and equitable; and this, in my judgment, will be accomplished by the insertion of a provision in the Constitution such as is contemplated by this resolution. The provision will shorten the terms of many of the officers—clerks and recorders, for example—whose terms, by the old Constitution, run for seven years. It will be a compromise with which they will doubtless be content.

Mr. President, one of the leading objects of the people in calling a Convention, no doubt, was—not, as has been contended, to turn out those whom they themselves have elected—but to bring under their control those officers in whose election they have hitherto had no direct agency. They desire to resume the power, of which they were deprived by the old Constitu-

tion, of choosing their State officers, Judges of the Supreme and Circuit Courts, &c. If I have not mistaken the public will, it is that those officers who have not been chosen by the people should not be continued in office longer than may be necessary to make arrangements for an election by the people; but that they do not desire any interference, except as is provided in this resolution, with those who have received their offices directly from them.

The gentleman from Hancock, (Mr. Walpole), who has argued the other side of this question with much ability, alleges, among other objections to the proposition, that it will, in some instances, continue officers longer than the term for which they were elected. That of course would be a valid objection, and if it were a necessary consequence should defeat the proposition. The gentleman contended that under the new Constitution elections would be held biennially, and that a sheriff or other officer, whose term should expire in the year during which no election should take place, would be compelled to hold on until the succeeding year, and hence he argued that all should go out at once, and commence regularly under the new Constitution. The gentleman from Switzerland replied to this by saying that annual elections would still be held for county officers; and I would say further, that even if elections should only take place biennially, it can be so arranged that officers may be elected the year before they enter upon the discharge of their duties. In several of the States members of Congress are elected a year before their term of service commences; and the same arrangement certainly might be made in regard to our county officers. There surely need be no difficulty in carrying out the proposition, and it seems to be founded in justice. The Convention no doubt has the power, in the case of county as well as State officers, to provide for new elections immediately on the adoption of the new Constitution, but it seems to me that in the former case, those officers having already been elected by the people, it would not be proper to exercise the power.

Mr. PRATHER. I am tired of hearing speeches upon this subject, and I am satisfied that the minds of members are made up in reference to it. I, therefore, move the previous question.

The previous question was seconded, and the main question was ordered to be now put.

The question was taken upon the amendment, and it was decided in the negative.

The question then being upon the adoption of the resolution.

The yeas and nays were demanded, and being ordered were—yeas 93, nays 28—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Balingall, Barbour, Bascom, Beach, Beard,

Blythe, Borden, Bourne, Bowers, Brookbank, Bryant, Carter, Chandler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Vermillion, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Foster, Frisbie, Gootee, Gregg, Haddon, Hall, Harbolt, Hardin, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kelso, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Morgan, Morrison of Marion, Newman, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ristine, Shannon, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Tannehill, Thomas, Wallace, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—93.

NAYS.—Messrs. Badger, Beeson, Berry, Bicknell, Butler, Davis of Parke, Dobson, Dunn of Perry, Fisher, Garvin, Gibson, Graham of Warwick, Mooney, Moore, Mowrer, Nave, Pettit, Rariden, Read of Clark, Schoonover, Sherrod, Smith of Ripley, Stevenson, Taylor, Thornton, Walpole, and Mr. President—28.

So the resolution was adopted.

The resolution offered by Mr. HALL, for rescinding the vote which sets apart Saturday for the introduction of resolutions, was then taken up.

The resolution having been read,

Mr. BORDEN. I hope the rule will not be rescinded. Saturday is the only day on which gentlemen have an opportunity to introduce resolutions, and if it be left to depend upon the consent of the Convention to suspend the rules as a matter of courtesy to gentlemen, it may be done at the request of some gentlemen and refused to others. Some gentlemen may have the courtesy extended to them and others not. I recollect one gentleman having asked permission to record his vote, and permission was granted by unanimous consent. Another asked the same privilege, and it was as unanimously refused. Now let us all be on an equality in regard to the privilege of introducing propositions, for one day in the week at least. The change that has been made in our rules by the proposition of the gentleman from Putnam, is a very great innovation upon the proceedings of a body like this, and I think we should make no further innovation.

Mr. READ of Clark. The gentleman from Allen must be in error. He certainly does not understand the matter. Instead of abolishing the privilege of introducing resolutions, it is increasing and extending it. We shall have the privilege of introducing resolutions every day in the week instead of being restricted to one day. The introduction of resolutions will form part of the order of business for every day.

Mr. BORDEN. Will that be the effect of it?

Mr. READ of Clark. That will be the effect, and the only effect. Therefore I am in favor of the adoption of the resolution.

Mr. DOBSON. I think the gentlemen from Clark is wrong, and the gentleman from Allen is right. I know that resolutions will be in order once each day, provided we reach that point in the order of business. But we are continually engaged with reports from committees, and resolutions would never be reached. That was the reason for adopting the rule setting apart Saturday for the introduction of resolutions. So far as I am concerned, I believe, I have not introduced a resolution, except one, and that was under a suspension of the rule. But I take it we ought not to close up the avenues to information in this way. I think we ought to set apart one day for ourselves. We ought to leave at least, this one means by which those who are not in the habit of speaking, may lay their views before the Convention. There are many members of this Convention who are able to enlighten us upon important questions, if they had the privilege of introducing resolutions. There are a good many gentlemen here who are not accustomed to act in deliberative bodies, and who have not perhaps, so large a share of confidence as some of the rest of us here. They should have an opportunity of laying upon the clerk's table, their opinions in the shape of resolutions. But if you declare that resolutions shall only be introduced when it is permitted by the regular order of business, I tell the gentleman that that order will never be reached until we have finished the Constitution. And if it be made necessary to ask a suspension of the order of business for the purpose of introducing resolutions, it will occupy more time than if we were to devote one day in the week to that purpose.

Mr. READ of Clark. My friend has attempted to correct me, but I think upon an examination of the standing order of business, he will find that he is wrong himself. I hold in my hand the standing order. By that order the introduction of resolutions takes precedence of the several orders of the day, following immediately after the introduction of reports from committees. As soon as the reports are made from committees—which occupies not more than half an hour—resolutions are in order, previous to taking upon the orders of the day.

Mr. BORDEN. Let me correct the gentleman. On the motion of the gentleman from Putnam, the orders of the day have precedence over resolutions.

Mr. READ of Clark. Oh! if there has been a new order adopted, I come down. [A laugh.]

Mr. HOVEY offered the following amendment:

"And no resolution shall be offered without the consent of the Convention."

I think, said Mr. H., that we have had resolutions enough. I think that our labors would have been curtailed if we had had none. Day after day resolutions have been offered that were wholly irrelevant to the matters under consideration, altogether unnecessary, and sometimes the same resolution offered as many as four times. One day in each week has been devoted to this purpose, and it appears to me that it is time altogether thrown away, as the same end can be accomplished by amendments.

Mr. NAVE. I am one of those who consider that there has been an unnecessary waste of time in discussing motions to do away with action upon resolutions. And I would call the attention of this Convention to one fact, that where resolutions have been offered that have not been adopted, they have, almost universally, come up again for our consideration in the form of amendments, or in the shape of substituted sections. Then, sir, we unnecessarily consume the time of this Convention by offering resolutions when there is a time presenting itself every day in the regular order of business, when a member can introduce his proposition in the form of an original section, or amendment to be incorporated into the Constitution. Then, sir, the privilege which it is claimed by gentlemen is to be cutoff by rescinding the resolution providing that Saturday shall be regarded as resolution day, is in no wise affected. There is no gentleman who will be deprived of the opportunity of offering an amendment to any section when it comes up for consideration or when the subject upon which he may desire to offer resolutions comes up regularly for consideration. There is no gentleman who will be deprived of the privilege of offering anything that comes up regularly as an amendment to the Constitution.

We have already seen, sir, that we consume our time in discussing imperative resolutions, and when their defects are about to be pointed out, some gentleman rises and calls the previous question, thus preventing their further consideration, and consuming the time of the Convention unnecessarily in their consideration.

When it is a legitimate proposition, it should be regularly debated. Then, sir, I am in favor of cutting off this interminable resolution operation, because they have consumed our time without any profitable result.

Many resolutions that are presented here have no more business here than the provisions of the Statute Book of Kentucky. Thus, sir, it is evident that we deprive no gentleman of the opportunity of offering amendments to the Constitution; and when this is the fact, and we have to travel over the same ground, as often as we have to do upon different propositions, I am in favor of having the various subjects

that come under consideration brought but once before us, so that when we once act upon them we will dispose of them for all time to come.

Mr. COOKERLY. I am as much in favor of expediting the business of the Convention, as any man can possibly be; but I am opposed to all kinds of gag law. I will not for one consent to gag any gentleman upon this floor. I say if gentlemen desire to offer resolutions here they ought to have the opportunity afforded them of doing so. If this discussion in regard to offering resolutions had not been sprung upon us to-day, we would have been through long ago with them, and have taken up the orders of the day.

It is these trivial discussions to the right of the members to offer resolutions, that take up the time of this Convention. Let us proceed, then, with the regular order of business, as laid down in the rules, and not be continually attempting to change the rules which we have once formally agreed upon. Every gentleman here has rights, and it is not our business to deprive him of those rights. I hope this resolution will not be adopted.

Mr. MOWRER moved to lay the resolution and the pending amendment upon the table.

The motion was agreed to.

ADJOURNMENT OF THE CONVENTION.

Mr. BEESON offered the following resolution for adoption:

Resolved, That this Convention adjourn *sine die* on the 15th of January next.

Mr. KELSO. I desire, Mr. President, to say a word or two with reference to this proposition. We are now at the end of the tenth week of our session, and what have we done? We have passed carefully over some six important propositions. There are certainly more than ten more yet to be acted upon, among which is that of the organization of Courts of Justice—the Bank—Currency, and several other important matters. Now, sir, all these matters could not be disposed of by the time at which it is now proposed to adjourn, even if we were to go to work and lose not one moment of time unnecessarily between this and that period. Some time will necessarily be spent in vacating this Hall, and preparing for our new quarters.

Now, sir, I assert as a truth, that in seven times out of ten, when a proposition of the kind now before us, is submitted, those who introduce them tremble for fear we will adopt them. They know very well that if we adopt them they will have to return to the people without having accomplished the work they were sent to perform, and that the people will hold them to a strict accountability for their deficiency in action.

This, sir, is the largest Constitutional Convention—I speak within bounds—that has ever

assembled in the United States. And yet there has been less time spent by this Convention, in proportion to the labor it has performed so far, than by any other Convention that has created or amended a State Constitution within the last eight years. We have not been here an unnecessary length of time, neither have we wasted our time. To be sure, we have debated at length important propositions. But I appeal to gentlemen if the propositions we have debated have not been fully worthy of the consideration we have given them. Let us not tickle the ears of the people with the idea that we will get through with our business here satisfactorily by the fifteenth of January. If we cannot get through by that time, let those gentlemen who desire to go home take up their line of march for the "home diggings" at that period. The gentleman who offered this proposition I am inclined to think has not been a regular attendant upon the proceedings of this Convention no more than I have been—at any rate, he has not made himself acquainted with what is yet to be done by this Convention, or he would never have offered his resolution. He should make himself acquainted with what is yet to be done ere he attempts to dictate what time we should adjourn. I shall here close my remarks, sir, as I do not wish to consume the time of the Convention upon a resolution of the character of the present one.

Mr. SMITH of Ripley. I do not wish to consume the time of the Convention, but I feel it to be my duty to make a few remarks upon this resolution. I have endeavored to occupy the attention of the Convention as little as possible during the last two weeks, and I shall endeavor to do so in future; and if other gentlemen will pursue the same course, ere five weeks have elapsed we shall have completed the business we were sent here to perform.

I am of opinion, sir, that we shall appoint a day for the conclusion of our services, and then we will have an additional stimulus to work, knowing that we must get through by a certain period of time. But this is not the principal reason why I would have this resolution adopted. I think that, without any extraordinary or hurried efforts on our part, we can get through with all that we have to do in four weeks. We have already gone over a great deal of ground, and accomplished a great deal more than appears, without close examination, to have been accomplished. The speaking is probably greatly exhausted, and this is a great deal effected towards bringing our labors to a close. Some of the most important questions that can come before us have been fully discussed, and gentlemen, I think, are prepared to act upon them. We have already had ample evidence in the speedy adoption of important measures, that we can get through with our business in a speedy manner if we try. I fully believe, sir, that if we go to work with

the right determination, we can perform all our necessary business in four weeks time.

It is stated by gentleman that this Convention cannot and will not work during the holidays. Now, I would ask, in all seriousness, if we are boys, that we must suspend our labors Christmas and New Years, and employ ourselves in wasting time foolishly? I am then, sir, for giving our undivided attention to the business of the Convention; and if we labor faithfully during the next four weeks, I believe we can bring our labors to a close, and make just as satisfactory a Constitution to the people of Indiana in that time, as though we stayed here ten weeks longer.

Mr. GIBSON moved to amend by adding the following:

"No one member shall speak longer than five minutes, nor more than once on the same day."

Mr. MORRISON of Marion. I do not see, sir, why any gentleman should wish to tie up his hands by fixing a day of adjournment, so that he will be compelled to do that, which, under other circumstances, he would not wish to do. I stand as ready to adjourn this Convention at an early period as any other member, provided our business be through with in that period. For one, I do not desire, by adopting this resolution, to declare to the people that we wish to adjourn before our business can be completed. This is a very simple matter, sir. As the gentleman from Switzerland (Mr. Kelso) remarked, we have come here to perform certain duties—in accordance with the wishes of the people—and these duties have not as yet been performed.

Are we to permit certain gentlemen, sir, who may desire to see important reforms passed over, to circumscribe the limits of our sessions, so that we may be effectually debarred from carrying out those reforms? I refer to reforms in banking, sir, in laws in the organization of our courts, in the regulation of circuits, of the probate system, and other important reforms that we are expected to act upon. I am ready to work late and early, to get through with our business, and to adjourn as soon as our business is completed; but I am not disposed that gentlemen should, by fixing upon a certain day for adjournment, carry by stratagem what they cannot by open and direct action. If the members of this Convention take time to investigate questions, they can accomplish many important reforms; but if they suffer their hands to be tied up by fixing upon a day of adjournment, obstacles will be thrown in the way of many important reforms, so that they will be defeated for want of time to consider them. If I desired to bring in Buncombe resolutions, I have no doubt I could do so, and have them voted down; and to this class, I consider, resolutions of the character of the present one appropriately belong. I do not wish that any

such resolutions should appear upon the journal. I shall vote against this resolution.

Mr. TAYLOR moved to lay the resolution and pending amendment on the table.

On this motion, the yeas and nays being demanded, were ordered and taken, with the following result—yeas 60, nays 60:

Those voting in the affirmative were,

Messrs. Allen, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Blythe, Bourne, Bryant, Carr, Chandler, Chapman, Clark of Tippecanoe, Colfax, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Haddon, Hendricks, Hitt, Kelso, Kilgore, Kinley, Lockhart, Maguire, Mather, McLean, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Mowrer, Nave, Newman, Niles, Nofsinger, Pettit, Read of Monroe, Ristine, Shannon, Snook, Spann, Steele, Tannehill, Taylor, Thornton, Walpole, and Mr. President—60.

Those voting in the negative were,

Messrs. Alexander, Beard, Beeson, Berry, Bicknell, Bowers, Bracken, Brookbank, Butler, Carter, Chenoweth, Clark of Hamilton, Coats, Conduit, Davis of Parke, Elliott, Farrow, Fisher, Gibson, Gootee, Hall, Hamilton, Harbott, Hardin, Helm, Helmer, Holman, Huff, Johnson, Kendall of Wabash, Kendall of White, Logan, March, May, McClelland, Mooney, Morgan, Pepper of Crawford, Prather, Rariden, Read of Clark, Schoonover, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Stevenson, Tague, Thomas, Trimble, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—60.

So the resolution and pending amendments were not laid on the table.

Mr. RARIDEN said that, as there were several committees that should meet in the afternoon to attend to necessary business, he would move that the Convention adjourn until nine o'clock Monday morning.

Mr. GREGG: Will the gentleman from Wayne (Mr. Rariden) withdraw his motion for a few moments?

Mr. RARIDEN. Certainly, if the gentleman will renew it again.

Mr. GREGG. I understand, Mr. President, that the officers of State, who were to procure rooms in this city for the meetings of this Convention, have decided upon packing us in the Supreme Court room, against which action I most decidedly protest.

The PRESIDENT. The only business now in order is the consideration of the resolution and pending amendment having reference to the final adjournment of the Convention.

Mr. GIBSON. I desire to say a few words with reference to the room that has been selected for our sittings.

The PRESIDENT. Is it the pleasure of the Convention that the gentleman from Clark (Mr. Gibson) proceed with his remarks?

It was so ordered by consent.

Mr. GIBSON. I have a brief mathematical statement to make with regard to the size of the Supreme Court room. I took the trouble to make an actual measurement of its dimensions, and I found it to contain eleven hundred and forty-four square feet. From that take sixty-four feet for the offset in the south-west corner, two hundred and fifty-six feet for the President's and Secretary's desk's, two hundred and eighty-eight square feet for space around the fire-places, and one hundred and fifty square feet for aisles, and it leaves barely four hundred and fifty square feet, which will give three and one-fifth square feet, or about twenty-two inches square to each member. If the Senate is packed in there, it will give each Senator a space of a little more than a yard square.

It seems to me, sir, that these facts show conclusively that it is barely possible to crowd the Senate into that room, and utterly impossible for this body to be forced in there by any means short of a steam screw. [Laughter and applause.]

Mr. GREGG. I now renew the motion to adjourn, although I hope it will be voted down.

The motion to adjourn was not agreed to.

The question then being upon the adoption of the amendment of the gentleman from Clark (Mr. Gibson).

Mr. KELSO moved to amend the amendment by inserting the words, "*Provided*, we are through with the business which we have assembled to perform."

The question being on the motion of the gentleman from Switzerland,

Mr. PETTIT. I really hope, Mr. President, that this Convention will not adopt this resolution and the pending amendments. Let us look, sir, at the source of this resolution. From whom did it come? Was it submitted by a gentleman who has prepared and proposed even one trifling section to our Constitution? What has the author of this resolution done here? What does he know about our business? Sir, resolutions of this character are presented merely to gratify a miserable ambition to secure a few votes at the expense of everything that is lasting and valuable. What, sir, have you already accomplished? Not one-half of the provisions of the new Constitution have as yet been acted upon. The great questions of banking and currency have not as yet been reached. The subject of law reform has not been considered. The reports from the legislative and executive departments have not yet been fully considered. And then the miscellaneous provisions, such as those relating to the school fund, education, public seminaries and institutions, have not been touched at all.

And is this Convention, in view of all this labor, to be told that in four weeks from this time it will have completed its business and be ready to adjourn? We might just as well pass a resolution saying that we were unable to perform the business we were sent here to execute, and go home at once to our constituents and tell them so, as to pass such a resolution as is now before us.

Sir, it is this miserable pandering for place, this ambition to secure the few votes of those at home who are unacquainted with the arduous duties that have devolved upon us in framing a new Constitution, that brings up these resolutions retarding and delaying our business. A half a dozen times have resolutions like the present one been introduced, for no earthly benefit whatever. Now, sir, as sensible men, I ask the members of this Convention if there is any possibility of getting through with our labors in the manner in which they should be performed, in four weeks time? Will you allow the credit of Indiana thus to be assailed? Will you suffer her capacity to form an organic law which shall serve for the government of the present and of future generations, to be questioned and brought into contempt not only abroad, but among sister States at home, by consenting to an adjournment before we have half completed our business? [Great applause.]

Mr. TAYLOR moved that the resolution and pending amendments be indefinitely postponed.

The PRESIDENT. The Chair is of opinion that a motion to indefinitely postpone places it beyond the power of this body to act upon the subject again.

Mr. MORRISON of Marion. The motion will only have the effect of postponing to a day certain.

On this question a division being called for, it was decided in the affirmative, ayes 61, noes not counted.

So the resolution and pending amendments were indefinitely postponed.

On motion of Mr. MORRISON of Marion, The Convention adjourned.

AFTERNOON SESSION.

Mr. BASCOM offered the following resolution:

Resolved, That from and after Tuesday next the Convention will meet at 8 o'clock A. M. and half-past 1 o'clock P. M.

Mr. FOSTER moved to amend by striking out all after the word "resolved" and inserting the following: "That the Convention will meet at half-past 5 o'clock A. M., adjourns at half-past 12 M.; meet again at 1 o'clock, and continue in session until half-past 7 o'clock P. M."

The amendment was concurred in.

The question then recurring on the adoption of the resolution as amended,

Mr. PETTIT moved to lay it upon the table.

The motion was agreed to.

Mr. BUTLER offered the following resolution:

Resolved, That this Convention meet at half-past 8 o'clock on Monday next, and every day thereafter; and that the Convention keep no holidays, but proceed to discharge the duties the people sent us here to perform."

Mr. GIBSON moved to amend by striking out the words "half-past."

The amendment was concurred in.

Mr. PEPPER of Crawford moved to amend by inserting after the word "holidays" the words "Sundays excepted."

The amendment was concurred in.

Mr. DOBSON moved to lay the resolution, as amended, on the table.

And the motion was agreed to.

Mr. CRUMBACKER offered a resolution providing that the Convention, to prevent further waste of time, take up the order of the day.

The resolution was adopted.

Mr. KELSO moved that the Convention adjourn until Monday morning.

The motion was lost.

AMENDMENT TO THE RULES.

Mr. NEWMAN, pursuant to notice given on yesterday, offered the following amendment to the standing rules of the Convention:

"No section of the new Constitution shall pass unless the same shall be voted for by a majority of all the members elected to the Convention."

Mr. N. said: It is well known to the members of this Convention that a section has been passed providing that it shall require a majority of all the members of both branches of the Legislature to pass a law. Now, sir, that rule is of a very doubtful character. I myself have many doubts as to its propriety; and therefore, as we can test the correctness of the rule in this body, e're we finally ingraft it in the new Constitution, I have submitted it in the form of an amendment to our standing rules.

If it shall be found to work well, we can incorporate it in the new Constitution; but if it is found to operate detrimentally to the public service, we can re-consider the vote by which it was passed, and reject it. It does seem to me we should test its efficiency before we apply it to the proceedings of the Legislature.

Mr. FARROW. I opine, sir, that this rule is offered with a view to inflict a kind of chastisement upon the Convention because of its having adopted certain portions of the Constitution having reference to the Legislature.

Sir, this Convention has proceeded to a considerable extent with the business before it, and I would inquire if it is to be expected that we shall go back and re-consider every vote taken

upon sections that have passed where a clear majority of the Convention was not in favor of their adoption? I think not, sir. I move to lay the amendment on the table.

Mr. KELSO demanded the yeas and nays on the question.

The yeas and nays were ordered, and the Secretary reported the following result—yeas 63, nays 39.

YAYS.—Messrs. Alexander, Beach, Berry, Bourne, Bracken, Brookbank, Butler, Chandler, Chapman, Chenowith, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, &c., Elliott, Farrow, Frisbie, Garvin, Gibson, Gordon, Haddon, Hall, Hamilton, Helm, Helmer, Hendricks, Hovey, Johnson, Jones, Kendall of Wabash, Kendall of White, Mather, May, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Nave, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Spann, Tannehill, Thomas, Thornton, Trimby, Walpole, Wiley, Wolfe, Zenor, and Mr. President—63.

YEAS.—Messrs. Anthony, Badger, Ballingall, Bascom, Beard, Beeson, Bryant, Crawford, Crumbacker, Dunn of Jefferson, Duzan, Edmonston, Foster, Gregg, Harbolt, Hitt, Kelso, Kilgore, Kinley, Logan, Maguire, March, McClelland, McLean, Milroy, Morgan, Mowrer, Newman, Pepper of Ohio, Pepper of Crawford, Prather, Ristine, Shoup, Steele, Tague, Taylor, Watts, Work, and Wunderlich—39.

So the motion to lay upon the table prevailed.

Mr. KELSO. It being apparent, from the vote just taken, that there is a disposition on the part of many of the members not to attend the sittings of the Convention this afternoon—probably arising from the fact that several of our committees are in session—I move that the Convention adjourn until Monday morning.

On this motion a division being called for, it was decided in the affirmative—ayes 50, noes 35.

So the Convention adjourned until Monday morning 9 o'clock.

MONDAY, DEC. 16, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRARY.

The journal of yesterday was read and approved.

The Convention proceeded to the consideration of the special order, being the motion of the gentleman from Allen, (Mr. Borden,) to re-consider the vote on the passage of the section in relation to the rights of married women to hold property, &c. The gentleman from Laporte, (Mr. Niles,) being entitled to the floor,

Mr. NILES. I desire to remark to the Convention that I was not aware when I made the motion to postpone the consideration of this subject, of the rule under which I would be entitled to the floor this morning. But I desire to submit some remarks upon this section, and if the Convention will permit me to conclude now what I have to say, I will undertake not to occupy the floor again upon this question, unless it might be by way of personal explanation. I shall proceed with the hope that the Convention will allow me to exceed the fifteen minutes allotted by the rule.

Mr. GIBSON. Without intending any discourtesy to the gentleman I want to have the yeas and nays upon the question of suspending the rule. If a gag law is to be imposed upon us I want to have it strictly enforced.

The PRESIDENT. Those in favor of suspending the rule will say aye.

Mr. GIBSON. I have asked for the yeas and nays, Mr. President, and the Chair has taken no notice of it.

The PRESIDENT. One gentleman is not enough to call the yeas and nays.

Mr. BORDEN. It is the duty of the Chair to put the question upon recording the demand for the yeas and nays.

The PRESIDENT. The Chair, generally, undertakes to define its own duty. (After a count.) The yeas and nays are not demanded.

Mr. GIBSON. There are certainly twelve or fourteen gentlemen rising.

The PRESIDENT again put the question on recording the demand for the yeas and nays.

The yeas and nays were ordered.

Mr. NILES. I will withdraw my request. [Cries of "no! no!"]

Mr. BORDEN. I wish to say this: Some other gentleman may hereafter ask a suspension of the rule in his favor, and if the yeas and nays are taken we may turn to the journal and see who are discourteous enough to refuse.

Mr. COOKERLY. Would it not be well to specify for what length of time the rule shall be suspended. [Cries of "no! no!"]

Mr. NILES. I must say that my feelings of delicacy will forbid having such a vote recorded on the journal. I withdraw the request.

Mr. OWEN. I hope the gentleman from Laporte will not withdraw the request. I am sure the Convention will be willing to suspend the rule.

The PRESIDENT. Does the gentleman withdraw his request.

Mr. NILES. I feel compelled to do it.

Mr. NILES addressed the Convention during the time prescribed by the rule. His remarks are incorporated with other remarks which he afterwards made on the same day, in relation to the same subject.

Mr. NILES having occupied the fifteen minutes allotted by the rule,

Mr. OWEN moved that the rule be suspended for the purpose of enabling the gentleman from Laporte to proceed with his remarks.

I hope, said Mr. O., that the Convention will agree to suspend the rules. The gentleman has told us that he is firmly convinced that he can show us conclusive reasons why this section should not be passed—reasons which he says will be entirely satisfactory to every delegate in this Convention. I desire to hear the gentleman's reasons.

Mr. GIBSON demanded the yeas and nays on the motion to suspend the rule, and they were ordered.

Mr. PEPPER of Crawford. I merely wish to state the reason why I cannot vote to suspend the rule. There is no man in this Convention whom I would sooner hear than I would the gentleman from Laporte, but if we suspend the rule for one gentleman, we will be obliged to do it for others.

The yeas and nays were then taken, with the following result—yeas 76, nays 40:—

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Beach, Beard, Bicknell, Biddle, Blythe, Borden, Bourne, Brookbank, Bryant, Carr, Clark of Hamilton, Clark of Tippecanoe, Colfax, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Haddon, Helmer, Hendricks, Hitt, Holman, Hovey, Howe, Johnson, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, March, Mather, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Mowrer, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pettit, Rariden, Read of Monroe, Ristine, Shannon, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Thornton, Watts, Wolfe, and Mr. President—76.

NAYS.—Messrs. Bascom, Beeson, Bowers, Bracken, Butler, Chandler, Chapman, Chenoweth, Coats, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Farrow, Fisher, Hall, Hamilton, Harbolt, Helm, Huff, Kendall of Wabash, McClelland, McLean, Moore, Morgan, Prather, Read of Clark, Schoonover, Sherrod, Spann, Thomas, Trimble, Wiley, Work, Wunderlich, Yocum, and Zenor—40.

So the rule was not suspended.

Mr. HOLMAN said, I regret that the rule was not suspended to enable the gentleman from Laporte to finish his remarks. That the subject under discussion is an interesting one, is manifest from the feeling that has been exhibited in this body, and to some extent throughout the entire State, since it became the subject of a distinctive proposition, through the report of the committee, of which the very able gentleman from Posey, (Mr. Owen,) is the chairman, and if it be a subject of such interest, any gentle-

man who has thoroughly investigated its effects and tendencies, should have an opportunity of being fully heard.

When the original section, as reported by the committee, was under investigation, I received the courteous attention of the Convention while I attempted to discuss what I deemed to be the ultimate tendencies of the principle involved. The question has now, by the amendment, assumed a different character.

The section as reported, recognized in broad terms, the principle of the civil law: "Women hereafter married in this State, shall have the right to acquire and possess property to their sole use and disposal," &c. The arguments urged against this part of the section, were, that it would create separate interests in the same household; that it would destroy that identity of interest in the marriage relation from which results the highest degree of domestic happiness, and that it would induce a refined and complicated system of laws for the protection of the wife's separate property, inconsistent with the republican simplicity of our institutions.

I was opposed to both the language and spirit of the section, believing that as the happiness of the wife is peculiarly dependent on the sanctity and happiness of the domestic circle, any change calculated to impair the unity of her interests with those of her husband, and thus destroy a vital element of the harmony of home, could only be productive of the deepest misfortune to herself. The happiness of home—the various joys of the domestic relation, can only result from this unity of interest. But the question now before the Convention has assumed a somewhat different character. The section as adopted—the re-consideration of the vote on the adoption, which is now pending, reads as follows: "The real and personal property of women, whether owned before marriage or afterwards acquired by purchase or gift, (except from the husband, in fraud of creditors,) devise, or descent, shall be and remain secured to them under equitable conditions, by law." The real difference between this section and that reported by the committee, is this: the one confers upon the wife an absolute right to acquire and dispose of property, independent of the husband, and a direct separation of their interests—the other confers the right to acquire property by all the various modes known to the law, but only directs the enactment of laws securing to the wife on *equitable conditions*, the property so acquired. The right to acquire by purchase and the power of disposal places the wife on the same footing with her husband. The right to acquire "by purchase," as used in the section under discussion, independent of the power of disposal, is inconsistent with the entire integrity of the conjugal relation as recognized by the common law. On a former occasion, I attempted to show that it is not in the possession

or exercise of these rights, which pertain to the more masculine departments of life, that the wife or mother finds her highest happiness.

I am, therefore, opposed to the section as adopted, and for one reason only—that the use of the word “purchase,” in the connection in which it stands, confers rights and powers inconsistent with the common law identity of the interests of husband and wife, and inconsistent with that domestic harmony which it is the interest of the wife, above all others, to maintain; for I believe that the identity of every interest of the husband and wife, as established by the common law, has wielded a potent influence in giving to the Anglo-Saxon race that moral, social, and intellectual elevation, which for centuries has marked its progress.

But, while I would oppose the adoption of any principle tending to create separate rights and interests in the domestic circle, yet I would rejoice to see every right of property—every interest of the wife secured, to the utmost extent consistent with the indissolubility of the marriage relation.

I should be in favor of the section if it were amended so as to read as follows:

“The real and personal property of women, owned at the time of marriage, or afterwards acquired by *devise, or descent, or by gift*, except from the husband, in fraud of creditors, shall be and remain secured to them by law on equitable conditions.”

I should be in favor of such a section, for the following reasons: It would leave the relation of husband and wife as created by the common law. It would tend to produce more just and equitable laws of descent and distribution, and, being made the basis of wholesome legislation, it would, when equity requires it, protect the property of the wife from the debts of the husband; and lastly, as incidental to the two last propositions, it would at least secure to the widow her just claim upon the husband's estate.

By the common law, the wife may acquire property by the several modes specified,—“by devise, or descent, or by gift,”—except in one instance, and then she may acquire, through the intervention of a trust. The wife, in all of these instances, remains the passive and not the active agent in the acquisition of property, and it is but common justice that the estate which descends to the wife from a father, or which is devised or given to her by a relation or friend, should be secured to her at least on such equitable conditions as wise legislation might prescribe.

Even now, the claim of the widow upon her husband's estate, results in part from the presumption of law, operating on general principles, that a portion of that estate came to the husband in her right; and by securing to her her right of dower, her one hundred and fifty dol-

lars as a claim, above all others, upon his estate, and her ultimate right as a distributee, the law intends, at least, to secure on equitable conditions, the widow's just claim upon the estate of the husband. That the law, however, in many instances, deals illiberally, if not unjustly, with the widow, is too manifest to require discussion; and while I have abiding faith in the common law as a system, and would not absolutely abrogate any one of its principles, unless it were wrong or unwise beyond question, yet reasonable modifications of those principles, as experience may suggest, would only be in consonance with the spirit of the age in which we live. In this State the common law, as it affects the rights of the wife and the widow, has been materially modified, and, in my humble opinion, the section, if changed as I have suggested, will go but little farther than the statute laws of the State; and I will call the attention of the Convention to several statutes having in view the securing of the wife's property on “equitable conditions,” at least in practice, and still consistent with the integrity of the marriage union. By a statute enacted in 1849, if the husband die intestate and without children, the wife takes one-half of his real estate, acquired otherwise than by descent, in fee simple; and by a statute enacted at the same time, the wife, after the debts of her husband are paid, if he die intestate and without children, has a legal claim upon his estate, for the value of the estate acquired by the husband *in her right*. This is one of the modes of securing to the wife her property on equitable conditions, though I admit that the power of the husband to defeat the effects of this law by a will, does not leave the equity of the conditions very apparent; and by the statute of 1847, the wife's real estate is secured to her separate use, and in that case the rents and profits of such real estate would be received by the husband, as trustee for his wife. I am, therefore, in favor of the adoption of the section in such a modified form as leaves the union of husband and wife unimpaired, and secures the sanctity and harmony of the domestic relations; and while we oppose the adoption of any principle which might invade, with unholy effects, the divine relation of husband and wife, we should still remember that the same God who has declared of the husband and wife, that “they twain shall be one flesh,” has enjoined upon us “charity” to the widow. If, therefore, the only effects of adopting a principle on this subject, shall be to secure just laws of descent and distribution, a most desirable end will be attained.

Sir, no man who has enjoyed the varied endearments of the domestic circle, who has sat at his own cheerful fireside, and felt, year after year, the warm, patient, and endearing affection of a wife, whose smiles have illuminated and the purity of whose love has sanctified his home, and made it, however hum-

ble, "a green spot in memory's waste," can but desire that when she whose life is entwined within his own, can no longer lean upon his arm for support, when "the light of her spirit has flown," that the laws by which her rights are to be determined shall at least be *just*, if not influenced by the divine teachings of mercy.

I trust, Mr. President, that the motion to re-consider will prevail, and that a section will be adopted which at once leaves the union of the husband and wife unimpaired, secures every just interest of the wife *consistent* with that union, and equity to the widow.

Mr. HOVEY. I shall not detain the Convention but a few moments. It is extremely difficult after this question has been so thoroughly discussed, to say anything that can either interest or instruct delegates in regard to the course they should pursue. I shall attempt neither; and had originally intended to have left the discussion to those more able, and let my votes answer for my opinions. Although I have agreed with my colleague (Mr. Owen) in the general, as to the rights of women, I have thought that this subject more appropriately belonged to the Legislature than to this Convention. But as there seems to be a decided majority in favor of making this a constitutional provision in some shape, and as the law-making powers have been wofully derelict in protecting the property of women heretofore, I have been willing and am ready to aid the friends of this measure, provided the section is framed in such language as will meet my approbation. The section originally reported by the committee on "rights and privileges," and the amendment of my friend from Vanderburgh, (Mr. Blythe,) which is now under consideration, I have considered too broad, as giving to women more power than the friends of that section and amendment have seemed to demand. When that amendment was under discussion some weeks ago, I moved to strike out the words "purchase or," which failed, and on its passage I voted against it for the reasons then given. I have heard no argument that has convinced me that the position I then assumed is incorrect, and shall still vote against the section in its present shape. Strike out the words "purchase or" and I will support it.

I cannot refrain from remarking that the progress of this question is fraught with many lessons to the uninitiated in the art of legislation. I have watched its course from its inception to the present hour, and must admit that I have been both mortified and amused at the course some honorable gentlemen have thought proper to adopt. Many have opposed it from the first under honest convictions, I have no doubt, of its impropriety. Some have opposed it on account of the language in which the section and amendment were clothed; but, sir, to the most unobserving it must be apparent

that it has met with no small amount of its opposition on account of its progenitor.

"A *community of interests* between husband and wife is about to be established," says one, and he launches forth in a learned argument to show the evils of a civil law system, and the harmony, perfection, and beauty of the common law of England.

At the bottom of that section, cries another, lies all the poison of "*the social system*;" beware what you do!

"Why you are striking at the very vitals of the *Christian religion*," vociferates a third, "you are sinning against Heaven with a high hand and an outstretched arm if you adopt a section like that!"

Now, sir, I ask, with all submission, if arguments like these ever would have been adduced had the section originally reported come from the pen of some other delegate than my colleague? I think not. I am fearful there has been an undue current at work, one that did not originate in the fountains of reflection and reason—a current that is tending towards a certain *time and place* where possibly he might be found to occupy a station in the estimation of the people far more exalted than many might desire.

I shall not attempt to go over the arguments urged by the friends of this section. They have been expressed much more beautifully and forcibly than I could hope to do. I cannot, however, resist from saying that under the practical workings of the common law in regard to the rights of married women, I have seen instances and hardships that every feeling and reflecting man would willingly avoid. I could give names did not propriety forbid, where women who were wealthy when married, have been left destitute by the sheriff for their husband's debts.

Under the common law as it has existed, and now exists in this State, the whole personal estate of women upon marriage rests in the husband. Let me give an instance: A poor man marries a wealthy woman, who we will say is worth ten thousand dollars in cash. As soon as that money is in his hands it becomes absolutely his, and if he should die the next instant afterwards it will descend to *his* heirs and not to *hers*. Surely every father in this Convention, and to such I now appeal, must deprecate that system of laws which makes matrimony a speculation on the part of the husband, and which may eventually leave his daughter a helpless outcast on account of her husband's profligacy. Although I am as bitterly opposed to the homestead principle as any delegate on this floor, and was as much gratified at its defeat, yet no one will more willingly and more cheerfully vote for any provision which will provide a home for the widow and the orphan in their affliction. A provision placing the property of married women beyond the

reach of their husband's debts would in many, many instances produce that happy result.

I cannot close without alluding to the Scriptural argument used by the gentleman from Putnam, (Mr. Badger,) when this subject was discussed a few days since. I had thought that I could vote for a section like the one reported, or the one adopted, without committing any sin either before God or man; but I assuredly cannot if that gentleman's argument is correct. Now, sir, I would ask that gentleman, for what purpose Christ came into the world? Did he come to establish new laws and new principles of government for the people? Certainly not. If I understand the purpose of his mission, he came not to interfere with civil laws or governments, but to establish a system of religion, the holiest, the purest, and the most perfect that the intellect of man was ever permitted to comprehend. And, sir, such has been the opinion of the greatest divines that the world has ever produced. What a lamentable condition would Europe be in were the arguments of that gentleman correct! Italy, Greece, France, Spain, Portugal, Denmark, Sweden, Holland, Switzerland, Prussia, and Scotland, if I mistake not, have had laws in existence, century upon century, giving to married women a control far more absolute than the section would, which has received the anathema of the gentleman from Putnam. All the South American republics, Mexico, California, Lower Canada, several of our States, Louisiana, Maine, New York, Texas, Alabama, and others, have recognized the right of the wife to her separate property in stronger terms than the section under debate. What a large host of sinners this world contains if that gentleman's arguments are correct! The gentleman could not have been serious; if serious he should remember, being a divine, that

"Christians have burned each other quite persuaded,
That all the Apostles would have done as they did."

It seems to me that such opinions receive their birth in that school where the "higher law" is taught—that "higher law" which, being correctly interpreted means individual opinion right or wrong, the *conscience law* of the northern fanatic—a law which they pretend to set above all the laws and institutions of our great Republic. Thank God we have no such "higher law" in that part of the State where I reside. The people there, sir, love the Union—love the free institutions of this country and do not understand the laws of God contained in the Scriptures as applying to the political condition of society. No northern fanatic or southern madman is there brawling for secession or disunion, but the united sentiment is, "*The Union of the States, one and inseparable, now and forever.*"

Mr. CLARK of Tippecanoe. I wish only to say a word in reply to the remarks of the gentleman from Posey (Mr. Hovey). He com-

plains that the subject under consideration is opposed because his colleague introduced it, and intimates that the opponents of the section are fanatics, *higher law men, conscience men*, who would dissolve the Union. Now, sir, for aught I know, the people in the sections of the State the gentleman comes from, may discard all divine law—and deny the existence of a conscience in the minds of men—they may regard all those professing a reverence for the higher law, and who talk of conscience, as fanatics. But I thank God that my constituents are not ashamed to have a conscience, and a reverence for the higher law, and a belief in the existence of a Supreme Being to whom men are accountable [applause].

Mr. HOVEY. The gentleman must have misunderstood me. I said that "higher law," which being correctly interpreted means individual opinion, right or wrong, the "conscience law" of the northern fanatic. I said nothing disrespectfully of the law of God, but alluded to that class of men who would break through all laws and attempt to justify their acts by religious scruples.

Mr. CLARK of Tippecanoe. The gentleman said he was for the Union of the States, and not for the higher law which fanatics have set up. Well, I say my constituents are for the higher law, and for the Union of the States, and for the union of husband and wife too [applause]. These are the higher laws they acknowledge. They do not deny the existence of a Supreme Being. They admit his laws to be superior to human law. I trust there are none here who deny that there are such laws.

The gentleman has said that the opposition to this section, was connected with an opposition to his colleague, and to socialism. Now, sir, if his colleague is so identified with socialism, that to oppose socialism is to oppose his colleague, why then, sir, I am opposed to socialism in all of it, that I believe tends to uproot the foundations of society, and to dissolve the elements of the political fabric, and the destruction of the domestic ties. But, sir, I had not in my mind connected the gentleman's colleague in any way with socialism, either as its inventor, or the champion of the system. I have not opposed this section merely because the gentleman from Posey offered it. I have opposed it because of reasons which I regarded as very substantial objections against the thing itself.

I ask if it is any sin to oppose anything which the gentleman's colleague may offer? Are we bound to take everything that he proposes as the higher law? I acknowledge no such obligation. I acknowledge no law here, but the law of equality. I acknowledge the right of every man to represent his constituents, and to oppose everything which he considers to be

wrong, no matter by whom it may be presented here.

Sir, the law we are defending has been the law of our ancestors for eighteen hundred years. It is the Christian law—the law that was promulgated by our Divine Master, and the gentleman sets up the assumption here, that we oppose it on personal grounds—because his colleague advocates it. Sir, I oppose it because, like socialism, its legitimate offspring, which prevails to a great extent in France, it divides and destroys families, removing all sanctity from domestic relations—destroys the domestic virtues, and then subverts States, and overturns Governments. Look at the convulsions in France—their tumults and revolutions. Has freedom, has republicanism flourished there? there where men denied the existence of a Deity and the higher law—and rejecting Christ, set up human reason as an object of worship? There, sir, tumult, confusion, and discord reign. They have not hitherto established or maintained a free government. And those other countries which the gentleman holds up for our imitation, Italy, Spain, Portugal, Mexico, have the people of those countries exhibited a proof of their superiority over us in the freedom of these governments, or in the purity of their morals—and in their regard for human rights?

Now, sir, compare the Anglo-Saxon race with those nations whose domestic and social virtues gentlemen are so desirous to emulate, sir. Throughout all its history, the Anglo-Saxon stands forth pre-eminently, far superior to those nations who have denied the law of conscience, and perverted the precepts of religion. This proud pre-eminence I trust we and our posterity will maintain forever. I trust, too, sir, that we shall not only have patriotism enough to be united as a people, but virtue to preserve the union of families.

Mr. NAVE. I regret very much, to see any excitement growing out of the re-consideration of this section in relation to the rights of married women. It is well known that on the adoption of the section, the only opposition that I gave to it in the shape in which it passed the Convention, was opposition to the word "purchase." If that word be stricken out, I pledge myself to give my support to the section. And why will I do so? Because I maintain the ground that the legislation of this country has long enough denied to the wife, the widow, and the orphan, that which justly belongs to them.

In the absence of the word "purchase," we propose to do nothing more and nothing less than can be effected by a Court of Chancery, by the interposition of a trustee, than what may be done by the interposition of a trustee in the Court of Chancery to guarantee to the wife her separate property. I am willing, for one, to give my vote for the incorporation of the section into the organic law of the State, if the word "purchase" be stricken out.

It has been truly remarked on this floor, time after time, that married women in this country have been imposed upon by reckless and improvident husbands; who had married them, not for the sake of the wife but for the sake of the money or property that she possessed, and as soon as that was squandered, that the peace and happiness of the family is destroyed. I have opposed the section thus far, solely on the ground that the word "purchase" was included in it; and believing that it will be but doing an act of justice to a portion of the inhabitants of Indiana to whom, hitherto, justice has been denied in the organic law of the State, I am for the incorporation in the organic law of a provision which shall secure to them their property against execution for their husband's debts—against the recklessness and improvidence of the husband. I am willing to record my vote for such a provision; and if the Convention adopt a resolution instructing the committee on revision to amend the section by striking out the word "purchase," and refuse the re-consideration, I shall be satisfied in regard to it. But if a re-consideration of the vote has to take place, I ask gentlemen to ponder well before they declare that married women shall have no rights granted to them in the organic law. When the Legislature have from time to time declared, by solemn enactment, that they are entitled to certain rights, if the word "purchase" be stricken out, I ask, what occasion is there for our becoming excited in relation to this matter? What occasion is there for a difference of opinion on a proposition to extend to married women in the State the same privileges that they have heretofore enjoyed? I should be ashamed to vote against the simple proposition to secure to married women property which may hereafter come to them by descent or by gift, and for that cause will give my hearty support to the section under consideration, with the modification that I have suggested.

Mr. COOKERLY. I have not heretofore occupied the time of the Convention with any remarks of mine in relation to this subject, but I believe I may as well take occasion now to make one or two remarks in reference to it. As time passes along men are subject to change, and you, no doubt, sir, as well as any delegate upon this floor, must be very much surprised at the speech that has just been delivered by the gentleman from Hendricks. But a few days have passed away since that gentleman ranted and raved against this section; now he is as docile as a lamb; now he is in favor of it. Now under the expectation that the word "purchase" will be stricken out by a resolution calling upon the committee on revision, he is willing to support the section. Sir, if anything be stricken out, it must be done by the Convention, and not by the committee on revision.

Mr. NAVE. What difference does it make?

Mr. COOKERLY. It is a question to be settled by the Convention, because it involves a principle.

Now, sir, from the first introduction of this provision until now, I have been opposed to it; first, from principle, and secondly, because the Convention ought not to ingraft such a provision into the organic law, even if the provision be right; for it is clearly a matter of legislation. These are the two reasons why I opposed the section. It is now proposed to strike out the word "purchase." If that word be stricken out, the section will be less exceptionable. But what is the proposition of the gentleman? I understand that his solicitude is for the widow and the poor orphan. He says that the widow is not sufficiently provided for—that there is not enough of the property secured to her. But I ask him and you, does this change the law of descent? I consider that it is not so beneficial to the women as the statute law is at present. If the gentleman wants to change the law of descent, if he wants to give to the widow more than one-third of the property of the husband after his death, why does he not introduce a section for that purpose. I will vote for it. I believe she ought to have one-half, and where there are no children, she should perhaps have more. There are two sides to the question. There are men, as well as women and children, sometimes to be provided for. I know this is a theme upon which gentlemen can talk, as the gentleman from Clark has done, to please the ear of the ladies, but when you come to the matter of justice and right, it is proper that before we act, we should look well—we should weigh the matter before we take the step. Now there is no greater admirer of the ladies than I am. No man loves them better. ["Consent."] But where their interest comes in conflict with the interest of children, and the other members of community, I am against it. I love my children as well as I do my wife; and I go for the interest of children, as well as for the interest of married women. If you adopt this section as it is, what will be the result? Women will become speculators in real estate. I hesitate not to assert on this floor, that it will destroy that unity of interest and feelings which should exist between husband and wife. They will each set up a different establishment; they will become rivals in trade; and they will find themselves placed in hostility to each other.

Now, sir, so far as regards my action upon this subject, I hope the section will be reconsidered, and if it is to pass at all, I hope the word "purchase" will be stricken out. Why, sir, what doctrine was it that the gentleman from Posey endorsed here the other day? And let me say a word to the other gentleman from Posey. He says the proposition is objected to because his colleague introduced it. Why, sir, has it come to this, that everything that he in-

troduces here, has to be voted for? Has it come to this, that everything that the gentleman from Posey introduces, has to be supported by the delegates of this Convention? He comes from Posey, I from Vigo; we all have different views and opinions, and is it not our right as well as our duty to state our opinions here upon this floor, and to vote as we please, it matters not who may introduce the subject? I have not opposed this section because he introduced it, and I do not think that it is right and proper for the gentleman to get up and make the assertion that he has made. Sir, it is an indignity. It is an insult to the representatives of the people.

Mr. HOVEY. Will the gentleman allow me to explain. I have voted against the section and amendment, from the first to the last, for the reason I have given.

I have followed no man as my guide in this Convention, and have been under the necessity of differing from my colleague as often probably as any delegate upon this floor. I did say, that I thought there was an under current at work in regard to the section under debate, but I made no personal allusions to any particular gentleman. I made no accusation against the gentleman from Vigo, but must again repeat that I think that this measure would not have met with the opposition it has from some quarters, were it not from the fact that my colleague is regarded as a prominent candidate for the United States Senate, and fears are entertained that this measure, if adopted, may add to his strength.

Mr. COOKERLY. Well, sir, I do not speak for others, but I have a great deal of charity for others, and I do not believe a single delegate here voted against the section for the reason that the gentleman from Posey introduced it. Now I say that if the section is to pass, I want the word "purchase" stricken out. If this be done, I will make no further opposition to the passage of the section.

Mr. BADGER. It seems, sir, that my Bible argument on this subject, is acting as a thorn in the side of more than one of the honorable delegates on this floor, and, notwithstanding there seems to be a disposition on the part of several gentlemen to assail me, I feel that I am on the right side of the question, and, as a consequence, I thank God and take courage. [Applause.] I would that I had time to discuss this question, in its bearings upon the civil, social, moral, and political condition of society. I was not aware until a few moments since, that the gentleman from Posey (Mr. Hovey) had a missile to hurl at me, nor do I think that portion of his remarks worthy my notice. He thinks I oppose this measure because his colleague introduced it. This, sir, is a poor compliment to his worthy colleague, but I can assure him that such is not the fact. I should have opposed the measure, let it have emanated from whom it might. Nay, more;

had I known as much of the life and productions of the gentleman who introduced this matter, then, as I know now, I should have spent, at least, a small part of my time in noticing principles connected with this one, of which he has for years been the advocate. For I am prepared to demonstrate, to the satisfaction, as I think, of all present, that this law is the entering wedge to the accomplishment of the doctrine recognized by the gentleman in his marriage contract. And if the honorable gentleman (Mr. Hovey) thinks his colleague unable to defend himself, and desires to assail me or my position, he will find me ready at any time for defense. Mr. President, I regard the evil tendency of this doctrine upon the civil and religious conditions of society as a matter of vital import. And I am exceedingly sorry, sir, that we have those among us who are disposed to trample sacrilegiously under foot, the relations which by divine authority exist between husband and wife.

Sir, tell it not in Indiana, publish it not in the streets of this beautiful city, that the learned and the elite ones of the land, are the votaries of a system which is rife with mischief to the best and holiest interests of society—a system which, if adhered to, proposes entire obliteration of that identity of interest which is founded in reason and common sense, because it is in strict accordance with the teachings of the laws of nature and of nature's God.

I propose now to quote from a work before me, the marriage contract of the gentleman from Posey, (Mr. Owen,) and would be pleased to know if he has any objection to its being read; if he has I shall, of course, not read it.

MR. OWEN. If the gentleman wishes to introduce irrelevant matter into this debate, I shall be extremely glad to hear him quote anything he pleases, although I am sorry to have the time of the Convention occupied with matters purely personal.

MR. BADGER. Well, sir, we have presented to us here, the marriage contract of the gentleman from Posey. I will read it.

MR. HALL. I call the gentleman to order.

THE PRESIDENT. It is not in order to read from a newspaper or any other publication. The gentleman must obtain the leave of the Convention before he can read it.

MR. HALL. If it were permissible to read extracts in reference to every point that is debated here, when should we be able to close our labors?

SEVERAL VOICES. The gentleman from Gibson is out of order.

THE PRESIDENT put the question, Shall the gentleman from Putnam have leave to read the extract?

The yeas and nays were demanded.

MR. WALPOLE. Sir, this is not the first example that we have had on this floor, where a gentleman has been prohibited from reading a document in the support of the position which

he assumes. I maintain that he has a right to read, whether it be from a newspaper or not, and that what he reads is to be considered as being legitimately a part of his argument. The gentleman is attempting to show that if this proposition be carried out, it will have a tendency towards socialism, and he proposes to read the marriage contract of the gentleman from Posey, which recognizes the principle of socialism. He has as much right to read it without interruption from the Chair as any gentleman here has to read a document, touching upon any other gentleman, that may be under discussion. The other day a certain gentleman assailed me, and I attempted to reply, and to show that he had assumed false data. The Chair called me to order, although the same privilege had been extended to every other gentlemen and the privilege had really been assumed by some to read documents that were not legitimately in order, and now, a gentleman proposes to read an extract, and he is called to order because the matter that he proposes to quote has reference to a prominent member of this Convention. Let us not adopt one principle for one particular case, and another for another. Let us not make flesh of one and fish of another. If one gentleman can legitimately read extracts, let the rule be universal. I object therefore to the gentleman from Gibson interposing. He, of all others, should not interpose, for there is scarcely a question that comes up for discussion here, that the gentleman does not refer to the resolutions of the county of Gibson, and no one calls him to order. Let us act fairly. The gentleman from Posey, the other day, was permitted to read a long list of extracts, and not one voice was raised to call him to order. But this morning when we have a most important question under consideration, affecting the principles of socialism, as inculcated by the gentleman who introduced this section, and a member is called to order by the gentleman from Gibson because he proposes to read an extract.

THE PRESIDENT. The Chair would remark in relation to this matter, that it is not within the province, nor is it the distinct right of any gentleman to read extracts from newspapers, or any other documents written or printed, if any member objects to it. It has been done repeatedly, however, and the Chair did not and does not now think it proper to interfere; but when the reading is objected to it is the duty of the Chair to call the gentleman to order. The reading of the extract by the gentleman from Putnam having been objected to by the gentleman from Gibson, it is for the Convention to determine whether the gentleman from Putnam shall have the privilege of reading it or not. Upon the question of granting the gentlemen leave the yeas and nays are demanded.

MR. BADGER. Sir, as there is a manifest determination to deny my right to read, I must

content myself with quoting such extracts as I can remember, without opening the book. I presume this privilege will not be denied me.

First, then, in this contract, the following language occurs: "We have selected the simplest ceremony which the laws of this State (New York) recognize, and which, in consequence of the liberality of these laws, involves not the necessity of calling in the aid of a member of the clerical profession—a *profession, the credentials of which we do not recognize, and the influence of which we are led to consider injurious to society.*"

In the next place it is said, that "the ceremony involves not the necessity of making promises regarding that over which we have no control, the state of human affections in the distant future, nor repeating forms which we deem offensive, inasmuch as they outrage the principles of human liberty and equality, by confirming rights and imposing duties unequally on the sexes."

Most assuredly, Mr. President, these sentiments need no comment at my hands.

But in order to prove beyond a doubt that I do the gentleman no injustice in my remarks, I quote once more:

"Of the unjust rights which, in virtue of this ceremony, an iniquitous law totally gives me over the person and property of another, I cannot legally, but I can morally, divest myself, and I hereby distinctly and emphatically declare that I consider myself, and earnestly desire to be considered by others, as utterly divested now and during the rest of my life, of any such rights."

Sir, let me now ask delegates if they are prepared to endorse this doctrine? Are gentlemen prepared to give their sanction to a law which is, as I before remarked, the entering wedge to the establishment of a state of affairs, the fundamental principles of which are contained in what I have just quoted? I know not what may be the feelings and views of other gentlemen, but if my very existence were suspended upon the rectitude of my views and my course upon this subject, still, sir, I should maintain them unmoved.

Gentlemen seem to be disposed to discard the higher law; but, Mr. President, I am proud to say that I recognize the *obligations* of a Divine law, and especially so in its bearings upon this subject; a subject in which is involved not only our peace in time, but our happiness in eternity.

Sir, I hope it will not be considered vain in me to express a willingness that my principles on this subject, in contradistinction with those of the honorable gentleman from Posey, were written in characters of light athwart the noon-day's heavens, that all the world might read them. [Applause.]

I have in my drawer numerous other extracts from the writings of the gentleman from

Posey, but am not allowed to read them; and indeed, sir, under the circumstances, decency forbids their use. But if I were permitted to read them, and show their worse than damning influence upon society, in conjunction with this system of separate interests, I venture to aver that gentlemen would turn from them with disgust; aye, sir, they would shun them as they would shun man's worst enemy, and flee from them as from a poisonous reptile. My position is now defined and unmistakable. And I confess I have some feeling on this subject, for it is one, sir, upon which I am conscientious. And hence it is that I feel bound to combat this or any other principle that has for its object the seduction of society from those feelings and views connected with the marriage relation that emanate from a pure and honest heart.

But it is said that women themselves feel that they are degraded by the operations of the present law—that they desire a separate interest in order to their elevation and happiness.

Sir, I mean no disrespect whatever to any lady, but will venture to predict that in most cases when such separate interest is desired, the woman belongs to that class to which reference has been made, or, she wears the breeches at home.

Mr. President, should this section remain in the new Constitution, if the Convention should refuse to re-consider this vote, although all things else should be in strict accordance with my views, I pledge myself not only to vote against the adoption of that document, but, sir, my voice, if capable of being raised at all, shall be raised in opposition to its reception. [Applause.]

But, sir, my time has nearly expired, and before I sit down, I wish to make one more appeal to delegates, and beseech of them to pause and reflect soberly upon this matter, the effect of which, if adopted, will most certainly be the contamination of the entire moral atmosphere. I ask gentlemen if those wives of theirs, who are the partners of their toils, their feelings, and their fame, are prepared for its reception? Are those lovely daughters of yours, around whose well-being is entwined the very pride of your existence, prepared for it?

Mr. President, unless assailed again, I now close my remarks on this subject; and so far as I am concerned, I leave its destiny with the wise heads and honest hearts of the honorable members of this Convention. And, sir, I do humbly trust that the vote by which it was passed may be re-considered, and that, upon its final passage, it may be defeated—that it may find a resting place where it properly belongs, and be numbered with the things that were.

Mr. HALL. I had no other design in calling the gentleman from Putnam to order, than to facilitate the business properly before this Convention. The gentleman from Putnam stated in advance, that the article he proposed to read

from a newspaper was of a personal character, having reference alone to the gentleman from Posey (Mr. Owen). Had the gentleman been indulged in his wishes, then the gentleman attacked would, as a matter of course, claimed the right to reply, and thus the time of this Convention would have been taken up in the discussion of a question wholly irrelevant to the subject matter before us. This Convention has already been in session nearly eleven weeks, and we have not advanced one-third through our labors. It is time we should pause, and reflect upon this matter. We are daily wasting time and money in useless discussion. Shall there be no end to this folly? Each day we sit in this Convention costs the State upwards of six hundred dollars. Is this not worth a serious reflection, when members propose to introduce subjects wholly foreign to the business the people sent us here to perform?

The gentleman from Hancock, (Mr. Walpole,) who takes ground in opposition to my course on this occasion, has said that I ought to be the last man on this floor to object to reading anything from a newspaper; for, says he, scarcely a subject comes up before this Convention that I was not upon my feet, reading, without objection, certain resolutions which emanated from the people of Gibson. Sir, the gentleman is unfortunate, both in his reference to me and to the resolutions he referred to. As to myself, I can assert before this Convention that I have occupied as little of their time as any other member, and so far from the resolutions I introduced affording the gentleman a precedent for what he is now urging, it might well be quoted as an authority against him; for I will say to that gentleman and to this Convention, that the resolutions referred to by the gentleman, emanated from the people in a primary assembly, that they were introduced at an early day in the session, and became and are now a part of the journal of its proceedings. What I have occasionally referred to, has been a part of the journal of this Convention.

[Mr. BADGER made a speech, which is withheld for revision, but will appear in Tuesday's issue.]

Mr. BASCOM. I had intended to read an extract, but as it is deemed out of order I shall refrain from doing so. And perhaps I should not have said a word upon this occasion had it not been for the observations of the gentleman from Posey, (Mr. Hovey,) who remarked that there was an under current at work in this Convention operating against the section. Now I undertake to say that the current is setting the other way; it is working towards the other side. I undertake to say that the gentleman who is pretending to be the father of the proposition, and who is getting all the honor, is himself, and those who act with him, making that under current, and I know not what the result may be. I presume that we will all vote against

the re-consideration, in order to get our names inscribed upon this spout of this tea pot. [Laughter.] I am not contending for the rights of women for the sake of having a memorial presented to me to hang around my neck. I have been as strong an advocate of the rights of women as the gentleman from Posey, and perhaps if the word "purchase" was stricken out of the resolution, the provision might be of some advantage to them. The provision would then be, I think, a very good one. If it was in order I would read a short extract from Macaulay's History of England. [Cries of "Read! Read! Read!"]

The extract reads as follows:

"All the peculiarities of his character fitted him (Burnet) to be the peace-maker between William and Mary. Where persons who ought to esteem and love each other are kept asunder, as often happens, by some cause which three words of frank explanation would remove, they are fortunate if they possess an indiscreet friend who blurts out the whole truth. Burnet plainly told the Princess what the feeling was which preyed upon her husband's mind. She learned for the first time, with no small astonishment, that when she became Queen of England, William would not share her throne. She warmly declared that there was no proof of conjugal submission and affection which she was not ready to give. Burnet, with many apologies, and with solemn protestations, that no human being had put words into his mouth, informed her that the remedy was in her own hands. She might easily, when the crown devolved on her, induce her Parliament not only to give the regal title to her husband, but even to transfer to him by a legislative act the administration of the government. 'But,' he added, 'your royal highness ought to consider well before you announce any such resolution; for it is a resolution which, having once been announced, cannot safely or easily be retracted.' 'I want no time for consideration,' answered Mary. 'It is enough that I have an opportunity of showing my regard for the Prince. Tell him what I say, and bring him to me, that he may hear it from my own lips.' Burnet went in quest of William; but William was many miles off after a stag. It was not till the next day that the decisive interview took place. 'I did not know till yesterday,' said Mary, 'that there was such a difference between the laws of England and the laws of God. But I now promise you that you shall always bear rule; and, in return, I ask only this, that as I shall observe the precept which enjoins wives to obey their husbands, you will observe that which enjoins husbands to love their wives.' Her generous affection completely gained the heart of William. From that time till the sad day when he was carried in fits from her dying bed, there was entire friendship and confidence between them."

Now I ask gentlemen if they desire to ex-

trange husbands and wives? If you adopt this section as it is you will assuredly excite difficulties. If, as the gentleman from Dearborn remarked, the section be re-considered; and the word "purchase" be stricken therefrom, I shall vote for it. But I hold that the Legislature has the power now, and has had for the last twenty years, under the old Constitution, to remedy the defect, if any defect there be in this respect.

Sir, this provision has nothing to do with the law of descents; this section proposes no change in the law of descents, and I wish by no act of mine, by no vote that I may give, to give occasion to estrange in the least possible way the feelings of husband and wife. Sir, I have no faith in the section as adopted, unless you strike out the word "purchase." I look upon it as a dead letter. Upon a man and wife who live together as they should live, your section will have no effect. If the husband treats the wife as she should be treated, she has got all the right she needs. She needs not the protecting arm of this Convention, so long as she has the protecting arm of her husband. But if he should prove to be a fiend in human shape, no law, and no constitutional provision, will reach him. I hope that the section will be re-considered, and that the word "purchase" will be stricken out. If so, I shall then vote for the section.

Mr. STEELE. I rise for the purpose of making a few remarks in reply to the gentleman from Putnam. I have no earthly doubt that it is a very honest impression that is made on his mind in regard to this matter. But I claim that I have feelings and opinions as well as the gentleman from Putnam, and I fancy that before I am through with these remarks I shall satisfy the gentleman that he is as blind in regard to this matter, as Paul became when he was journeying to Damascus. [Shouts of "good," "consent," "go ahead."] And first, I ask gentlemen if these common law distinctions exist in that future state of existence to which he has referred. Have you any of those distinctions there? No, sir, you have none of them. The union there in regard to all matters is perfectly pure. And I will moreover say in relation to some remarks that the gentleman has made in a Scriptural point of view, that from his own remarks there is nothing more evident than that the duties that are to be performed in the marriage contract by both male and female, are set forth in one single text, where Paul speaks of the obedience of the wife to the husband. He says it should be the same as the obedience that Christ requires of the church. He enjoins upon husbands that they love their wives as Christ loves the church. How does Christ love the church? He loves the church so well that He gives all things by free grace, and He gives them good measure, heaped up and running over. He so loves the church that He gives them all, not a part; and the same is required of the wife. What is re-

quired of you, ladies, after your husbands give you all things—after he has done all he can do—after he has given you all he possesses? This is required of you, that as the church is obedient to Christ, even so shall you be obedient to your husbands. That illustrates the whole matter. And another text that has relation to this subject is "ye shall keep yourselves unspotted from the world."

Now, sir, a few words in reply to the gentleman from Tippecanoe in relation to his theory. He compares the relation of husband and wife, with the union of the States of this confederacy. The comparison is a very good one; and I ask, what is better calculated to destroy that union than to create a diversity of interests? Consider for a moment. Two individuals enter into a partnership—one puts in a larger portion of stock than another. But suppose the one who puts in least converts to his own use the whole of the partnership stock—will it not have the effect of producing ill feeling?

Now the word "purchase" seems to constitute the great difficulty in this case, and it appears to me to be a small matter to re-consider the section for. It is a matter of indifference to me in what manner the gentleman from Posey formed his marriage contract. I go upon the ground of the principle itself, and let me at once show you how trivial the objection to the word "purchase" appears to be in my view of the matter. For instance, a man marries a wife, and I have known many men to get married. ["Consent"]. Gentlemen are consenting too soon. They ought first to hear me out. [Much merriment.]

[Mr. Steele proceeded to relate an instance that had come within his own knowledge where a man married for the sake of the property owned by the lady whom he married, and where the husband, having contrived to get the property into his possession, converted the whole of it to his own use and benefit, and prevented it from descending, as it should have done, to her heirs, she having been previously married.]

I can see no good reason, continued Mr. S., why the property of the wife should not be secured to her and her heirs.

The gentleman from Putnam talks about the Divine law in connection with this question. Sir, Christianity works nothing but love. But if you create a diversity of interest you destroy the very principle upon which the married contract rests.

Mr. RARIDEN. This sir, is the last kind of subject that can come before the Convention, that ought to produce irritation. Does any man doubt that there is any other inclination prevailing in this body in regard to this subject, than an inclination to do justice to women? Does any man suppose that we have any other view than to promote the good of both husband and wife? I entertain no such idea.

It is a mere difference of opinion among gen-

tlemen as to what will redound most to the happiness and contentment which should rest in the marriage relation.

And this being the only consideration, I say I believe there is not a member of this body who has not that object in view. I say, then, I can see no cause for irritation. That the members of this body have been and are influenced by the highest and purest motives, I have not an earthly doubt; and it is my object in rising at this time to show the practical effects of the principle that is proposed to be adopted. I said in the beginning that the proposition was insidious. I said that the gentleman proposed one thing, while another was disguised under it; and that the result would be to create a separation of interests which would lead to continued strife. I would be willing that a provision securing to the wife her own property during the coverture, should be incorporated in the Constitution, but I am not in favor of creating distrusts between husband and wife, and permitting a married woman, during the life time of her husband, to have any special control of property independent of her husband. It is not the proper sphere of a woman in it; she would lose her loveliness, and most likely her property and reputation, for who can love a jewing bargain-making woman. Whenever a lady travels out of the proper line peculiar to female character, she lays off the ermine which God gave her, and descends from the character of an angel to the character of an amazon. I would not place her in a situation that would tend to destroy, or to lessen the love and mutual dependence which should exist between husband and wife. Under the present system of things, the man is bound to love and honor his wife, or he degrades himself, and it pertains to his marital rights to control the property and the conduct of the wife. This is a part of the contract, and it is so provided, for wise ends. The husband becomes responsible for the conduct of the wife when he assumes the marriage relation. But if you give her the right to manage property without consulting the husband, and yet hold him responsible for the conduct of the wife in all things, do you not see that your law will be inconsistent? Of all persons the husband is the most interested in the preservation of the property of the wife, and of all persons the husband would be the most disposed to prey upon the rights of the wife, if their interests were separated, and the intimacy of the married relations, doing away with all diffidence on her part, to prey upon his rights. There will necessarily arise strife and turmoil about property.

Now he might or might not be bound for her support. Admitting, then, that they have a separate interest in the property, I ask gentlemen what they propose to do in regard to their support? Is he to support her? Or are they under mutual obligation to contribute from their

private resources for the support of the establishment, just like common partners in trade? This is a matter that must be regulated by law. The husband is, as the law stands now, bound for the support of the wife, and you find few men who are not proud to acquit themselves honorably of this duty, and to render the situation of the wife as easy and comfortable as it is in their power to do. I speak of husbands as they ought to be, which I suppose embraces a large majority. Well, what do you propose to do after you dis sever the interests of husband and wife in relation to property? The husband will no longer have control of the person and the property of the wife. You strike out an article from the marriage contract that undoubtedly should exist: for when a woman under the present system agrees to take a man, it is just the same as if she should say, "I agree to surrender to you my person and my property—the control of my life and conduct," and the husband on his part takes her for his supreme Empress—and undertakes to be responsible for the property and the conduct of the wife. If the wife should slander a neighbor, the husband would be liable to an action. The wife is not answerable, but the husband is. If she commits a trespass, or does any act that is contrary to law, the husband is responsible. She is in this respect, himself. Now what do you propose to do when you dis sever the interests of husband and wife? What kind of laws must the Legislature pass to carry out the principles which you here inculcate? In the first place, the Legislature must give to the husband a right of action against the wife in a suit at law, and they must give a similar right to the wife, because they will trespass upon each other if they are such as thus desire separate interests. She has not the physical strength to contend with him personally. She must have the right of action in a suit at law. The law must provide her a remedy for all trespasses committed against her. Will not this tend to disturb the harmony that should prevail in families? Suppose we yield the point that the husband shall support the wife, and that she shall have the undisputed control of her part of the property. Her doctrine is to keep all she has and get all she can, for she cannot love her slave as she can her lord. You must either indemnify the husband and make her responsible for her debts in a court of justice, or else nobody will trust her, and that disgraces her ten times more than if she had no separate property of her own. I am speaking of the practical effect of this principle, if carried out. Sir, it is a covert assault upon the holy state of marriage, and an attempt to strike from it that feature which constitutes it the most blessed and the most sacred of all human relations.

Gentlemen have alluded to the law of descents. I tell them I will go with them for a

change in that law, for I have ever entertained the idea that as husband and wife have been one during life, one should succeed to the other in the inheritance of property. That is my doctrine. Well, I say, then, that it is because I would not place the woman in a situation which would tend to diminish the attachment of the husband, and make her less idolized, for what is property with a woman, compared with feeling that she engrosses the whole soul of the man with whom she has entwined her destiny, and whom her children look up to and call father.

I would go further. If you say that the wife shall have separate rights in regard to property, you should also allow her to participate in the making of the laws to protect it. If you give her the rights that you propose to give her I see no reason why she should not have a hand in making the laws. I say that the result of such a principle will be to bring woman down from the character of an angel to that of an Amazon, to teach her to deal in bonds and mortgages—instead of the graces. They are to be permitted to enter into competition with the husband in the business transactions of life, to enter the marts of trade, and to look out for bargains. Where is the man who can love in them what they now adore—who can make an idol of such a being? Look around, and see how much woman, lovely woman, will lose by descending from the high ground she occupies, and becoming an adventurer in the marts of trade. I tell you it is a mistake when you talk about woman's rights being in dominion over property—it is to engross hearts and affections that are proud to lay offerings at her feet of all they have the powers they possessed. I have once described the source of that power. I shall not go over it again. It has been my purpose to point out the effects of giving them those extended rights which you propose to give, and I say that gentlemen cannot fail to see that after recognizing those rights it is necessary that she should take a part in making the laws of the country. You must make them eligible to office, and give them a potential power at the ballot-box, if they are to maintain those rights.

Nothing less than this will answer, and the moment you introduce litigation in regard to these rights, you strike from the marriage relation that which has always formed its chief happiness, and I go further and say that it tends to lower the character of women. They have won their way to an influence that is as powerful and potent as any influence that ever was exercised. Do you not see at this day, when our galleries and lobbies are crowded with fair listeners—do you not see gentlemen, as in the days of chivalry, ready to break a lance in their cause—ready to do battle in defence of their supposed rights! in order to win a single or even smile of approbation or an approving glance

from them? I speak of it not in a derogatory sense, but I say they have attained a high degree of influence in the only way in which females ever can or will acquire influence in society; and if you grant them the so-called rights that are here proposed to be granted, you will at once and forever destroy the best part of that influence.

These are the views that I entertain and believed, that it is a covered attack, calculated to disturb the present married relation. I am opposed—utterly opposed to make such innovations.

Mr. OWEN. There are two things which may happen on the present occasion. They are: that the vote may be re-considered, and the widest range again given to debate, on a subject that has already claimed much attention from the Convention; and, in that case, I pledge myself that not an assault that has been made, whether on the section before us, or on myself individually, but shall be replied to—ay! to the very letter! [Applause.] Or it may happen that debate will remain restricted, as at present, to fifteen minutes; and while this is so, one can but glance at the charges, personal or otherwise, that have been just employed in the attempt to reverse a deliberate decision of the Convention.

Yet, brief as the time is, it is due alike to myself and to my fellow members, that I notice, by a word or two, the attack, alike irrelevant and unprovoked, made upon me this morning by the delegate from Putnam (Mr. Badger).

I have no reply to his unmannerly and insidious allusions to a little word of mine, which the ignorance or the grossness of some men cannot appreciate. There are subjects, however useful—however proper—nay, eminently moral in themselves—which demand a proper selection of time and place for their discussion.

The delegate speaks of what he is pleased to call my "Marriage Contract," but what was, in fact, but a memorandum of my sentiments, written in the privacy of the closet, the morning before my marriage, some eighteen years ago; never intended for publication; shown accidentally to a friend of mine, named Gilbert, and by him published some months afterwards, during my absence on a marriage trip to Europe; published, I cannot doubt, from the best motives, as evidence of sentiments which he conceived did me honor, but without my knowledge or consent. I say this, not, very certainly, in the way of apology for a document that requires none—only in explanation of the appearance, in print, of what I had not the slightest intention of ever obtruding on the public.

But to what amounts the railing accusation brought against me here by the delegate from Putnam, in connection with an old and a private matter like this? First, he charges that I had, in that paper, expressed my unwillingness

to call in the aid of the Church in the performance of the marriage ceremony. That is true. I was not married by a clergyman; I was married in my father-in-law's house in New York, in the presence of some twenty or thirty friends, by a notary public. We are accustomed—we of the West, especially—to do in this matter as we please. Some choose to be married by a minister of the Gospel; some, by a justice of the peace. I doubt not many of my fellow members have called in, on occasion of their marriage, the services of the latter. I never heard before that it was a crime to select, on such an occasion, a magistrate instead of a preacher. Sir, this charge is simply ridiculous.

What is the second count in the indictment? It is, that, in the document in question, I declared that, though I could not legally divest myself of the unjust and tyrannical rights which an iniquitous law—dating from barbarous times—gave me over the person and property of another, I desired to be considered as disclaiming and renouncing these. Sir, I trust that, in my conduct, through long years of wedded life, toward as good and true a partner as ever husband was blessed with, I have acted up to the spirit of that disclaimer.

I am indebted to the delegate from Putnam for the unwilling testimony he has thus adduced of my sincerity and consistency. He proves to you that I felt and wrote eighteen years ago as I feel and speak to-day. He shows you that I then renounced, in my own person, those feudal rights to property justly belonging to another, which I now seek to abrogate, not only in my own case, but in the case of all my sex. I thought and felt, at the moment of my own marriage, that the law which denies to the wife all right to her property was a relic of barbarism, a disgrace to modern civilization. I think and feel so still. That conviction it was that induced me to pen the document which the individual on my right (Mr. Badger) has dragged into this discussion. That conviction it is which still urges me to do battle in this just and righteous cause.

Sir, the delegate may find, perhaps, in the paper he attempted to read, certainly in other portions of my writings, sentiments—opinions—which by many are deemed heretical. Some of these, written in earlier years, I adhere to, now as then; others I should write differently, if it were to do again. He must have been a careless thinker—he must have profited little by the teachings of experience—who finds, after twenty years, nothing to modify—no word to take back. But if my maturer judgment cannot endorse all that in my more youthful days I may have said, I call to mind with satisfaction, mingled, it may be, with pride, that not one sentiment, whether just or not, was uttered—not one word, whether wise or not, was penned—save with intention the most upright; from pure motive, for justifiable end. I make

no pretention now, any more than I did then, to orthodoxy. I claim for myself, as the good and the noble Roger Williams did of yore, that right of private judgment and free speech which it is our country's proudest boast, that every American citizen—be he citizen by birth, or citizen, as I am, by selection and preference—has a right to DEMAND of his fellow citizens. To the greatest it has not been refused; to the humblest it may not justly be denied. Jefferson claimed it, when he asked your fathers' votes for the office of Chief Magistrate of the Republic. I am equally entitled to its sacred shield, though I stand here but a simple delegate to this Convention.

Sir, there are two courses that may be pursued in debate. The one is marked by uprightness, candor, and generosity. Its prompting motives are a love of truth, a sense of justice. And, let a man be right or wrong, if, in urging his sentiments he pursue such a course, his opponents—or that portion of them whose good opinion is worth having—cannot choose but respect him. There is another course, to which men sometimes stoop, wholly different in its character, and as different in its effects. It has no fairness, no straightforward honesty about it. Its sole aim is success, at any cost, by any means. It looks round, not for argument, but for prejudice. And it employs such prejudice much in the same way, (to adopt a homely illustration,) as a mischievous boy may tie a stone around the neck of some luckless cat, doomed to be drowned in the nearest pond. A proposition which would succeed on its own merits, is loaded down by the weight of extraneous irrelevancies, and sunk in the stream of turbid debate.

The delegate from Putnam may inquire and welcome, if it interests him, into my early life—may scrutinize my personal habits, past or present. Errors we all have; yet, as to what I have done, or what I have written, there is nothing of which I am ashamed.

He may do this, if he will. But, for myself I say, that if his biography, written by his worst enemy, lay before me on this desk, I would not open a page,—I would not read a line. Detraction and ribald abuse are within any man's reach. Nothing is easier than to use such weapons. The brutal bully, the disgrace of the bar-room, is an adept in their use. The difficulty—with a gentleman it is an insuperable one—the only difficulty is, in resolving to use them. [Applause.]

Sir, a strange turn has been given to a remark made this morning by my colleague, (Mr. Hovey,) the remark that the section now under debate has been opposed on account of its patermity. This has been twisted into a claim set up by my colleague, that whatever I brought forward was infallibly right, and should be received without scruple or question. No construction can be more unfair or less warranted

by the gentleman's remark. It is absurd in itself, and not very creditable to those who make it. Whether correct or incorrect, my colleague's inference was certainly not complimentary to myself. It was an intimation that in other, less heretical heads, the section might have escaped much denunciation now employed to defeat it. The attack of the delegate from Putnam is some proof that the remark was not wholly without foundation.

A word now, since a few minutes are still left to me, on the merits of the question. Here is the vote on the law passed four years ago, and securing to women, so far as regards real estate, all, and more than all, that we claim for them in this section. *First*, there is the vote in the House; I read from the House journal of 1846-7, at page 360; it stands 72 to 17; more than four to one, in the popular branch. *Secondly*, here, in the Senate journal for that session, at page 470, is the vote of that body on the same bill, 38 to 9; again a majority of more than four to one.

You can scarcely find, sir, in the records of our legislation, an instance of a more overwhelming vote in favor of a novel and untried principle of this importance. There could not be adduced a stronger proof that the bill was regarded as a beneficent reform, eminently in accordance with the humane spirit of modern civilization.

Is there any chance that such a law as this, passed by a vote so decided, should ever be repealed? None, sir; not the slightest. Such reforms, once fairly commenced, ever go on. There is no example, so far as my reading extends, in all modern history, of a change from the mild rule of the civil law as to the wife's property, to the harsh despotism of the common law on the same subject, while changes from the common law rule to the provisions of the civil law are of continual occurrence. You might as well attempt to stop the sun in his course, as to arrest the progress of a principle like this.

The statute I have referred to will remain the permanent policy of the State. And protection for personal property will be added; possibly not in this Constitution, though I confidently believe that the section, in some shape, will finally triumph ere we separate. But whether by organic law or by legislative act, the wife's property of whatever kind, will, beyond all question, be protected by law in this, our State of Indiana.

Sir, I know that a majority of this Convention are opposed to the incorporation in the new Constitution of a definite homestead exemption. But say that we had decided to adopt such a provision; and suppose the question to be, whether the exemption should be of personal property as well as of real estate. Should we not decide that question affirmatively? [Cries of "Yes," "yes."] I am sure that we

should. I am sure that two-thirds or three-fourths of the Convention would decide that, while we exempted the farm or the dwelling, we should exempt also the mechanic's tools and the renter's farming utensils. But if that be a just principle as regards exemption, so is it also in regard to the wife's property.

The law already protects land. We propose—and that is all we propose—equally to protect the property of women who have no land. Upon that issue I am willing to go before the country.

Mr. HOLMAN. I simply rise to say this: I intended, when I had possession of the floor a short time ago, to move, before taking my seat, that the committee on revision, arrangement, and phraseology be instructed to amend the section by striking out the word "purchase," and also the words "any other way." The section would then read as follows:

"Securing to them under equitable conditions, all property, real and personal, whether owned by them before marriage or afterwards acquired by gift, devise, or descent; and also providing for the registration of the wife's separate property."

This will be a provision in accordance with the provisions of the common law in reference to this matter. The word "purchase" is an innovation upon the common law. The balance of the section provides that the property thus acquired—that is, by gift, devise, or descent—shall remain secured to the wife upon equitable conditions.

The PRESIDENT. The Chair would remark, as the inquiry has been made as to whether it would be in order for the committee on revision to amend the section as proposed, that the Chair entertains no doubt that it is perfectly competent for the committee to make the amendment under the instructions of the Convention. It is within the power of all deliberative bodies to instruct their committees in regard to their duties. And the committee is bound to do only that which they are instructed to do. It is for the Convention to determine whether they will take that course.

Mr. PETTIT. I have not risen to discuss the principle that is involved in this question. It would take a longer time than is allowed, under our rule, to discuss the many points that suggest themselves in connection with it. I shall, however, briefly notice a few of them.

The first thing that suggests itself to my mind is this: Is it desirable to make the family one, to secure unity, harmony, and chastity? I shall undertake to answer the question in the affirmative. Whether the common or the civil law tends most to accomplish this end, or the reverse, will also be a question to be answered, and it can only be answered by a comparison of the social condition of people living where the civil law prevails, and of those living where the common law prevails. What is the condition of

the marriage relation in England and the United States, on the one side, where the common law obtains, and its condition in Italy, Spain, Mexico, Brazil, and other countries where the civil law prevails, on the other. These questions will naturally suggest themselves to the minds of those who propose to discuss the question; but I do not. With the main features of the section I am content. I am not content, however, with this or any other law that shall enact a separate interest between husband and wife—that shall give to the wife, during the life of the husband, the control of property, either real or personal. I am willing to put the wife's property both real and personal while the husband lives, and after his death, beyond the reach of the creditors of the husband or his legal representatives, and further than that I am not willing to go. Sir, I need pass no compliment on the heart or the head of the gentleman from Posey. I believe that he has introduced this matter with feelings of sincere philanthropy. But as I understood the section when it was first introduced, there were words contained in it that were clearly objectionable to my mind. I said so at the time to the gentleman who introduced the section, in private conversation. There is no man who is more ready than I am to vote for a provision that shall secure to the wife the benefit of her separate property; but I am not for giving to the wife the control of property real or personal during the life of her husband.

But if you allow this section, as it now stands, to be incorporated in the organic law, you make it necessary that she shall be a party to all legal transactions in reference to the property, that all leases shall be given by her, and that the rents shall be collected by her, or in her name. All suits in ejectment must be brought against her; the sheriff must serve the writ on the wife, and not on the husband; all writs of replevin and detinue must be made out in her name, and her's alone.

With the present section I am not content. I would amend it so that it should provide that the property, real or personal, of the wife, shall be secured to her from the creditors of the husband. And I would secure it as well against the executor and administrator of the husband after his death, as against the husband's creditors during his life; and the section which I have proposed, the meaning of which cannot be misunderstood, for it is plain, simple, and definite in its character, would leave the matter where I think it ought to be left; that is, during the coverture the husband shall be at liberty to control the real and personal property, he shall have the absolute and undisputed control of the property, and shall take the rents and profits for the maintenance of the family, for the maintenance of the wife and her offspring.

Sir, this section will supply the defect in the law in regard to this subject; it will accomplish

all that is necessary. I doubt not it will accomplish all that the gentleman from Posey himself desires. I cannot believe he wishes that after the marriage the wife should continue to control the property. It is not her sphere. The management of her household is her appropriate occupation, and if she be driven into boisterous action, into the stream and turmoil of life, to manage and transact business relative to property, it is imposing upon her a burthen which is unsuited to her and which she is ill qualified to bear.

This section, then, if it be substituted for the one which has been adopted, will secure to the woman all her property, real and personal, against the creditors of the husband and against the executors and administrators of the husband. So far I am willing to go, and farther than this I will not go.

On motion by Mr NILES, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the motion to re-consider the vote by which the section in relation to the rights of married women was passed.

Mr. NILES. A section has been adopted by a vote of this Convention, which I believe to be of overruling importance, and to which I am earnestly opposed. It is a section, in its spirit, changing the relations of domestic life among us, and in its silent and ultimate influences, superseding the condition of society which we have inherited from our ancestors. It is now proposed to re-consider the vote by which that measure was adopted. Upon a question of such vital interest, I feel that it is my right to be heard, not for myself, but for the sake of every man, woman, and child, whom I in part represent. Though it will be impossible to condense what I desire to say upon the subject into the short space of fifteen minutes, I shall commence my remarks with the hope of being able to obtain the floor again before the close of the debate.

Before proceeding to the main question, I desire to state explicitly what I would not be considered as opposing when I oppose the section which has been adopted. In the first place, by opposing it I do not question the propriety of protecting, by legislative enactments, the property of married women from execution for the payment of their husbands debts. In such a measure I can see no essential wrong. Such protection would come in conflict with no law of our being. It would have little or no tendency to build up and perpetuate in families, separate interests and estates, to breed dissension or to affect the purity of the marriage relation. Neither would I be understood as opposing, with some slight alterations, our present statute in reference to the real estate of married women.

Again, I would not oppose a modification of our law of descents, so as to give to the widow, at least during her life time, a larger share of her deceased husband's estate. I think our laws in this particular are defective, and cannot doubt that the Legislature will, at an early day, provide the proper remedy. Some further provision for the benefit of the widow does not conflict with my idea of the unity which should exist in the marriage relation, but coincides with it fully.

I even go further than all this. I would not be understood as opposing, but as a legislator, would favor the idea of giving to married women, by suitable statutory provisions, some further power than they now possess of protecting property against a profligate or drunken husband. At present, whenever the case is of such a character as to justify a divorce, the wife can obtain protection by an appeal to a court of equity. I would not drive her to so desperate an alternative. She may be attached to her husband; she may cling to him for the sake of their common children, however abandoned his character, and in the hope that he may ultimately become reformed. Under such circumstances, I would give her the right to require the aid of some impartial tribunal, in protecting, not only her own, but his property, against his extravagance and folly. By some such means a lesser evil could be substituted for a greater. But such interference would still be an evil, and could only be justified in contrast with the greater evil which it would be intended to remedy.

Such measures as these would only be legislative expedients, designed to remedy defects in our present laws, without introducing any new principle at war with the whole spirit of the common law as it affects the domestic relations. They would introduce no new and dangerous element into the general condition of society. They would afford special remedies adapted to special evils. Such provisions of the law would have nothing in common with the spirit of this section.

The section under consideration provides that "the real and personal property of women, owned before marriage or afterwards acquired, by purchase or gift, (other than from the husband in fraud of his creditors,) devise or descent, shall be and remain *secured to them* under equitable conditions by law." When it was first reported by the committee it contained the words "to their separate use." These words have been stricken out, and it seems to have occurred to several gentlemen that their omission makes an essential difference in the character of the section. Now, sir, I consider it a difference in form, in words and in nothing else. The spirit of the section remains unchanged and its influence upon the domestic relations will be precisely the same as if the words had been retained as reported by the

committee. In its present form it is a provision to guard and protect the wife against her husband, not in the isolated cases of great wrong calling loudly for such protection, but as the universal rule, and as if the husband were the worst enemy of the wife; as if such protection were always necessary.

The section provides that the property of married women is to be and remain *secured to them*—secured to them against whom? Against strangers only; or against the husband equally as against strangers? It means the latter, or it means nothing. The section, if carried out in good faith by the Legislature, must vest property in the wife, to her sole and separate use, and it must, as to property, divide every household against itself. The words "equitable conditions," ingeniously thrown in, have no essential force. They cannot be so construed as to annihilate the spirit of the section, and they can have no other effect than to quiet the apprehensions of some gentlemen who would be startled at a proposition to adopt at once, in all its length and breadth the civil law, to govern hereafter the relation of husband and wife. True, it is said that the husband would be made the agent of the wife to manage her property; but the agency must be subject to be revoked by her at any moment, else during the interval when she could not revoke the agency, he might dispose of all her personal property, and the whole effect of the section would be defeated. The mere words "equitable conditions" are utterly unmeaning. It cannot be presumed, if they were omitted, that the Legislature would enact laws upon this subject, in violation of equity and good conscience, unless compelled to do so by the spirit of the section, which as part of the Constitution they would be sworn to support. Your proposed section is to be a matter of strict law, having nothing to do with equity. I would rather vote for it without than with those words, because without them, it would be more concise and intelligible, while its meaning and operation would be the same.

It has been suggested that the friends of this measure will consent to strike out the word "purchase." I admit that that would be some slight improvement, but it would be very slight. It would look somewhat less as if you intended to make women partners in trade with their husbands or with other men. But the evils of the new system of things would hardly be mitigated.

I take it for granted that this section will not reach the condition of the poor. It has no application to them. The poor do not ask you, as the universal rule of society, to protect to the wife against her husband, the few plain dresses, the family cow, and the little keepsakes—the tributes of parental love on the bridal morning. To them, with their simple views, happiness counts more than wealth, and the bride is committed to the affections of the man with whose

destiny hers is to be united. But with the rich it is not always so. The possession and the love of wealth, or rather its engrossing pursuit, does often dry up the fountains of the heart. Under the system which you propose, marriages among the wealthy will become, even more than now, the appointed means of perpetuating great estates. The marriage obligation will degenerate more and more into the idea of a civil contract, bringing together partners equal in point of fortune, to perpetuate a hot-bed aristocracy, instead of a sacred union between congenial spirits, becoming one in their affections, their hopes and destiny. Adhere to this section, and let it be faithfully carried by the Legislature into statutory provisions, and in all such cases, as indeed in every case whatever, the wife, in the control of her property, will be as independent of her husband as of any other man. Her separate authority will extend to the estate of millions, and will reach down to the smallest article of personal property—even, as was remarked by a countryman in the streets the other day, to the hog fattening for the butcher. She must have the power, in every case, to say to her husband, "That is mine; don't meddle with it, sir! I revoke the agency which the law has given you."

Then, sir, I repeat again, that this section does affect an entire and perfect separation of interests. It utterly and forever subverts the rule of the common law which merges in the husband the legal existence of the wife.

To such a policy I am uncompromisingly opposed, not merely as a constitutional provision, but as a legislative provision, in all its forms, now and at all times. You may as well argue to me that minor children should be separated from and made independent of their parents, because parents are sometimes inhuman, as that, by one universal and sweeping rule, the interests of the wife should be separated from those of the husband, because some husbands are unworthy of the name. In the present condition of the human race, all general laws, however wholesome, are liable to operate badly in individual cases. But do not dispense with wholesome general laws to meet those cases. You don't send all men to the penitentiary lest some men should commit crimes. Provide for the exceptions by proper laws, but do not disturb the good order of a thousand peaceful homes to punish one unworthy husband.

[Here the President's hammer fell, the time, under the rule, having expired; but in the afternoon Mr. Niles resumed, and concluded his remarks as follows:]

Mr. President: In the remarks which I submitted this morning, I endeavored to show the real character of the section now under consideration, and that, in reference to property, it affects an absolute divorce of husband and wife. I must not now recapitulate or dwell longer on that part of the subject. I oppose the measure,

then, as antagonistic to the social and domestic habits and sympathies of our people; as, in its essential spirit and ultimate influences, a violation of that law of the Divine order announced in the Sacred Scriptures, "They twain shall be one flesh," and as tending towards a condition of things in which every wife shall have her separate mansion, her separate equipage and separate servants; and when, as in some of the cities of Continental Europe, every husband shall have his mistress, and every wife her lover. And, sir, seeing the measure in such a light, sooner than fasten it upon the country, I would breed a perpetual pestilence throughout the State. But let me not be understood as questioning the benevolence of the gentleman from Posey, (Mr. Owen,) and those who have acted with him on this question. Our sympathies are naturally enlisted in favor of those who seem to be the weaker party, and whose voices are not heard directly in our legislative halls. Our laws in regard to widows and married women do, as we all admit, require amendment, and should this discussion lead to the proper legislation without adopting this radically subversive measure, the gentleman from Posey will be entitled to our thanks.

In our legislation we should be fully careful never to violate, however remotely, the laws of nature, or as I prefer to say, the laws of God. Such violation never goes unpunished. One generation may seem to escape, but succeeding generations must suffer.

By the common law of England, which has hitherto prevailed in this State, husband and wife are recognized as one person; she takes his name; she cannot sue him; he is bound to cherish and protect her; he is liable for her acts; his interest is her interest; his destiny is her destiny; he is the recognized head of the wife and head of the family. Under this law it must be admitted that woman has attained a higher influence and secured more profound respect, that the marriage obligations have been more faithfully fulfilled, and homes more united and happy than elsewhere, or ever before, in the history of the world. And I insist, sir, that this doctrine of the common law, in its essential spirit, accords with the teachings of Revelation—the Divine Law itself.

The Sacred Scriptures have often been referred to in this debate. While I admit their genuineness and authenticity, I do not claim that we can always infer from isolated passages their mere letter, true rules of legislation. If the Bible is what it claims to be, it is a book addressed to man's spiritual nature—to communicate to him spiritual truth, though all the precepts for the government of our moral conduct may be found upon its surface. While I would not engage in controversy on such a question, I must say, that to my mind no doctrine stands out more luminously on all its pages, than that which teaches the perfect oneness of the

marriage relation, and that the husband is the head of the wife. But, sir, we need not go to Revelation to learn this law. It has been written on all human hearts since before the period of history, and it will remain written there forever. You may violate its spirit in your legislation, but you can never obliterate the law itself.

But it is said that under the common law, which recognizes fully this law of our being, the condition of the wife is akin to slavery; and I have been personally appealed to in this debate as, in my opposition to this measure, acting inconsistently with the doctrine for which I most earnestly contended, on another occasion, that all men are endowed by their Creator with equal rights. Sir, as I do not reason with that proposition which asserts American slavery to be a blessing, so I do not reason with the proposition which assumes that the condition of the wife, under the common law, is a state of slavery. I simply pronounce it absurd. The wife is equal with the husband, not because she occupies the same sphere and fulfills the same offices; not because her nature is identical with his, but because she is in all things different from him. In those very differences, reaching to their inner life, which are always recognized by the terms male and female, masculine and feminine, consists not only their equality but their fitness to become united; not by a cold, civil contract; not as partners in trade, but as one, indissolubly, in the most sacred, most endearing and enduring of all relations. We can see a resemblance of this union and of these differences, in the elements which make up this water. [Here Mr. N. held up a glass of water which was sitting on his desk.] Their qualities and offices are different and opposite, hence their union in the new and beautiful compound; a union no more complete than, according to the beneficent design of Providence, the relation of husband and wife was intended to be. Will you then introduce between them a principle of disunion and separation by your laws?

It seems to have become fashionable in this Convention, to refer to the ancient classics, and something valuable may have been gathered from those old storehouses of truth and error. There is one incident in the early history of the Roman Republic, of which I have been forcibly reminded during this debate. When a portion of the people had rebelled against the government and encamped beyond the Anio, and when, as we are told by Livy, no hope was left except in concord between the citizens, Menenius Agrippa was sent as an ambassador to persuade them back to their allegiance. Being admitted into their camp he related, as all will remember, in homely style, the fable of the dissensions which arose among the members of the human body against the stomach, because their sphere and offices were different. That speech was not

without its influence upon an excited Roman populace, and it may well be pondered by us before we adopt this measure. Perchance there was more of truth in that fable than was seen by the orator himself. Similar illustrations occur in the Sacred Scriptures. It may be that it throws light upon a law of the Divine order extending throughout the Universe.

Gentlemen who undertake to argue that the essential principle of the common law, in relation to husband and wife, is unsound, might as well attempt to convince me that the human body should have been made without a head, or that my hand and eye are unequal, because their offices are different. True, in your Asylum for the blind, the unfortunate pupil is taught to see and to read imperfectly with the hand. But is that a reason why my hand should assume the office of the eye, when the eye is perfect? Woman can learn to be the head of the household; she could learn to mingle in the strife of politics, and in all the rugged scenes of outdoor life. But it needs no argument to prove that such is not her sphere. Woman loves to have an arm on which to lean. What is implied in the very name of widow, but the idea of one who has lost her protector and head? God has made woman a help-meet for man; to be the delight and ornament of home; to rule by love and not by law. There lies her happiness. God has made woman what she is. Would you, by legislation, transform her into a man? Above all things, would you introduce a principle of disunion between her and her husband? You might, with equal propriety, attempt to transform the ivy into the oak around which it twines, or to make the ivy independent of the oak.

There is a beautiful Indian allegory, of the grape-vine and the oak, intended to illustrate the relation of husband and wife. While the vine clings to and is supported by the oak, it is loaded with fruit—a delightful object in nature, but independent of the oak, it trails upon the ground, losing all its beauty. Sir, we may well learn a lesson from the children of nature.

By any principle of disunion between husband and wife, incorporated into the organization of society, you will do far more injury to woman than to man. Her life and wealth consist pre-eminently in the fullness of reciprocated affections. Her empire is home. Unless I have wrongly read the female character, mere outside splendor palls upon a woman's heart. It is to her like a palace of ice in the Polar regions, beautiful as the diamond on the surface, but cold and desolate within. I never think of the women who have occupied a conspicuous place upon the rough theatre of the world, from Semiramis and Cleopatra to Elizabeth and Maria Theresa, but as of beings out of their place and thrown ajar. Sir, I will confess it, I never think of Jenny Lind, spiritually beautiful as she is, but with a feeling akin to sorrow. And I

would not name her in this public manner, except that it is her misfortune to have become an historic character. I should think of her with far more satisfaction, as fulfilling the conditions of her own happiness, had she married some noble Swedish youth and emigrated to our Western frontier, becoming the light and music of her neighborhood, and the centre of a delighted and happy home.

[Here again Mr. N.'s time expired, but by consent the rule was suspended, and he proceeded as follows:]

I thank the Convention for their courtesy, and will endeavor to be brief. The gentleman from Posey (Mr. Owen) has read to us the opinions of Kent and Story in favor of the justice and propriety of this measure. While I cheerfully admit my profound respect for those eminent men, I must believe that they were no more competent to form a sound judgment upon this question, than if they had followed the plow instead of spending their lives amongst the misty volumes of the law. They might be very competent to determine rights as between partners, and at the same time overlook the great distinction between the relations of partners to each other, and of husband and wife.

This is a question to be determined in the light of history and of reason, not by judicial authority. But the opinions of many eminent jurists can be produced that the whole policy is wrong, and that even marriage settlements are the result of excessive refinement, and generally pernicious in their influence. Here I may remark that whenever a case does arise which, in the opinion of the parties or of their friends, requires something like the provisions of this section, the same object can be substantially secured by means of a marriage settlement. It is secured in that way without disturbing the general condition of society for the sake of the individual cases. But such marriage settlements are unsuited to the habits of our people, and are hardly less objectionable than the law of primogeniture.

If gentlemen go to history for evidence in favor of this policy, the concurring testimony of history is against it. Who would exchange the condition of women of the middling classes in Great Britain and the United States, for that of women in France and Italy? Where is the marriage tie held most sacred? But we are told that this principle has been adopted in several of the States of this Union. Though it may have been adopted, its consequences have not been developed. It has been longest in operation in Louisiana, and it is, to my mind, a sickening fact that a large portion of the litigation in that State is by wives against their husbands.

But, sir, as law-makers, we should look no less at the interests of the husband than of the wife. How many a man's destiny for good or for evil, is fixed by the influence of his wife.

In the present condition of the world, woman, like man, is imperfect. Let her destiny be bound up with his and she will guard him from the beginnings of vice with all the solicitude of a woman's nature; but let her fortune be independent of his, and in those capricious moments to which all are liable, she may abandon him to his fate.

Make this separation of interests, and many a hasty and ill-judged remark, which might otherwise be soon forgotten, will rankle in the husband's bosom, till sharp-toothed unkindness shall supervene and domestic peace be sacrificed forever.

The gentleman from Posey excited our just indignation at the conduct of two young men from the South, who married sisters in this State, and on their way home, sold the property of their wives, at public auction, in the town where he resides, and left for parts unknown with the proceeds. But, sir, what was the real wrong done to those confiding sisters? Are we not forgetting the reality while we chase the shadow? Suppose that those young men, instead of being scoundrels, had proved to be worthy of their wives, and that their little property had been destroyed by fire, or any other accident; who would have thought of it as a great calamity? Would not those sisters have still gone on their journey to their new home, full of joy and full of hope? The real injury was that their affections had been trampled upon; their love, which was their life, had been betrayed. Property has its value, but in this money-loving age, we are liable to give it undue pre-eminence. Let that example be a warning to parents and to daughters. A woman can never be too careful in ascertaining the character of the man who is to be her husband. But the wretch who would betray a woman for her fortune, would find means to obtain it from her, in spite of this section. And, indeed, this measure would afford no protection to those affectionate and confiding women who alone would need it.

The gentleman from Posey, (Mr. Owen,) tells us that we would do well to deal out to women a little more justice and a little less flattery. Now, sir, I admit that sensible women are sometimes compelled to listen to flattery, which is never an evidence of genuine respect; though I mark a wide difference between a manly sentiment of approbation, and that crawling sycophancy which, with serpent tongue, flatters only to beguile. But I do believe that there is no spot on earth, where women are treated with more real deference and respect, than in the United States. I once heard Miss Dix, of whom you all know something, and whose name has become a synonym of charity, say that she had traveled through nearly every State in the Union, and generally alone, and that she had never met with anything approaching to rudeness or imposition but in a single instance—that was at Little Rock in Arkansas. Some one carried her

trunk upon his shoulder, from the house where she had stopped, a short distance, to the boat. He charged her fifty cents for the trouble. She inquired, as she handed him the money, if it was not a large price? when a rough looking man, standing by, interfered, and told the servant that he ought to be ashamed, to impose upon a lone woman, and she, for what he knew, a widow.

Sir, the age of chivalry has not, in the doleful language of Burke, departed forever. Let woman occupy her appropriate sphere and fulfil her appropriate offices, in the spirit of hope and love, and, in a far higher sense than that ridiculed by Cervantes, ten thousand swords shall yet leap from their scabbards to avenge even a look which threatens her with insult. Within that sphere she is clothed with omnipotence, for her armor is love—but without that sphere, her power and influence are gone. Within that sphere, she can almost say, with the Lady in Milton's *Comus*,—

That He, the Supreme Good, * * *
Would send a glistering guardian, if need were,
To keep her life and honor unassailed;

but without that sphere, she has no protection.

It is not because I love justice less, but because I love woman more, that I oppose this section. It strikes at the foundation of her power and happiness. Sir, I make no professions of what is called gallantry, but I do profess a profound respect and love for the female character, as who does not, that has known of woman, in all the relations of mother and sister—of neighbor and of friend—of wife and daughter—in sickness and in health.

One fabric of political authority may be destroyed in a day, and another may rise in a night; but changes in the elemental condition of society are affected slowly. Pass this section, and no shock will be produced upon the public mind; its influence will not be felt by the present generation, but its evils will be fearfully visited upon our children's children. Remove, if you will, all the old land-marks of government, but do not experiment with fire-sides and homes. The relation of husband and wife is of Divine appointment; it takes hold upon our spiritual nature, and reaches far into the future. Experiment with anything else, but do not tamper with a subject so vital and sacred. [Applause.]

Mr. GIBSON said—

MR. PRESIDENT: The gentleman from LaPorte (Mr. Niles) has illustrated his views of the relations of husband and wife, by a simile drawn, as he informs us, from the rude literature of the aborigines. The source from whence he derived it struck me, sir, as one peculiarly appropriate to the end for which he pressed it into his service.

It is fitting and proper, that those who seek to perpetuate the injustice of our laws, in their

relation to woman, should turn to the annals and the language of the barbarian, for precept and example.

If a poetic simile affords to the mind of the stern stoic of the woods, his justification for converting his wife into a beast of burden, I know of no reason why those of us who emulate his example, should not profit by his argument.

Far more appropriate is it, sir, that the opponents of this measure should seek to sustain their views by savage arguments and savage example, than that they should desecrate the pure and holy religion of Jesus, by seeking to justify injustice from disjointed texts and distorted meanings.

What, sir, shall we be told that a religion, every precept of which is purity itself, inculcates love, justice, and mercy to all others save her who was "last at the cross, and first at the sepulchre!"

A thousand years had rolled over the sepulchre of Christ, before the world ever heard of the common law of England, and yet we are told by the reverend delegate from Putnam, that that law had its foundation on the teachings of Him who summed up the whole duty of man in his social relations, in that matchless precept "do unto others as ye would have others do unto you."

Strange, passing strange is it, sir, that the fathers of the church should not have so read the oracles of their faith—that for a thousand years the rules of the common law should have lain dormant and unperceived in the writings of the apostles—that such a system, so inculcated by divine authority, should have escaped the observation of the thousands and tens of thousands of Christian martyrs whose blood cemented the foundations of the church, and should have first come into practical use among the feudal barons of a semi-barbarous isle, where the name of Christ was not heard for hundreds of years after his crucifixion.

Wonderful, indeed, would this all be, if it were only true. But, sir, it is not true; it has not and it cannot be proved. There is not the shadow of a shade, not the faintest semblance of an argument in the slightest degree tending to prove it, in aught that has been urged here, by the peculiar guardian of religion upon this floor, the reverend delegate from Putnam (Mr. Badger).

And here let me dismiss this branch of the subject with this remark, that whenever he, or any other man, can prove to my satisfaction that the existing provisions of the common law, robbing women of every legal right, are inculcated in the pages of the New Testament, he will have succeeded in convincing me at the same time of another fact, that they are not the edicts of a just, a righteous God. A just God could never have been the promulgator of unjust laws.

The whole argument which we have heard from the opponents of this section, from first to last, has been based upon that most despicable of all grounds, expediency. It has been the tyrant's plea in all ages. No one has dared to affirm on this floor, that our existing laws are not unjust. As well might they face the sun, and deny that he was shining in the heavens. They do not, they cannot, they dare not deny it.

Sir, we have had declamation upon declamation, but I deny that we have been met with argument. Take as an instance the assertion of the gentleman who preceeded me, (Mr. Niles,) that the tendency of the proposed amendment would be to build up an aristocracy. Did he show how or why such would be the tendency. Did he offer a reason or an argument for his position? Nothing of the kind—nothing but his mere broad assertion. I am free to confess that I am totally at a loss to guess by what process of reasoning the gentleman arrived at such a conclusion.

So it has been, sir, with the ten thousand other evils which the fertile imaginations of gentlemen have conjured up, as likely to follow the change proposed; we have assertion, broad vehement assertion and nothing more.

And here let me remark that these assumptions of anticipated evils are themselves built upon an assumption that is false in itself—that has been again and again proved to be false; and of which no one has attempted to prove the truth. Time after time, and day after day, gentlemen set out in their speeches with the assumption that the section under consideration provides for a separate property in the wife, under her uncontrolled authority. Again and again, has it been proved that such is not the meaning or effect of the section as it now stands, and yet the very next gentleman who rises in opposition to the measure, without an attempt to prove it, makes the same assumption; sets up the same man of straw, that he may have the pleasure of knocking it down again.

The sections reported by the committee did, it is true, provide for a separate and distinct property in the woman, but they are no longer before the Convention, and I assert unhesitatingly that the present section, neither directly or indirectly, contains any such provision, nor can the ingenuity of the most subtle lawyer, torture from it any such meaning.

It simply provides that the property of the wife "shall be secured to her."

Now, sir, let me ask the legal gentlemen who oppose this measure, if the *real estate* of the wife is not "secured to her" under the common law as it exists. The husband cannot sell the fee, and at his death it reverts to her or her heirs. But will any lawyer contend that because it is thus secured to her, that she has a "separate property" in her real estate.

Sir, I do hope that we shall not hear this assumption of the meaning of the section again made, without at least some faint attempt to sustain it by argument.

I ask the Convention now calmly to review all the objections which have been urged against the adoption of this reform, and say whether every one of them are not based upon the assertion that this section provides for a separate property in the wife. If so, and if it is not true that the section has any such meaning, I ask what becomes of all the declamation, loud, long, and furious, with which it has been assailed.

The gentleman from Laporte told us a touching story this morning of Miss Dix, the celebrated philanthropist, who stated that she had traveled through every State of the confederacy and had never been insulted but once during the whole period of her wanderings. I do not doubt its truth. It is characteristic of our countrymen. It is the noblest trait in their character, and one sufficient in itself to atone for a multitude of faults.

But, sir, I regret to say that it is not without exceptions.

What shall I say, sir, of the reverend Delegate from Putnam, (Mr. Badger,) who this morning so wantonly and grossly insulted every one of our countrywomen who have dared to hope for justice at our hands?

Gentlemen cannot have forgotten the low-bred vulgarity with which he assailed them, in language that would be inexcusable in a gentleman anywhere, and pardonable in a blackguard only in the drunken orgies of a bar-room. [Applause.]

But the reverend Delegate's proclivity for vulgar abuse was not satisfied with this wholesale insult to the women of our land, and he must needs take a tilt at my friend from Posey (Mr. Owen).

And here let me remark upon it as something strange that a gentleman whose every act and word has ever been characterized by the most extreme courtesy—who never, even in jest, indulged in language calculated in the remotest degree to wound the feelings of others—should have been more often perhaps than any other gentleman on this floor the subject of personal attack.

It may be, it doubtless is, gratifying to some men to hear their political opponents abused; but most men like to have it done with some little regard to decency, and I believe I do this Convention no more than justice when I say that I do not believe there was a gentleman on this floor who listened this morning to the assault made by the Delegate from Putnam (Mr. Badger) upon the gentleman from Posey and his wife, who did not, in his heart of hearts, spurn and despise the assailant.

They might some of them have secretly rejoiced to hear the gentleman himself abused, but when his wife's name was dragged in for

no other purpose but to add to the bitterness of the insult, disgust and contempt were written in legible characters upon every countenance.

Sir, I have no words to express the deep, utter, and unspeakable loathing and contempt I have for such a man—who soils the very carpet, foul as it is, upon which he treads.

["Cries of "order," "order," "good," "good," "consent," "go on.""]

If gentlemen don't wish personalities let them check them in the outset. If they don't want their dogs hurt, let them keep them up.

We have had also, from the same source, an attack upon the social system. Does the Delegate who traveled out of his way to make that attack know where we have the first foundation of it? Has he ever read of a society of men some eighteen hundred years ago, of whom it is written that all that believed were together, and had all things in common, and sold their possessions and goods and parted as every man had need? If so, where did he find it? Was it not among the disciples of Christ themselves? That was the origin of socialism, if socialism consists in a community of goods. The Delegate from Putnam belongs to a sect—I believe however they disclaim that name—a religious society which claim to themselves the exclusive name of Christians, and profess to have revived the early practices of Christianity, and to have eschewed all modern innovations, and to teach the only true Christianity of the present day. Why does he not follow out then the example of the first disciples of Christ in the matter I have referred to, having all things in common. But here let me be understood as saying that I do not favor socialism. I do not believe in the doctrine. I am no advocate for it. I merely quoted the texts to show that possibly socialism was not such a monster after all. Again, we are told that this is a matter for the Legislature to determine—that that body may and should change the law of descent. Is it not singular, sir, that men cannot or will not perceive that the laws of descent and this question are totally different things. No change in the law of descent can reach the evils we are seeking to remedy. The law of descent can only say what portion of a husband's property a wife shall have. The present section simply declares that she shall have her own property, and leaves the question of descent to the law.

The present section, sir, does not secure to woman, under any circumstance, the power to control her own property, unless the Legislature choose to give it to her. It simply secures to her her property ultimately. It provides that the law shall not wrest it from her by the act of marriage, but that it shall revert back to her upon the death of her husband. This is all the section proposes.

I am willing, as a matter of compromise, that the word "purchase" should be stricken out of the section. The effect of it will be that the

wife will have the right to purchase property, with the concurrence of her husband, and not otherwise.

Mr. BADGER. It seems, sir, that I am to be made the subject of personal attack by all the gentlemen who are advocates of this measure. And in relation to the effusion of the gentleman who has taken his seat, (Mr. Gibson,) I would remark to this honorable body that having been blessed with a kind father, he taught me when young this lesson: "that from the character of those with whom I associated, my own would be estimated;" and I feel disposed to act on this occasion, not only in reference to that rule, but also to obey a very beautiful text which says: "Cast not your pearls before swine." [Great laughter and applause.]

Mr. BRACKEN said:

It may be considered presumptuous in one of my age—young in political experience—excitable and diffident as I am—to address this intelligent body on a subject of so great importance as this is acknowledged to be. But I hope I shall be pardoned, if I trespass for a few moments upon the time of this honorable body.

I was one of those who voted in the affirmative on the final passage of this section. I then considered it somewhat objectionable; and, sir, on more mature consideration, I am fully convinced that the section, as it has passed this body—*honest*, intellectual, and learned as its members may be—is fraught with a *sirocco* breath to the homes of the good people of this Commonwealth. Therefore, I shall go for the re-consideration of the section, and I hope that the motion for its re-consideration may prevail, so that the section may be modified.

My desire, from the time that the subject of woman's rights was first broached in this body, was, to be a silent voter thereon; nor should I at this time depart from that rule, if I did not believe that the vote I gave was wrong—radically wrong *in principle*.

This being the case, I believe it is due to a constituency that I am proud to represent—to myself as an humble member of this body—to state a few out of the many reasons that I have for wishing a re-consideration of the entire subject. Some gentleman may and no doubt will taunt me with a want of consistency in reference to this matter. If it will satisfy them, I will acknowledge it. But I wish to say, in all candor, that I came into this body determined, for one, to do what my conscientious convictions of duty might prompt me to do—to seek diligently for the truth, and to do right, though the heavens be clothed in darkness. For I would rather go back, find what is right, and do it, than to be consistent at the expense of the best interests of those whom I represent. Self I love, it is true, but I love my native State much better. If this, my apology, be not sufficient, come, you who have

not had a new idea for the last quarter of a century—come, you who never change, though wise men do—and cast the first stone. I'll be a willing sacrifice.

My first objection to the section is based upon the fact that it constitutes, and is intended as a radical departure from the time-honored principles of the common law. Now, sir, for one, I revere age; and our institutions that have become aged, deserve respectful consideration. The common law of England has stood the test of a thousand years, and it still retains its youth and vigor—it still commands the respectful consideration of the learned and the good. Wherever the Anglo-Saxon race is found, it has always been considered, as without doubt it has been, the bulwark of the rights of the citizen, whether subject or sovereign. It deserves something better than a taunt. It is well to recollect that all change is not improvement. From the concurrent testimony of gentlemen learned in the law, it has been made to appear that the rights of females are governed by two diverse laws, acting in different portions of the civilized world. First, the common law governs wherever the Anglo-Saxon commands; and secondly, the civil law governs Continental Europe and her colonies. Now it has been assumed in this debate that the effect of the common law is to degrade the female—to lower her in the scale of being—to make her as the goods and chattels of her lord—worse than the hired servant, the slave of her husband—not fit to be the companion of man, but the instrument of his convenience or pleasure. Now, the panacea for all these dire ills, in gentlemen's opinions, is the civil law remedy. They cry out in their ecstasy: "Eureka"—I've found it out. There is the great, good, glorious remedy that cures all social ills in relation to the female. It will infallibly make all husbands thrifty, good, loving, lovable, fine looking, intellectual, &c., though those husbands have the tempers of cynics, and the forms of hunchbacks, and the intellectual qualities of driveling simpletons, acknowledging and recognizing the inalienable right to curtain lectures *ad libitum*.

The advocates of the civil law remedy put me in mind of the charlatan praising some favorite nostrum: "The sovereignest thing on aith," says he.

Well, fortunately for us, as a Convention, both these law remedies have been administered to the body politic for centuries. We propose at this time to inquire into the social health of nations under this diverse treatment.

First, we will look at the condition of the females of the Anglo-Saxon race. What is the social position they occupy? They are everywhere revered, respected, loved—as mothers, sisters, wives; the boast of fathers, the pride of brothers, the delight of husbands. As such, they are our chief joy—our household

deities. Conjugal faith, purity, and truth is loved and practiced by all. This, and this only, is the effect of the common law wherever the Anglo-Saxon lives. I am too fast—there is an exception—that exception is the nobility of proud Albion. I have been curious to ascertain the difficulty with them as a class. I find that centuries since, to keep up the wealth of their houses, and the purity of their blood, they threw away the common law remedy, and practiced on civil law principles, reducing matrimony to a mere civil contract. The result is what was to be expected. This conjugal infidelity is the eyesore of the nation, the source of perpetual discord, and the unmistakable cause of the extinction of families. Let us leave the home of the common law, and take a view of Continental Europe; and first at La Belle France. France is the heart of Continental Europe; and Paris is the heart of France. When she throbs, all Europe quakes. What is the condition of women there—in Paris—the home of the brave, the intellectual, and the polished Frenchman—the city that essays to give laws governing etiquette throughout the civilized world? What is the condition of woman in Paris, and in rural France?

We find her in all the avocations of life, from carrying on the most extensive commercial and manufacturing establishments down to mere street scavengers. Having no word for home in their language, there are no homes in Paris. In our acceptation of the word, marriage is a matter of taste or convenience. The parties have often no knowledge of each other until they meet at the altar. It is merely a civil law contract. The result is conjugal infidelity. This is the rule and not the exception. True, they have no jealousies there. What jealousies can men feel where there is promiscuous intercourse? Amiable result, truly. I speak ironically. What of Vienna, the Capital of Austria, and the home of the Hapsburgs? There were fifteen hundred more illegitimate births than legitimate, in the year 1849, as shown by her own police reports. Glorious result of the civil law remedy! But it may be remarked in reply that the countries that I have instanced are Roman Catholic. True; but look at Sweden, Denmark, and Protestant Germany, and face the light and say if their females, as a class, are not the merest drudges imaginable. Now, sir, Continental Europe has adopted the civil law, and has administered it with assiduity for hundreds of years. Yet their females are, in point of social privileges, a thousand per cent. below their sisters of the Anglo-Saxon race. Of all the pathies in medicine, this has been the most unfortunate in its application. It has not prevented, and does not at this late hour prevent, woman from being yoked with the ass to the plow; while the sturdy husband holds the handles on fair Italia's plains.

Doctors of the law, do n't you think you are

mistaken either in theory or practice? Or it may be that gentlemen are like Gil Blas' Preceptor, or Sangrado. Now this Doctor was a renowned professor of the healing art, and had written a book setting forth the fact that bleeding a patient twice a day to sixteen ounces, and keeping him filled to the throttle with hot water was an infallible remedy in all diseases. So after Gil Blas had graduated and entered into partnership with his preceptor in the practice, he was not long in making the discovery that their patients all died, while the patients of other physicians generally got well; and as a consequence, business was leaving them, and starvation looking in at the door. One day after his usual round of vexation he suggested to his preceptor the possibility that the treatment was an error, and that he was accountable for the misfortune of losing their patients. Mark the coolness of the answer: "I know it," says he, "but I have written a book and must stick to it." I fear that we have political Sangrados still living.

Now gentlemen viewing the results of the application of the principles of common and civil law on a stage truly grand, no less than Continental Europe and her colonies on one side, and Great Britain and her colonies, and the United States on the other, tested for the last thousand years. Tell us, yes, tell us, where woman holds the highest social condition, and the triumph of the common law is complete.

This is a question eminently practical in its effects; as such I wish fairly to meet it. It must and will have its influence on man from the cradle to the tomb. Now what I object to in this section is that it enables the wife to enter into all the strifes attendant upon the varied pursuits of life, upon an equality with and against her husband. It will require the separate registration of her property, and the passing of laws affording all the legal remedies now known to the law. For if she has separate personal property, she of necessity must have the right to sue the husband, to make money out of his property, by distress and sale; she must have the benefit of writs of trespass and traverse, so that she may be able to obtain damages of her husband for sleeping in her bed, or for sitting in her parlor. And the same must be true of the husband; he must have the same right and the same privileges. Husband and wife must be competent witnesses for and against each other in courts of law. A pretty state of society, truly.

I want the word "purchase" stricken out of the section, so that it may read "women shall have and hold to their sole use and benefit, all the real estate that they may own at the time of marriage, or that may come to them during coverture by gift, devise, or descent." That is just as far as I am willing to go with my own consent. You may force me, but for that I am not accountable.

I am firmly of opinion, that if we go further than this the word "home"—that word which sends a thrill through the Anglo-Saxon wherever he may be, will become *obsolete*. If woman will force herself into all the rough pursuits of life to contend with man, she may find, when too late, that she has gained a legal position at the expense of her social position. The result will be here, as in Continental Europe, merely civil equality, and social degradation. May God forfend my loved country-women from such a result.

I too could flatter, for flattery it would be by calling them angels. They are in this world subject to its vanities, its frailties, and its foibles. Yet in the positions of mother, sister, daughter, wife, and friend, the cheerer of our home, our solace in affliction, we, the rougher part of creation, forget their earthly origin, and think them all divine. My country-women, recollect that your first flatterer said you should be wise; your second says you shall be legally great. Beware, lest similar evils fill your cup of sorrow, and fail not to avoid the error.

Mr. BLYTHE. In contrast with much of what has been said to-day, I wish to give the simple history of this section as it has been passed by the Convention.

The gentleman from Laporte (Mr. Niles) remarked that this section, as passed, is in substance, the same thing with the section as originally reported by the chairman of the committee on rights and privileges. To that section, Mr. President, as I stated some few days since in some few remarks upon the subject, I was opposed, for the reasons which, during the first debate on this question, were given by the gentleman from Dearborn (Mr. Holman). After listening to the arguments adduced on both sides of the question, it occurred to me that a section could be drafted which would unite the opinions and meet the wishes of all; and in conversation with the gentleman from Monroe (Mr. Read) I adopted the form which I first introduced as an amendment to the original section. Without consultation with the gentleman from Posey, (Mr. Owen,) I offered that amendment, which, together with the original section, was a few days since laid upon the table, on the motion of the gentleman from Wells (Mr. Bascom).

This section, as it has been passed by the Convention, is, in effect, precisely the same thing with the section which I first introduced, and which was laid upon the table, as I have stated. That amendment, as I before remarked, the gentleman from Posey knew nothing of, until I offered it; and it was drafted with the express view of freeing ourselves as far as possible from the difficulties which I, in common with many other gentlemen, apprehended would arise out of the section as originally reported; and yet we are now told that the two sections are in substance the same.

What is the section as it has passed?

"That real and personal property of women, whether owned before marriage, or afterwards acquired by purchase or gift, (except from the husband in fraud of his creditors,) devise, or descent, shall be and remain secured to them under equitable conditions by law."

That is the section as it has been passed; now what is the section originally reported by the committee?

"Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal, and laws shall be passed, securing to them under equitable conditions all property, real and personal, whether owned by them before marriage, or acquired afterwards, by purchase, gift, devise, descent, or in any other way, and also providing for the registration of the wife's separate property."

Are these two sections the same? If they are, surely I cannot understand plain English. Here in the original section as reported, we have the power conferred on married women to acquire property in modes now unknown to the law. To much of the language of that section no technical signification is attached; and our courts in deciding upon it, would be governed by the plain every-day signification of the words used. But a labored effort is made to confound these two sections together. Gentlemen affect to treat them as one in spirit and design. Suspicion and fear have been awakened; and against every proposition which is made, the object of which is to further this great reform, all our antipathies against the doctrines of the socialist are called up to do battle. Eloquently have our passions and our prejudices been appealed to; denunciation and the cry of infidelity have been awakened. These, Mr. President, are the weapons to which men resort when they find themselves without those more suitable to the contest. Sir, declamation, however much it may please us, or however beautiful it may be, or denunciation however terrible—is not argument. I know of nothing, the indulgence of which is easier than declamation and denunciation; but cold, hard, stern, logical argument is another and a much more difficult thing.

The gentleman from Laporte, learned as he is and eloquent as we all know him to be—has committed the radical error in his argument of assuming as true, that which the friends of this reform have utterly denied from the beginning, to have the slightest semblance of truth about it, and which should have been proved, not assumed, and upon that assumption basing his argument. How is it? Says the gentleman from Laporte, (Mr. Niles,) the gentleman from Tippecanoe, (Mr. Clarke,) and the reverend gentleman from Putnam, (Mr. Badger,) the effect of this section is to sever forever the inter-

ests of husband and wife—introduce discord where God and nature designed there should be harmony—sunder the strong bonds of affection—in a word, make twain of those whom God and God's word have declared to be one flesh. And upon this assumption is based the whole of their argument.

Now I call upon these gentlemen, when they seek to defeat the ingrafting upon the Constitution, of this great, fundamental principle of right, to show how and in what way that separation of interest and introduction of discord is to be brought about, to be produced by the language we have used in this section. I fearlessly assert that the gentleman from Laporte (Mr. Niles) with all his eloquence, his legal learning, and his skill as a debater, will find himself incompetent to the task.

Then if the very foundation upon which the argument of these gentlemen is based is of this worthless material, what is the value of the superstructure built upon it? What becomes of their argument? It falls, sir, to the ground.

Now, Mr. President, let us look at this section and see what its legal effect is. The wife shall have the right to acquire property by purchase, gift, devise, and descent; in all of which modes she may now acquire property. Now, to each of these words there is attached a definite, specific, legal meaning, and no man can mistake it. Through every one of these modes enumerated in this section, married women today, in the State of Indiana, may acquire property. Now, the section, as originally reported, goes much farther than this. It declares her right to acquire property, not only in the enumerated modes, but in any other way or manner in which persons, who do not labor under the disabilities peculiar to married women, may acquire it; and when acquired, it is to be secured to her sole use. As I have already said, there is, to many of the words used in that section, attached no definite legal signification, and the courts would give them a liberal construction. It is true that, under such a law, the wife might buy, and sell, and claim the profits of her labor and traffic as secured to her own use and control. But how is it under the section passed by the Convention? Is any new mode pointed out? Do we throw wide open the doors of public trade, and bid her enter! No such thing. We start out with the avowed purpose only of securing to married women their property. Surely this purpose is easily enough comprehended. But we say that this property, no matter in which one of the modes now known by the law—and to all of which it is admitted she may lawfully and without danger acquire it—shall be secured. And this is all. But much stress is laid on the word "purchase." Strike it out, if you please; I care very little about it, although I insist that it is properly in the section. Whenever a married woman acquires property by gift or de-

vise, she is said to take it by purchase. Now show me—for the burden of proof is upon you—how its use enlarges her right. Common sense, and the courts, in adjudicating questions arising under this section, say that the word is used with reference to those modes in which a married woman may now acquire property by purchase, and was designed to secure the property so acquired.

But gentlemen say that this is an experiment, and that there is danger of corrupting the fountains of domestic purity and happiness, and overturning the most cherished of our social institutions, by the introduction of a new principle. But have they read the legal history of the country in relation to this principle? Do they know that other States have led the way in the recognition of this right? Are they aware that they are now gravely predicting results which the experience of others has shown are not likely to follow from the adoption of this doctrine? Do they know that Pennsylvania, Florida, Arkansas, Wisconsin, New York, Maine, and perhaps other States, have recognized the right of married women to be secure in their property?

And yet gentlemen speak of this as an untried experiment. Sir, in many of the States which I have named, the right of the wife is declared in terms far stronger than any used in this section. Not only is her right to acquire property, in the several modes here pointed out, declared, but also her right to receive and enjoy, as though she were sole, the rents and profits of her estate; and the husband has no power to interfere. This is going far, very far, beyond anything proposed by the friends of this measure. And yet, sir, we hear nothing from those States, which have adopted this enlarged and liberal policy, of those consequences which some gentlemen here seem to fear so much. We hear no alarm of danger to their social institutions. Because justice, simple justice, is done to woman in those States, we do not find that she fills her appropriate sphere with less grace, less modesty, less affection. No, sir; not until you reverse the great laws of moral order, can misfortune follow as a natural consequence, a strict compliance with the rule of right, and a rigid obedience to the requirements of justice.

Well, sir, this alarm is raised not only in this Hall, but it has been sounded from more than one pulpit in this city. The strange doctrine has been promulgated, that, if we secure to woman that which belongs to them—belongs to them by every principle upon which we claim to be secured in our own property—we violate the law of God. Strange doctrine this! It bears its refutation upon its face. Mr. President, I will only say for myself that, if I believed that the Bible—a book which, from my earliest infancy, I have been taught, by those who now are saints in Heaven, to reverence and to cherish as I would

my own life—if I could believe that that book forbid the enactment of a law like this, either I would submit myself with a blind, unmanly credulity to its teachings, and the teachings of its commissioned interpreters, or else, in the exercise of my reason and judgment as a man, reject it as a fable, and its every exposition as a fraud. But, sir, I know that it teaches no such monstrous absurdity. I know that its precepts, which have elevated woman from the life of a menial to the fulfilment of her destiny, point us to the discharge of this duty. Therefore it is that I have taken the position on this question which I now occupy.

The gentleman from Tippecanoe says, that he will go so far as any one to secure the property of the wife against the *debts* of the husband, but he will go no further. Yes, sir, you say it is right, and it is just to secure and protect the property of the wife against the *debts* of the husband, although these debts may have been incurred through necessity or under the pressure of misfortune, and not by any crime. You will say to the sheriff when he comes to seize upon the property of the wife whose husband may have been unfortunate, Stand back, this property you may not touch. And yet you will not say to the scoundrel who has sought her alliance with the sole object of obtaining her money the same thing! [Applause.] You should protect her against sheriffs, and constables, but against the cold blooded and heartless fortune seeker, who may seek her hand only because it can bestow upon him wealth, you will afford her no protection. You will protect her against the *misfortunes* of the husband, but not against his *crimes*. You will say to the honest creditor, this man has been unfortunate, but it is not right that his wife's property should pay his just debts, so you shall not touch it. But you will fold your arms, and stand calmly by, while the friends of the card table madden him with the wine cup, and then strip him of the last remnant of his wife's fortune. You are willing that this subject should be referred to your Legislature, and that statutes shall be passed better to secure the wife in her property. Yes, and in this very concession, the principle for which we contend triumphs. I thank you for it, and turn it against you. Every weapon which you take in your hands, shivers to the hilt with the first blow you give.

Here Mr. BLYTHE's time having expired,

Mr. FOSTER moved that the Convention give the gentleman from Vanderburgh liberty to continue his remarks.

It was so ordered, and

Mr. BLYTHE said: Mr. President—I voted to suspend the rule limiting the time of speaking this morning so far as it applied to the gentleman from Laporte, (Mr. Niles,) not because I thought it was just exactly right, but because I happened to be the author of this section. And I knew very well, that if I voted against

the suspension of the rules I should subject myself to the charge, that I was unwilling that the discussion should be continued by that gentleman. I thank the Convention then for the courtesy they have extended to me, but beg leave to decline it.

MR. BARBOUR. I have risen, Mr. President, to present my views on this important question as plainly as I can. While the gentleman from Vanderburgh (Mr. Blythe) declaimed so eloquently against declamation, I could not forbear thinking he had caught some of the vein himself, though his argument in the main was quite logical. I shall endeavor then to avoid if possible any thing like declamation.

Lest I should be misunderstood or misapprehended on this absorbing question, I will here remark that I will go as far as any gentleman on this floor to elevate the condition of both sexes. And most especially do I desire to see the ladies clothed with every grace and beauty which renders them ornaments of society. But while I entertain these views, I must be permitted to oppose the section now under consideration. It requires no small degree of bravery with so fair an audience around me, to stand up here and oppose what some of our fair auditors desire should become a law. But believing that in doing so, I am promoting their interest, as well as the interest of mankind, I shall be under the necessity of giving my voice against it.

It is asserted, sir, that the division of property between man and wife is not calculated to produce discord between man and wife. And we are called on to produce arguments to show that it will have that effect. What is it that moves the world—that excites the activity, the industry, the vigilance of man? Is it not our vast scramble for wealth. Will not the wife when she comes to have a separate interest in property, personal property, that she can identify as her own—will she not feel all that attachment for property which man is accustomed to feel. If that property in her imagination, or in fact, was handled a little more roughly than the husband treated his own, would it not tend to produce a little excitement in her mind, and call forth some ill-natured remark? Would it not be more likely to have this effect than if the property had all belonged to the husband? I think there can be no question about it. The world have been taught some by experience, and some by the current news of the day, that under the present happy system of government, there are occasionally family laws, domestic dissensions, certain lectures, and some unhappy marriages. Would not these domestic dissensions, and certain lectures, be greatly multiplied and aggravated by introducing this new element of discord into the family circle? Have not remarks been made during these little altercations that have planted a thorn in the bosom of one or the other, which

after kindness has not always been able to extract! Let us remove then, so far as we are able, every cause for dissension.

The gentleman from Vanderburgh (Mr. Blythe) says, he desires to protect the property of the wife from a spendthrift husband, who would spend his property at the brothel or gambling house. I would also protect her property, that she had brought her husband, but in a different way. I would make home a paradise to him. I would make the domestic fireside the altar around which all his hopes and affections cluster. The gambling house and the brothel will have no charms for him. Their leisure moments would be those of comfort and felicity, passed in the society of each other. Would this not be the case? How is it in France, where man and wife have a separate property? There, sir, married women are found at the gambling tables, betting their separate property. Why is this? It is because home is not what it should be. It is because woman has abandoned the sphere in which nature has designed her to move. It is because the heart, the home of the affections, has been neglected. Let us keep, then, this apple of discord away from the fireside. There are already sufficient causes of trouble, without seeking to add others.

The gentleman from Clark (Mr. Gibson) says, he is proud of his country, because of their deportment and delicacy towards the female sex. I thank him for the compliment, and in return would ask: Who moulded the character of our countrymen?—Who taught them this delicate appreciation of the female sex?—Who, but woman?—Who, but a loving and love-inspired mother? It is in infancy that the germ of virtue and self-respect is planted. "Just as the twig is bent the tree's inclined."

How is it in France, where the civil law prevails—where man and wife hold separate property? An examination of their history and condition of society, will prove that both sexes in that country do not occupy the same elevated position in morals that we do. Almost every evil that society is heir to has preyed upon that people; while in the United States, the condition of society is that of progress and enlightenment. Morals are in their highest state of purity: our governments are firm based on the virtues and affections of the people. Turn we now to France. Wars, civil wars, desolation, carnage, and bloodshed, have been the bitter fruits of their institutions. Why is this? It is because of the deplorable state of morals. Had the French people been virtuous, their government would have been kept firm and secure. A government which has for its basis a virtuous people, has nothing to dread; and where, I would ask, is virtue inculcated in all its strength and purity? Where, but around the fireside, in that place called home? It is in this sanctuary our first impressions are imbibed. It is here that the affection of the fond mother pours in-

to the soul of her child, love, generosity, and virtue. Oh, then, poison not this fountain with dollars and cents. Clog not this stream of affection with mercenary drugs.

What has produced the great men of this country and of England? Kind and affectionate mothers, who have trained up their sons in the practice of virtue.

It is not a union founded on pecuniary interest—where the wife daily spends her leisure moments in casting up the debtor and credit accounts of her property—that gives use to the oft-repeated instructions and virtuous training by a mother to her children? Oh, no! When her labors are confined to her proper sphere, then do we find that the youth of the land grow up to mature age, pure in heart, intelligent, industrious, and wise. And, sir, a statement has been made that a woman feels degraded when thus the mentor of the family circle asks her husband for means to distribute—say in charity. Now, sir, I deny utterly this assertion. I contend that, in our Union, based upon affection and virtue, the husband esteems it a privilege to assist her in the glorious work of relieving the wants of men, and administering charity to the deserving and suffering poor. It is a pleasure for her to call forth his virtuous feelings; and a virtuous feeling prompts him always to anticipate her wishes. There is not the slightest feeling of dependence on her part, but a feeling of mutual equality and confidence. Permit me here to bring in the testimony of a woman, which, though not perhaps strictly in point, will serve to illustrate the doctrine for which I am contending. It is the production of Mrs. Hall, an English lady: “The frequent observation of foreigners is, that in England we have few celebrated women. Perhaps they mean we have few who are ‘notorious,’ but let us admit that in either case they are right; and may we not express our belief in its being better for woman, and for the community, that such is the case. Celebrity rarely adds to the happiness of woman, and almost as rarely increases her usefulness. The time and attention required to attain celebrity, must, except under very peculiar circumstances, interfere with the discharge of those feminine duties, on which the well-doing of society depends, and which shall so pour a halo around our English homes. Within these homes our heroes, statesmen, philosophers, men of letters, and men of genius, receive their first impressions, and their impetus to a faithful discharge of their after callings as Christian subjects of the State.”

There are few of such men who do not trace back their resolution—their patriotism—their wisdom—their learning—the nourishment of all their highest aspirations to a more hopeful, loving-hearted, and faith-inspired mother. One who believed in a son's destiny to be great. It may be impelled by such belief, rather by instinct than reason; who cherished (we can

find no better word) the hero feeling of devotion to what was right, though it might have been all worldly; and whose deep heart welled up perpetual love and patience toward the over-boiling faults, and frequent stumblings of a hot youth which he felt would mellow into a fruitful manhood.

The strength and glory of England are in the keeping of the wives and mothers of its men. And when we are questioned touching our celebrated women, we may, in general terms, refer to those who have watched over, moulded, and inspired our celebrated men.

Happy is the country when the laws of God and nature are held in reverence. Here allow me to remark that if the Scriptures teach any one thing more strongly than another, it is that in relation to marriage—is that they twain shall be one flesh—the husband shall be the head of the family—shall have the right to control and direct the action of his wife in an appropriate manner. But again—“Where each sex fulfils the peculiarities, and renders its sphere a sanctuary! and every such harmony is blessed by the Almighty—for which other nations writhe in anarchy and poverty, our own spread with her armies to view all who seek protection or need repose.”

I concur in every sentiment here expressed. And here a direct allusion is made to the want of virtue and stability of character in the French people. And why is this? Why is it that the males and females of our country are so immeasurably elevated in point of morality and intelligence above the French people? It is, sir, because of an affectionate and virtuous household—and of domestic firesides where the lessons of truth and wisdom are imparted, fostered, and matured in the youth of the nation by wise and virtuous matrons.

Sir, it is not for a moment to be supposed that the institutions which have been in existence during the whole period of our lives are to be changed in a day. Great and intellectual minds may cause the change in laws, but the habits and customs of a people cannot be so readily changed, and systems under which generations have been reared, cannot be so easily altered. The gentleman from Posey (Mr. Owen) very well knows that public sentiment cannot be suddenly changed, even if the efforts of men of extraordinary talents and influence are brought to bear upon that sentiment. It is out of the order of things that the action of society can so easily fluctuate. The proposition here presented is but an experiment; it is a novel, and, in a great degree, an untried measure.

Gentlemen say that a provision of this kind has been adopted in other States; that may be true, but do gentlemen suppose that the effects of such a provision could thus suddenly be perceived, should we adopt the section in question? Its baleful effects might not be felt or perceived in this day or generation. It would only be

when a series of ages had passed away, to hear the historian come to compare the morals of to-day, with that of some remote period, that he would be able to detect when the serpent entered the garden of Eden. In France, they may truly be said to have some experience. Is there anything in that experience which we desire or love? Would we change our virtues and claims in institutions for others? I trust not. For one, then, I prefer that it be left to the action of the people through the Legislature.

Mr. NEWMAN. I may vote to re-consider this subject, but by so doing I do not wish it to be inferred here, or elsewhere, that I am opposed to the principle involved in this section. It may be so modified as that it will meet with my hearty support, or I may vote for it as it stands; but at all events, I am in favor of the spirit of the provision. Gentlemen may vote, if they please, against it, but it is in accordance with the spirit of the age, and better provisions will yet be made for the protection of the more helpless portion of mankind, the female portion, than can be made by this body or have been made by the Legislature of this State. I have no fears but that if this subject is left to the Legislature, that appropriate provisions will be made in reference to it, and I am not sure, by any means, but that is the appropriate place for it.

We all know, sir, that in many instances injustice is done to individuals, and in this case the injustice which it is supposed will result to women from the rejection of this section, can be remedied by a provision which will not give rise to the great evils which gentlemen seem to anticipate. We are very apt to foresee evils that never come to pass, that never happen, as the consequence of the act that is done. No great measure of reform can be advanced without evils being predicted to result from its adoption. This has been the case in all past time, and will continue to be the case in the future, I have no doubt, so long as free discussion is allowed. I think gentlemen anticipate too many evils to arise from the adoption of this provision, and give too much dignity to the possession of a little property that may be held either by the husband or wife.

With regard to this subject, Mr. President, I think there is a higher law, that over-rides all considerations of property. Property is but as dust in the balance compared to the attachment that should exist between the sexes, no matter in whom the right to property rests, or who has the control of it. I am sorry to hear any gentleman in this enlightened age, prefers to adhere to the doctrine that the husband has the right to control the actions of the wife, (if they mean any other control than that arising from the influence of his opinions,) particularly when we take into consideration the strong ties of mutual confidence and affection that should ex-

ist between the two parties. It is an expression worthy of an age of barbarism, but one unworthy of this age.

It is said that woman has all the privileges she ought to have, and that her virtues, if nothing else, will secure them to her; but, sir, does it follow that when these virtues are not appreciated by man, that she should not have the means afforded her, if necessary, to claim them through the medium of the law? We all know that a wife, no matter how degraded or improvident may be the husband, or what disgrace he may have brought upon his family, as my friend from Laporte (Mr. Niles) beautifully remarked, clings to the husband as the vine to the riven oak, and when he falls she will trail in the dust with him. Does it follow that the little pittance that might support her shall be taken away because the husband has become degraded in the eyes of all mankind? It is within the experience of all of us, that high-minded and intelligent women, through the improvidence of the husband, have been left to eke out a precarious subsistence for themselves and their children. Any property that may be left in her charge is constantly under the eye of the constable, or officer of the law, who is watching her dwelling to see what he can secure over and above the petty sum of one hundred and twenty-five dollars worth of property, secured to the husband by law; not secured to the family, but to the husband. He can appropriate even that small sum remaining to his own uses, and squander it in the grog-shop, or at the gambling table, leaving his family to suffer all the pangs of poverty and privation. Shall we not allow the friends of such a woman to secure her against absolute want, although she may cling with uniform tenacity to the degraded being who has brought despair upon her and her family?

Free a certain portion of property from the grasp of the husband and creditor, and she will have means to keep her family in decency—to support herself and bring up her children respectably. And in this, sir, not only is the wife interested but the neighborhood in which she resides—in fact the entire State, for are they not compelled to administer to her wants, and those of her family, which of course involves a considerable expense.

But further, sir. A father or mother or friend of the wife, may confer property on the wife, and yet the officer of the law under our present system may seize upon that property to liquidate the husband's debts, unless it is a kind of indian gift that is taken back when the donor may choose, or the husband takes the opportunity to sacrifice it for the indulgence of his vicious propensities. The wife has no right to go to the grog shop or the gambling table, or participate in scenes of debauchery, thereby expending the husband's means—and is she to suffer all the consequences of such a course

that may be adopted by the husband? If he indulges in these vices she has to suffer all the consequences of his evil acts, without being a participant in the wrongs he has committed.

I assert, then, sir, my readiness to adopt any proper provision that will afford protection to the deserted or suffering wife, or bereaved widow. I desire such a provision shall be adopted as will not be stringent, and invariable and fixed in its character, but one that may be judiciously modified whenever such modifications shall give promise of resulting beneficially.

Mr. SHOUP demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being upon re-considering the vote on the passage of the third section of number four, the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 84, nays 43:

YEAS.—Messrs. Badger, Ballingall, Barbour, Batcom, Beach, Beard, Bicknell, Bidle, Borden, Bourne, Bowers, Bracken, Brookbank, Butler, Chandler, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Frisbie, Garvin, Gordon, Gregg, Haddon, Hardin, Helm, Helmer, Holman, Hovey, Howe, Huff, Johnson, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, Miller of Clinton, Miller of Fulton, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Niles, Nofsinger, Pettit, Rariden, Read of Clark, Schoonover, Shannon, Sims, Snook, Smith of Ripley, Stevenson, Tague, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—84.

NAYS.—Messrs. Alexander, Beeson, Blythe, Bryant, Chapman, Chenoweth, Coats, Crumbacker, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foster, Gibson, Hall, Harbolt, Hendricks, Hitt, Jones, Kelso, Kendall of White, Kilgore, McLean, Miller of Gibson, Milroy, Mooney, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ristine, Sherrod, Shoup, Smiley, Smith of Scott, Spann, Steele, Tannehill, Wiley, and Mr. President—43.

So the vote was re-considered.

Mr. PETTIT moved to re-commit, with instructions to amend the section, so as to provide that the property, real and personal, of women, shall be secured against the creditors or legal representatives of their husband.

Mr. HOLMAN moved to amend the instructions by striking out the words "or purchase" where the same occurred in the section.

Pending this question—

On motion of Mr. LOCKHART, the Convention adjourned until nine o'clock to-morrow morning.

TUESDAY DEC. 17, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. HULL.

The journal of yesterday was read and approved.

The Convention resumed the consideration of the section in relation to the right of married women to hold property. The pending question being on the amendment offered by the gentleman from Dearborn (Mr. Holman) to the instructions moved by the gentleman from Tippecanoe, (Mr. Pettit.)

Mr. HOLMAN modified his amendment so as to make the instructions read as follows:

"The real and personal property of married women shall be and remain secured to them on equitable conditions by law."

The question being upon the amendment to the amendment,

Mr. PETTIT moved that there be a call of the Convention.

The roll having been called, and the names of absentees noted, further proceedings under the call were dispensed with.

Mr. OWEN. I fear, sir, that it will be impossible for me, in the allotted quarter of an hour, to complete what I desire to say on the subject before us; and as the Convention yesterday permitted my friend from Laporte, (Mr. Niles,) speaking in opposition to the section under consideration, to continue his remarks beyond the fifteen minute term, I trust they will extend to me, desiring to speak in its defense, similar permission to day.

Mr. BORDEN. We'll give you what time you want. Go on. [Cries of "consent, consent."]

Mr. OWEN. It is evident that the Convention will either select betwixt the two amendments offered to the original section by the gentleman from Tippecanoe, (Mr. Pettit,) and the gentleman from Dearborn, (Mr. Holman,) or else, wearied out, perhaps, and desiring to get rid of the matter, will vote down the section altogether. Before adopting the latter alternative, it would be well for gentlemen to consider, whether they can get rid of it in that way. On a deliberate vote, after the fullest consideration and debate, the section was inserted in the Constitution. Have those who now seek to reverse that decision so poor an opinion of its friends, do they ascribe to us so little perseverance, do they think so meanly of our spirit in a good cause, as to believe, that even if the vote should be against us to-day, we shall let it rest so? Do they imagine

that by stirring up temporary excitement, by introducing personal matters and suborning prejudice against the section, they will deter us from renewed efforts to accomplish what we believe to be an act of duty and of justice?

Sir, I went into the contest with my eyes open. When I first submitted the resolution in relation to the property-rights of married women, true friends warned me of the probable result to myself; of the chances that my private opinions and character would be attacked, and that influences would thence be brought to bear against me, in connection with an approaching election. It was not that I did not see the danger; it was, that I was willing to encounter it, in the endeavor to secure to one-half of my fellow-citizens of Indiana rights of which an iniquitous law has heretofore deprived them.

I owe to woman, as mother, as wife, as friend, all the best, the happiest—yes, and the purest hours of my life. Sir, no man of sense or modesty unnecessarily obtrudes upon the public personalities that regard himself and his private habits and actions. But yet grossly assailed as my conduct and principles have been upon this floor, it may not be unfitting that I should say here, that to a good father, to an excellent mother, I owe it that my youth was preserved from habits of excess, from associations of profligacy. I will add—and in so doing I may excite a smile of ridicule in some, for that I care little—I will and, that never, from the day of my birth down to this hour, have I consorted, even for an evening, with those poor, unhappy beings, whom the brutal yet tolerated vices of man first degrade almost beneath the compassion of a coarse and a cruel world, and then curse for being what they have made them. I have no associations connected with the name of woman but those of esteem and respectful affection. I owe to her sex a debt of gratitude that can never be paid, though my days were extended even to the term of life assigned to the ancient patriarchs, and though all these days were spent in her service—were devoted to the vindication of her rights. Something I may do to lessen the debt, and that little shall be faithfully done.

Sir, even if I were the faint-hearted man which I feel that I am not, I might take courage from the evidences of sympathy and approval that reach me from every side. The press throughout our State, almost without an exception—indeed, so far as I have seen or heard, with one solitary exception, in the case of an obscure paper of small influence and limited circulation—the press where it has spoken at all has spoken in terms most favorable. Some ten or twelve such notices have been sent to myself. Two newspapers having reference to this subject, reached me within the last three days. One of them, the "Indiana Register," published at Lawrenceburgh, has a

brief editorial, announcing that the ladies of that town were to meet on Monday the sixteenth day of December, in the basement of the Methodist Episcopal Church, to take into consideration "the propriety of inserting a clause in the new Constitution more effectually to secure the property-rights of married women."

It was yesterday, Sir; yesterday at two o'clock, that these ladies were to meet; on the very same day, at the very same hour, when the gentleman from Laporte arose in his place, and declaimed in his earnest and impassioned manner, against the policy or justice of securing to a married woman any property-rights whatever. Ah! if they, thus assembled to consult how their daughters might be secured in the property which parental care had laid by for their benefit—if these ladies, meeting for an object thus praiseworthy, to protect interests of such vital importance—had but heard my friend's eloquent casuistry—his denial of one of the most important of human rights to those whom, though he honors and loves, he will not, (with most strange inconsistency) trust with the ownership of property any more than the Southern planter will trust his purchased slave,—if they had listened to all this, what, I thought me, even while the gentleman was speaking, would have been their reflections how deep their regret, that one feeling so warmly, should yet judge so ill!

That was an intimation of public sentiment in an Eastern county, here is another, in a paper from the West, a number of the "Terre Haute Journal." I found it yesterday, in the post office, after our forenoon adjournment; an antidote it truly was to the torrent of abuse to which, an hour or two before, I had been condemned to listen. This paper contains some editorial remarks in connection with a circular it publishes, a circular signed by certain ladies in this city and other portions of the State, expressing their gratitude to those who aided their cause in this Convention, and tendering to me a testimonial little deserved by anything I have been able to do for their sex. With the Convention's permission I will read from that editorial, a few words.

Mr. BASCOM. I object to the gentleman from Posey reading anything from a newspaper.

Cries of "Read! Read!"

Mr. OWEN (laying down the paper). It is wholly immaterial. I can repeat the words from memory.

Renewed cries of "Read! Read! Read the document!"

The PRESIDENT. As many as are in favor of giving the gentleman from Posey leave to read the extract in question will say aye. (An almost unanimous aye!) Those opposed to it will say no. (Only a few scattering voices responded.) The gentleman has leave.

Renewed cries of "Now let us have it! Read! Read!"

Mr. OWEN. I thank the Convention for their kindness, but must decline reading to them the entire editorial, because a portion contains remarks of personal commendation towards myself.

Cries of "Never mind. Read it!"

Mr. OWEN. That portion of the editorial is irrelevant, and may be read by others, not by me. The words I desired to bring to the notice of the Convention, refer to the section now under consideration. The editor says: "It has our hearty approval, and is, we think, in accordance with the public wish." And again he speaks of it as "a benign measure, which marks an epoch in the advance of Christian civilization." This comes from Vigo county, one of the Delegates from which (Mr. Barbour) addressed us yesterday, in condemnation of the section.

Since I have had occasion to allude to the testimonial which it is proposed to offer me on behalf of the women of my adopted State, I will say here, that regarding it as the greatest compliment—if in so grave a connection a word often so lightly used may be properly employed—the greatest compliment I ever received in my life, or ever can receive till I die, it matters little to me what may be said of myself in that connection. I am accustomed to personal attack, and am proof against ridicule. But if any man—and here I have no individual specially in view, let the remark hit those who may feel its application to themselves—if, I say, any man, whether he disgrace a chair on this floor, or dishonor by his presence some of the bar-rooms of the city, utter an insinuation, cast a reproach, directly or indirectly, by open assertion or covert insinuation, against the motives or the character of those courageous women who may have met in Lawrenceburg or elsewhere, to consult regarding rights shamefully denied to them, or those who may have publicly expressed gratitude to the defenders of these rights—if such a man there be, within or without the walls of this Capitol, I say here of such an one, let him receive it as he will, that I would give my hand more freely to the inmate of the penitentiary than to him.

I pass to the consideration of the instructions with which it is proposed the section should be referred.

My friend from Tippecanoe (Mr. Pettit) proposes to substitute for it a section which may secure property to married men, but assuredly does not to married women. Thus it reads:

"The property, real and personal, of women, shall be secured"—to whom, Mr. President? To them? Not at all—"shall be secured against the creditors and legal representatives of their husbands." Secured, therefore, this property is to be to the husband, not to the wife.

It strikes me that the property-rights of hus-

bands are pretty well secured by the common law already; that law gives to the husband all the wife's available property, and this section secures to him a monopoly in it.

Suppose a girl about to be married is rich, bringing to her husband say ten thousand dollars cash in hand; at the moment of marriage the husband becomes the owner of that money, may spend it, may speculate with it, may squander it, at his pleasure. This section would declare that the property, though his own to use or to waste, shall not be liable for an honest debt. It may go through his extravagance, it may go to supply means for his debauchery, the law imposes no guard against that, but his creditor, no matter how equitable his demand, cannot reach it. Shall we sanction such a principle as that?

The fifteen minutes having expired, the President notified the gentleman from Posey of the fact. [Cries from all sides of the Chamber of "Go on! Go on!"]

The PRESIDENT put the question, Shall the gentleman have leave to proceed?

Leave was granted.

Mr. OWEN. I am indebted to the Convention for the courtesy extended to me.

I was speaking of a case of marriage, where the property brought to the husband was of considerable amount. But that is comparatively rare among us. Suppose the bride, as is usually the case in our new State, in humble circumstances; receiving from her parents, on her wedding day, but a few articles of household furniture, or a few head, perhaps, of stock. The sheriff comes with a writ, and proposes to take the cow that supplies the family with milk. It cannot be taken; for, though now the husband's, it came to him by his wife. So far, well. But scarce is the sheriff out of sight, when there comes along, perhaps, the keeper of some neighboring grocery, well knowing the failing of the man he addresses. "So the sheriff was after your cow." "Yes," the man might reply, with an oath, probably—"but he couldn't get it." "Glad of it," rejoins the grocery keeper; "I'll tell you what I'll do. Let me take her along, and you shall have credit for fifteen dollars. You owe me five, you know, already, and that's as far as my conscience will let any man run in debt to me. You'll have ten more to take out in liquor. Come over to-night, and we'll have a jolly time of it." The cow is taken; the debt remains unpaid; and how much, meanwhile, is the wife benefitted by the protecting section? But the property is to be "secured against the husband's legal representatives." What property? All the property brought by the wife. But, what if the husband, meanwhile, had squandered it all, as he had a legal right to do? Is the widow, in that case, to have her action against her deceased husband's legal representatives? And for all that was once her's?—or only for all that remains of it? If so, is it to

be a preferred debt? Then, as to personal property that had passed into the husband's hands, how is it to be identified? Shall it be registered? Registered as what? Not as the wife's property, for she has no ownership in it. Is it to be as "the husband's exempted property?" That would be a new and singular distinction.

It is evident, sir, that whatever else may be adopted, this section will not do. It would give rise to endless litigation, if the law founded upon it be so framed as to be of the least service to the widow; and, as to the wife, she is not named or regarded in it at all.

I turn now to the amendment proposed by the gentleman from Dearborn (Mr. Holman). It reads:

"The real and personal property of married women shall be secured to them, under equitable conditions, by law."

Presented in this simple form, there are two questions, and two only involved. The first is, shall we endorse the law passed four years ago, securing to married women their real estate, with its rents and profits, as their separate property? The second is, shall we add personal property also?

Let us suppose that, after the passage of that law, some member of the Legislature had moved to re-consider it for the purpose of inserting, in the proper placé, the words "personal property;" that proposition would have gone further than the present section does; for the words "separate property" do not occur in the section.

Now, do you not think, sir, that a member proposing so simple an amendment would have been astonished, nay utterly confounded, had he found his proposal met, in the Legislature, as this section is met in the Convention?

Suppose my friend from Laporte (Mr. Niles) to have been there, and to have taken the same course he has done here. Then the luckless author of that amendment would find thrown at his head such assertions as these: "You are about to do woman the greatest, the most irreparable injury you ever can do." Or again: "You subvert the obligations of society." Or yet again: "You violate a great and sacred law of order." And if, marvelling at such an attack, the author of the amendment were to beg of the gentleman some proof for these wild and vague assertions, what would be the reply? Something practical, we might suppose, (judging from the gentleman's legal reputation,) touching the relative merits of the civil and the common law doctrine on this subject; something in regard to the legal effects of the change proposed; some evidence of its legal inconveniences. But no, sir, nothing of the kind. Instead of such sober, matter-of-fact reasoning, we have the old allegory of the stomach and the members, once told to the Plebeians of Rome in proof, that a rapacious aristocracy was an excellent and a necessary portion of the body politic.

And what is the application here? The stomach, the great devourer, typifies man. The hands and the feet shadow forth woman, created to do his bidding. And still further to carry out the spirit of this most refined allegory, allusion is made to the queen of song, Jenny Lind. The recent triumphs, due alike to the marvellous talents and her private virtues,—triumphs without a parallel in history—triumphs that have made a simple Swedish girl the most popular human being in the civilized world—these my friend regards "with a feeling akin to sorrow." He would deny to the world those magical strains that elevate and ennoble, while they enchant; he looks with regret on the position of the songstress; on the honest enthusiasm that greets her wherever she moves; on the princely charities she dispenses. He would rather think of her washing dishes and darning stockings at Stockholm: [laughter,] and, perhaps,—for Jenny's original station in life was the humblest, and her public talents alone raised her above penury—perhaps, to employ the words of the author of the "Seasons,"

—devoted to the rude embrace
Of some indecent clown.

Ah! sir, I should like to sit beside my friend from Laporte, with his quick perception of the good and the beautiful,—I should like to sit beside him during the performance of that grandest among human compositions, Handel's "Creation," and witness the effect of that pure and matchless voice, stealing out upon him in some of the magnificent solos that relieve, with a magical effect, the massive, solemn splendor of the piece,—and, at the close, I should like to break in upon the reverie of his rapt senses, and bid him ask his heart, whether it dared endorse the sentiment he has here put forth, to point his argument against the rights of woman.

But why speak of the department of art alone? Let us turn to a Hannah Moore, teaching the world lessons of piety; to a greater than she, Maria Edgeworth, devoting a long and a blameless life to the sacred cause of education, and to the inculcation, sometimes in the graceful garb of fiction, of lessons of morality that have never been excelled by modern pen; to a Felicia Hemans, whose melodious numbers will live, while human hearts continue to beat, and while HOME is an English word. I might bring the argument nearer to ourselves, and speak of her whose poetic genius is the boast, not of this city alone, of our State, of the west—but I forbear. I turn to the gentleman from Laporte and I ask him—it repugns me, in such a connection, even to allude to the allegory he so strangely introduced—but I will ask him, whether these and a hundred other faithful hearted and gifted women, their sisters in intellect and in goodness, are to be regarded as the hands and the feet of society! fit only submissively to minister to the physical wants of the all-possessing lord and

master, man? I ask, whether, instead of devoting the glorious talents God has given them, to improve, to instruct, to delight mankind, their highest ambition, their noblest avocation through life should be,—to make pies and puddings for the gentleman from Laporte and the rest of his high-minded and most generous sex! [Laughter and much applause.]

Household cares properly claim the wife's—the mother's attention; no true woman neglects these. So is it the husband's and father's first and bounden duty to provide support for the family. But it no more follows that a man of commanding talents shall tie down every energy of his soul to the one task of accumulating dollars and cents, than that the influence of a woman, fitted to aid in the civilization of her race, should be restricted to her parlor or her kitchen.

I cannot but think, sir, that my friend's Roman allegory, with all the deductions he would have us draw thence, would be considered a somewhat strange, and erratic, and irrelevant argument against the proposal to amend the existing law by inserting, in the proper place, the words "personal property."

But what further proof of his positions does the gentleman from Laporte furnish? The poetic image of the clinging ivy and the sturdy oak. To the argument—if, indeed, there be any—therein contained, the gentleman from Wayne (Mr. Newman) has already replied. We ask for bread, and my friend offers us flowers. We demand an argument, and are put off with a simile.

But now I will beg the gentleman from Laporte to reconcile, if such a thing be possible, two sentiments of his, put forth within ten minutes of each other. The one, as I took it down at the moment, reads thus:

"Separation of interests in a husband and wife cannot be endured in a perfect condition of the human race. I am opposed to the principle, even as a legislative provision, in any form, in every shape, now and forever!"

And the other, which I now place side by side with it, is in the following words:

"I am in favor of extending to women" (to women observe!) "some further protection against a drunken or profligate husband than the present statute affords them."

Now, sir, I pray you, how are we to understand this? The gentleman, in one breath, not only favors the present statute, but would extend further protection to women from a profligate husband, than its provisions afford, by the addition, we must suppose, of the words "personal property," for that is all it lacks. And in the very next breath he protests against the very principle of that separate property which the statute, in express terms, recognizes; and he declares that he is utterly opposed to it, even as a legislative provision, now and for ever more!

Mr. NILES. Will the gentleman from Posey allow me a word of explanation?

Mr. OWEN. Certainly, with great pleasure.

Mr. NILES. My idea was to provide for the special cases, not to adopt a rule which would be injurious to the general interests of society, for the sake of remedying occasional evils.

Mr. OWEN. Just so. I remember well, that was the very argument employed. And now, in reply to it, I say, that all laws for the protection of human rights—all laws against crime or injustice, though general in their character, apply, and are intended to apply, only in cases of individual exception. There are laws against murder, against larceny. They are and must be general in their character. Yet they take effect in individual exceptions only. What difference would it make in my privileges, in those of the gentleman from Laporte, in those of the overwhelming majority of our fellow-citizens, if murder, if theft were not punishable by law. We do not desire to take the lives or the property of any one. In one sense, laws against murder and theft are not made for us. If all felt as we do, such laws would be a dead letter. Their provisions come into play only in the individual exceptions of the murderer or the thief. Exactly so as regards laws to secure against a husband's profligacy the property of the wife. They are and must be general. They will be imperative in a majority of cases; for profligacy or improvidence in a husband, though far more frequent than either murder or theft, and therefore more necessary to be guarded against by law, is the exception, not the general rule. But not the less should such laws be of a general character, applicable in all cases, though applied, perhaps, only in a few.

Has the gentleman from Laporte brought further argument in defence of his sweeping assertions as to the evil tendency of these laws? None that I bethink me of, except this: that, in opposing them, he did so for the sake of the sex themselves; or, as he expressed it, "not because he loved justice less, but because he loved woman more."

This is, in effect, a repetition of the old argument, that woman cannot be what we all desire to find her, if justice be meted out to her as to rights of property; or, in other words, that pure domestic happiness can exist only where there is dependence and inequality. The reply must be found, to some extent, in each man's feelings. According to mine, the love of a noble mind—which has always, as its hand-maiden, respect—seeks to elevate its object, socially and legally, to an equality with itself. On the other side of the Atlantic, it is argued that political equality must eventuate in the destruction of any republic. On this side, the argument is, that legal equality must result in the disruption of those bonds which hold together the family circle. I believe neither the one doctrine nor the other. I desire to be

no man's master, as I am no man's slave; and here I employ the word "man" in its generic sense, to designate both sexes. I know what I should feel, if I were condemned, under any pretence, to the bondage of pecuniary dependence, even on the friend I love most in the world. I can imagine what the gentleman from Laporte, with his sensitive nature, if he were a woman, might endure in similar circumstances. The beautiful words of Sterne, I am very sure, would rise to his lips: "Disguise thyself as thou wilt, still, slavery; still thou art a bitter draught! And though thousands in all ages have been made to drink of thee, thou art not the less bitter on that account."

I know what I should feel; and I call to mind, and I seek to obey the injunction of Him who said: "Whatsoever ye would that men should do unto you, do ye even so to them."

But I must return from this digression to the case I first supposed; namely, a proposal to amend the present law, by adding to it the words "personal property."

What reply have others besides the gentleman from Laporte made, to a section embodying nothing more than such an amendment? The gentleman from Vigo (Mr. Cookerly) said, it would "induce women to speculate in real estate, and the whole marriage relation would be uprooted." If that assertion has any force whatever, it applies to the present law, and to a proposal to repeal it. That law, passed by an overwhelming majority, has been in operation nearly four years, unquestioned, uncomplained of; and if the gentleman has heard of any women, who, in consequence, have become speculators in real estate, or of any marriages that have been uprooted by the influence of its provisions, he has heard more than I have; and more, I venture to assert, than any facts warrant.

But there is the gentleman from Tippecanoe, (Mr. Clark,) he sounds a trumpet blast loud and long. "It is a part," says he "of the social system, that overturns governments." Nay, his fears reach farther yet, and he proclaims: "You discard Christ, and the higher law."

We discard Christ! The law which already protects real estate we propose to amend so that it shall protect personal also; and this is to be construed into a "discarding of Christ." I am ashamed again to reply to arguments thus baseless, thus idly reiterated. When we protect the weak and the defenceless, we obey Christ; we act up to the very spirit of his injunctions; we reduce to practice the very essence of his morality.

Sir, let us descend from the misty clouds of imagination to the solid ground of fact. Let us answer two plain questions. *First*, is the present law to stand? *Secondly*, shall we do for the poor what we have already done for the rich? The gentleman from Laporte spoke of the "aristocracy of wealth." In nothing can

it speak out more strongly than in a refusal to extend to the girl who has but one or two hundred dollars worth of personal property the same measure of protection which has already been meted out to her wealthier land-owning sister.

I am willing to make and to meet that issue, here or before the people.

Mr. READ of Monroe. Did I feel but an ordinary interest in the subject now under debate, I should not at this late period in the discussion open my mouth except to vote.

The question of giving married women the right to hold their own property is not a new one to my reflections, or to my action. Early in life, when reading the law just as it existed in the books, and was carried out in practice, I felt both indignation and shame.

Whenever I have had influence upon male or female friends and relatives, about to enter the marriage relation, I have advised the securing to the wife of her own property, as safest and best for both parties. This had to be done through the troublesome and cumbrous process of trusteeship. I never return to the place of my former abode, without receiving the blessings of one woman, who by my advice and aid, in this way, was saved from utter ruin in her property. I am, sir, but acting out in this body long cherished opinions.

I rejoice in the progress of just sentiments which on this subject has taken place all over the United States. You can no more turn back this advancing sentiment of the age, than as was yesterday well said by some gentleman upon this floor, you can turn back the sun in his course across the firmament. It is one of those principles of justice and humanity, which is triumphing over long established custom, and is finding a lodgment in our laws, as well as in our hearts and judgments.

If the common law is so humane and Christian in its treatment of women as has been represented, I would be glad to know, at what period of its history, its humanity and christianity, were in this particular, at their highest point.

Was it when wardships existed as incident to feudal tenures, and the guardian lord was permitted to sell out the minor heir in marriage to the highest bidder, and the heir was forced to marry whom the lord appointed. This benign and Christian feature of the common law existed down to the year 1660, when feudal tenures were abolished.

Was it when the husband was permitted to chastise the wife, the law deeming it reasonable that inasmuch as the husband was answerable for the wife's conduct, he should have the power to punish her? Was that the period of the law's highest Christianity?

Or, was it when the woman might be hanged for the very same offense for which her husband received a slight burning upon the hand? Oh,

this sir, was but a Christain difference of punishment!

Perhaps the law is now at the epoch of its Christianity. It gives all the personal property of the wife to the husband, which the husband may squander or will away from his wife at his pleasure.

Or is this more Christian and more nearly coming up to the golden rule, quoted by the gentleman last upon the floor, that upon the death of the wife, the husband shall have all the rents and profits of the wife's lands, during life, while the wife shall have but a third of the husbands?

Then it was a sad time of declension, when, three years ago, our Legislature passed the law permitting married women to hold their own real estate. We need some Christian reform to carry us back to the primitive Christianity of the law. Mr. President, it is a libel upon Christianity to impute to it the monstrous injustice and cruelty, which it is sought, to affix to its name.

We have heard much of the unity necessary to the happiness of the married State. Greatly, I suppose, it will promote this unity, if the law take from the wife all her own, and she be obliged to beg her husband for each dime, or half-dime of her own money, yes, sir, her own money, which she may have occasion to use! This is the discipline of the law to keep married women mild and gentle, and graciously submissive.

But, sir, what is the object of all property? Is it not to supply the physical wants of our nature? Well, then, let us see how this unity of husband and wife in this view, requires the unity of property, or, in other words, that the wife should give up all her own rights. When the husband eats, it satisfies the hunger of the wife—when he puts on his garments, of course, in virtue of this unity, it clothes the wife—or if he even deserts her and finds a shelter for his own head, hundreds of miles distant, that shelter protects the wife and her babes! Until the unity so much spoken of in this debate, shall do this for the wife, some property for her wants would seem to be needed, and it would seem not unreasonable to give her, not her husband's, (that I am not pleading for now,) but just the property, and that only, which by every principle of right and justice belongs to herself.

The gentleman from Laporte, speaks of dollars and cents, as not for a moment to be weighed in the scale of happiness. That is all true. But those unhappily married, must still have the means of living. We will suppose that gentleman on the bench of our highest court, a station which he is eminently fitted to adorn. A woman is before him suing for divorce for cruel abandonment. When the question is in regard to alimony, will he say, your affections have been cruelly crushed—your young hopes have been all blighted—that is the real injury—dol-

lars and cents are nothing—they can never restore you to happiness. Alas, madam, the court cannot in the case, consider so poor a thing as money. It is so trifling, it is not to be thought of. The court will grant you nothing. Money will do you no good in your unhappy condition. It will not restore your maiden affections, nor bring back joy to your heart.

Mr. President, woman needs property for her sustenance, just the same as man does, and because she has suffered a withering blight in her most cherished hopes, that is not a reason why the law should give her no protection in her rights of property. The argument is, if argument it may be called, that having suffered so much, you do her but little harm, in superadding to injury in all that a woman holds most precious, the loss of her means of support. It is an argument which never has been used, and never will be used, in the case of men and their rights to their own property as against other men.

I may ask the gentlemen from —— if they know no case in their own neighborhood, where the laws of another State securing the property of the wife, against creditors of the husband, that wife from means descending to her from her father, is able to furnish a support to her family. I might ask them if that accomplished lady is found engaged in the market, and driving bargains for the purchase of farms, or of produce. I might ask other gentlemen, if they ever knew a case, where some separate property having been settled upon the wife, she, in consequence, became a trader or speculator. That, Sir, is never the result.

That a woman must be deprived of all her own, and made the merest dependent upon the husband's bounty, in order to secure her proper womanly character, is a slander upon the sex.

Mr. President, I hope there will be some recognition in the Constitution, of rights which I consider just as sacred as any other, just as necessary for the happiness of those concerned and as much founded in principles which are acknowledged by every mind.

Mr. PETTIT. Having moved to re-commit the section with instructions, and it having been alluded to by the gentleman from Posey, I deem it my duty to make a short explanation. The gentleman from Posey complains that he has been wantonly assailed. I can only say, that the assault has not been made by me, nor shall it be under any circumstances. No man deprecates more than I do, any such course, particularly in reference to that gentleman, for, in my judgment, there is no man in this Convention who is less liable to censure. I may say that I am well acquainted with the gentleman from Posey. I have served with him on this floor, as a representative, I have served with him in the National Legislature for four years. I think, therefore, I may say that I am acquainted with the gentleman's character and disposition,

and I take great pleasure in saying here, what I have often said in private circles, that I know of no man who is more blameless in his conduct and more pure in his moral character, than Robert Dale Owen.

That his motive and design in the introduction of this section were the promptings of a pure and guileless heart, I have no doubt. But that is not enough for me. That is not enough to induce me to vote for this measure. I look beyond that, and enquire, is the section right in itself? Will it produce peace and harmony and happiness in the marriage relation? Will it produce a just distribution of property? Will it put the property of the family into proper hands, or will it do the reverse? I do not, sir, intend to discuss this question; but I may be permitted to notice one or two remarks that have been made by the gentleman from Posey. He has compared the married relation to the condition of slavery. Sir, I think that most of the women in this country—for I like the good old English word “women;” it is in my estimation a better word than “lady”—I think, sir, that the happy wives, and the happy mothers of this land, will be somewhat astonished to learn that their condition has been all their lives like that of slaves. I do not believe they have supposed or imagined that such was the case. I certainly did not suppose any such thing.

Mr. OWEN. Will the gentleman allow me to set him right? The expression that I used was of a qualified character. I said that women, during the most of their lives, had no more rights of property than slaves.

Mr. PETTIT. I did not wish to misrepresent the gentleman, and if I interpreted his language in too strong a sense, the gentleman shall have the benefit of his correction. I was merely going to say, however, that I do not deem myself the holder of a slave, nor do I think that my wife has reason to consider herself thus situated.

The gentleman from Posey said, at the commencement of his remarks, that he was going to talk about this question in a business like manner. Well, sir, I was really glad to hear that, for I have heretofore heard the question discussed in what appeared to me to be anything but a business like manner. But upon hearing the gentleman I found that he was repeating precisely the same speech that he had made when the discussion of this subject first commenced. It is certainly the same speech that he made yesterday, and I believe he has made the same one several times before; and, sir, the gentleman is perfectly justifiable in doing so, for the subject has been wholly exhausted. It is one upon which you can make an appeal to our feelings of sympathy, but that is the whole subject; you cannot make an argument beyond that. If more could have been said, the gentleman from Posey would not have

failed to say it. There is no gentleman who is more capable than he is of presenting the case to us in the strongest light that it will admit of.

There is no gentleman who is more capable of doing justice to any subject, and if any additional arguments could have been advanced he would not have failed to avail himself of them. I take it therefore that there can be nothing more said on this side of the question.

Now a few words and I shall have done, for I have no disposition to consume the time of the Convention, and it does seem to me that this subject has been talked about long enough, and if it had not been due from me, as the mover of the amendment, I should not have said a word. I moved that the section be re-committed with instructions to substitute the following: That the property, real and personal, of women be secured against the creditors and legal representatives of the husband.

I do not perceive that the instructions proposed by the gentleman from Dearborn, differ at all from the old section. The proposition is that the wife's property shall be secured to her separate use, that it shall be and remain to her, for her separate use and benefit during the coverture. I have not asked that there shall be any covert action about it. I do not want that as between husband and wife, during the coverture, there shall be separate property. I want, however, that the property of the wife shall be secured against the creditors of the husband; that an execution against him in the sheriff's hands shall not reach it; and that the executors and administrators of the husband, shall not take the property that the wife brought to the common and joint-stock. While both are living, I desire that there shall be but one head to the family. It is proper that the law should constitute the man whom the woman has taken to her embrace as her guardian and protector, through life; her agent for the transaction of all business, for the management of all property that may belong to her. It is proper that he should be her legal representative in this respect.

One word in reference to the statutes which the gentleman has read. Now I undertake to say that taking a common sense view of the language employed in those acts, no one can suppose that the Legislature contemplated that the wife should be entitled to bring suit for the recovery of rents or that suits should be instituted against her in relation to property, yet I say the language of the section that has been introduced here necessarily leads to that result.

But, sir, it cannot be successfully carried out in practice.

The whole difference between my proposition and the original section, is this: I propose that real property shall remain as it now is, subject to the control of the husband, during his life. But my proposition secures the prop-

erty of the wife, against the creditors and legal representatives of the husband, while the other creates a separate control in the wife, making two heads, or managers in one family, the one selling a few sheep to-day, the other disposing of a cow to-morrow. I ask you how is this property under such circumstances to be divided or apportioned? Where the wife brings with her as a marriage portion, a small quantity of stock—a few cows, and perhaps a horse and some sheep, how are you to make distribution of the property? How many pounds of wool will you allow to the wife's separate use, and how many to the husband's? How often shall the wife have the privilege of riding the horse, and how often shall the husband have the privilege? Sir, I have reflected upon this subject with an ardent desire to co-operate with the gentleman from Posey in the support of his proposition. I was anxious to go heart and hand with him, provided it could be done without disturbing the harmony and unity of the married relation. But I find myself compelled to differ from him. Now the only thing for the Convention to do, it seems to me, is to vote down all these amendments, and adopt the proposition that I have offered. I say to the gentleman from Posey, and to the Convention, that I believe that the wife's separate property ought to be secured to her. I seek no credit for advocating the proposition. The gentleman from Posey may have it all. I am perfectly willing that he should have all the honor and glory arising from the presentation to him, of a testimonial of approbation on the part of the ladies. I have no desire to deprive him of the least share of the honor and credit that are justly his due.

I have thus briefly given my opinion in reference to the two propositions. I am not for giving the wife a separate control of property while the husband lives.

Sir, I am not without my feelings of attachment, although I confess I have no great gallantry. All of us have had mothers, and the most of us have wives, or ought to have; ["consent;"] many of us have daughters—would to God I could say I had a daughter. But believing as I do that the course proposed would be promotive of mischief—aye, sir, I will say of ruin, believing that it would make the domestic hearth desolate—I am opposed to it. I cannot consent to do an act that will tend to withdraw from the family circle the finer, and softer, and better feelings of human nature.

I have detained the Convention longer than I intended, and shall no longer trespass upon their time. I hope this matter will be brought to a close. It has been fully discussed by gentlemen on all sides of the Convention.

Mr. HOWE. Mr. President: The gentleman from Posey says that in the remarks of the gentleman from Laporte there is much poetry and little argument. Sir, they are the pro-

foundest remarks we have had on this subject. An Appelles or a Michael Angelo would have deemed it an insult to have been required to write under their master-pieces a description or marginal annotation. The appeal of the gentleman from Laporte was the strongest of all arguments—an appeal to the understanding through the sentiments and affections—and he touched a cord in the human heart whose vibrations proved the truth of the touch and the hand of a genuine master.

I have not, until now, spoken on this subject, and I will now, and once for all, state the reasons why I am opposed to, and shall vote against, the section relating to the rights of married women.

A Constitution is with us the law of laws—its object is to frame an instrument of government—protect political rights and those social rights which are in danger of being encroached on, or of such transcendent importance as to justly challenge such a high guaranty; and it may be safely laid down as an axiom that, in framing a Constitution, no changes from the present state of political or social affairs is to be invoked, unless sanctioned by reason and experience, their own paramount importance, and the inadequate protection of ordinary legislation.

I oppose this section because experience at least has not demonstrated its propriety in this country. Similar Constitutional provisions, it is true, have been adopted elsewhere, but time, which tries all things, has not yet practically tested their merits.

Again, ordinary legislation, already highly liberal on this subject towards married women, is abundantly adequate to effect all desirable changes in our laws on this subject as fast as these changes are sanctioned by experience in other States, and the habits of our people. If the measure were adopted in the Constitution, and should be productive of bad consequences in our social relations, it might be impossible to get rid of it until all the evil consequences it can produce are fully developed, and then though the measure die its evil will remain forever. These reasons are founded upon the assumption that the measure is for good or evil only doubtful, for I affirm that we have a right to demand of the advocates of a measure of proposed Constitutional reform the clearest demonstration of its utility. All change is not progress; yet it would seem to be so in the opinion of a large proportion of the American people.

But, sir, as to the propriety of the measure itself, I believe the whole weight of the argument is with its opponents.

Experience we have none, except in those countries where the civil law exists, and although in many of those countries the religion of the Romish Church prevails, and marriage is regarded as a sacrament, the marriage tie is neverthe-

less in point of fact notoriously weaker in those countries than here.

There is another objection. The change is opposed to every rule of the common law regulating the relation between man and wife. By this section, you would disfigure our law and destroy its unity. Either adopt the whole of the Civil law on this head, and abandon your own, or allow our present system to remain untouched. You might as well attempt to crowd Corinthian columns in the place of the solid buttresses of a noble Gothic pile. In fact, your whole law upon this subject would thus gradually give way. The consequences I have not time to discuss. I am only stating without developing my objections. Let me resort to the *argumentum ad hominem*, and ask the gentleman from Posey with what propriety he opposes a homestead exemption in the Constitution, and supports this child of his hopes—this favorite section? If the people have not yet advanced to the point which would make a homestead exemption popular, by what test does he determine the popularity of this section?

The measure proposed by the gentleman from Tippecanoe, although far from being meritorious is preferable. It avoids the unanswerable objections of fostering separate interests. It is the policy of the common law to merge the legal existence of the wife in the husband, and never to place them, or allow them to be placed in a hostile attitude, and all its provisions are subservient to that end.

The Civil Law, on the other hand, starts with separate interests, and no merger of the wife's legal character, and it is consistent throughout, in not deviating from these main intents.

You never can have but one of these systems; you cannot have both. Which will you take? This is the alternative now presented. If you choose now, so far as effects and consequences are concerned, you choose for all time. The Civil Law may be in many respects a better system than ours—less artificial, and imbued to a higher degree with natural equity. But God forbid that we should irrevocably adopt a part of its provisions in this Constitution and make a patch-work system for the government of such a transcendently important relation! It is not the part of wise men. It is not the part of statesmen.

There is still another and weighty objection. Grant, if you please, that the measure embraced in this section is adapted to the wants of a very wealthy community, where an advanced civilization falsely so-called, prevails, and where large amounts of property are transferred by one marriage, it is certainly ill adapted to the simple and primitive habits of the great mass of our people. Such a change forebodes more, I fear, than is dreamed of in the

philosophy of some gentlemen. Sound wisdom forbids the change.

Law is a vain thing, unless it meets a response in the hearts of mankind; but law and public sentiment react on each other.

The domestic relations may continue as perfect and as peaceful under your proposed change as heretofore, but it will be in spite of the law, for you thereby manifestly exhort to domestic discord, by furnishing a subject for it. Some evil consequences may arise from the present law, but suffer them, rather than diminish the sources of peace and quiet among those elements which compose the vast society of a State.

Ante-nuptial settlements of property can be resorted to by those who are not willing to run the hazard of misfortune or profligacy.

If a change in the law must come, let it be made calmly, deliberately, and safely in a code. Let a change be made in the whole structure of the law on this subject, and at the same time, if at all; and let able architects superintend the pulling down of the old structure, and the erection of the new one. But I trust this will never be done. No nation ever yet flourished by systematically abandoning its institutions. Time may work its changes in the fabrics of States and societies. Let us be wise and follow time.

This very time—this very day—when changes are most loudly called for by many—is the very time when they are most to be deprecated. Above all, let us not now adopt laws which will mar the simplicity of our habits. Instead of encouraging laws for the protection and accumulation of wealth, let us labor to establish those which will lead to private virtue and public happiness. A corrupt court and a simple people may stand together, but simplicity of manners and virtue of mind will alone sustain a republic. The opposites are corruption and selfishness. Our institutions, like all things human, will fall soon enough without the aid of the cohorts of luxury and refinement. Let us stick to our household gods. Wealth and luxury will come fast enough, with all their enervating and corrupting influences.

Let us remember the simplicity and the virtue of our ancestors—like the infant Hercules,

“—— In vice untaught,
But skilled where glory leads the way
To deeds of virtuous enterprise.”

MR. GIBSON. I have a word to say, Mr. President, in regard to the amendment of the gentleman from Tippecanoe (Mr. Pettit). But little has been said with reference to it, and that almost all upon one side. The effect of the amendment is this that the real and personal property of the wife shall be secured to the husband and not to her during her lifetime, and at his death will be secured to her against his legal representatives. It should be secured against the creditors, as no man can have any legal

representatives, as I understand the law, until after his death. This is the amendment :

"The property, real and personal of women, shall be secured against the creditors and legal representatives of her husband."

That means creditors during life and after death, and legal representatives after death.

As far as personal property is concerned, I would like the gentleman to explain to whom the personal property is to go to after the husband's death, if not to the personal representative. It says nothing about the heirs; proposes to secure it only against the legal representatives, meaning the executor's administrators. They are the mere channel through which the law distributes the property.

This, sir, will produce confusion in the appointment of the property. The provision cannot be carried out without complexity.

I would not accuse the gentleman who has introduced this proposition, of desiring to break down the proposition of the gentleman from Posey, because I think he has submitted it from proper motives; but I am satisfied the amendment can never become a part of the new Constitution and I shall vote against it in every form, and I believe I will be benefitting the females of this State in so acting. It takes away from them the only right the law has left them. We now have a law by which the deserted wife can obtain a sufficiency out of the fortune she has brought the husband, to provide her with the necessities of life; and this amendment proposes to take even that away. Under the law as it now exists, if a heartless husband deserts his wife, the law allows her a bare support by allowing her to purchase necessities upon his credit, and making him pay for them. But by this amendment her own property cannot be held liable by the creditors, and of course the right to buy on her husband's credit avails her nothing, for no one will trust her. For such a section, sir, I will vote in no shape or form.

We are met here, upon all hands with the reiterated assertion, and it is nothing more than an assertion, that by this section it is proposed to give the wife a separate property. Now, sir, I pledge my reputation as a lawyer, that no such construction would be given to it by a court of common sense. The common law now does for woman's real estate all we propose to do for real and personal, and does that give her a separate property? Answer me, ye who have proclaimed here that by this section it is proposed to give the wife separate property, stand up and say whether the common law gives her any separate interest in her real estate.

Sir, there is but one alternative for the friends of this measure. They must sustain the amendment offered by the gentleman from Dearborn, (Mr. Helman,) or the whole subject falls to the ground.

It is entirely out of the question to incorporate the amendment of the gentleman from

Tippecanoe (Mr. Pettit). It is possible it may draw off friends enough of the principle contained in this section to have it engrafted on the present section, but then the amended section will be rejected. I should infinitely prefer to have nothing at all, and leave the matter with the people and the Legislature, rather than have such a proposition incorporated in the Constitution.

The gentleman from Tippecanoe (Mr. Pettit) objects to the word "slavery," as applied to woman. I am free to admit that her condition is not that of actual slavery, but she need not thank the law that it is not so. What right has the southern planter over his slave? The right to take all his earnings. Has not the husband the same right with reference to the earnings of his wife? The planter has a right to flog the slave. Has not the husband the same right? Go to Blackstone and see if the right to whip a wife is not accorded to the husband. Point out the difference, in theory, if you can. All that she has, and all that she earns, is his. He has the right to restrain her freedom or punish her by chastisement. True, he has not the right to sell her, and therein lies the only difference your law makes between a slave and a wife.

MR. BARBOUR. The gentleman from Posey (Mr. Owen) has referred to a paper published at Terre Haute, in the county which I in part represent, as indicating somewhat the sentiment of that county. I have not seen the paper and know nothing either of the editorial of that paper or the "communication" or "circular" to which he refers. That is a county in which I was raised from boyhood, and I think I know something of the sentiment of that county. Not from any expression of opinion on this subject, but from a knowledge of the general character of the people. I should say, then, in reference to the sentiments of the people of that county, if this question was submitted to them to-day, they would vote against incorporating it in the Constitution.

Now, sir, a word in reference to the indefinite postponement of this question. And first, I would remark that we have indulged in rather too much abuse of the legislative body. The Legislature is the popular arm of the government; it is through that body we learn the will of the people; the representative is supposed to reflect the sentiments and wishes of his people, and whatever we say calculated to bring that body into disrepute, is indirectly stigmatizing the people. I do not think this wholesale abuse is in good taste.

How stands this question now? The section was first passed by a very close vote; that vote has been re-considered by a large majority, and the question now comes up on a motion to indefinitely postpone its further consideration.

A great variety of arguments have been presented, both for and against the measure. In

the opinion of a large portion of this body, this section is pregnant with evil, and likely to work a dangerous revolution in society.

The sentiments of the people on the subject, however, are not fully known to the delegates on this floor. The question was not even agitated in the county which I in part have the honor to represent. It has not been agitated in nine-tenths of the counties of the State, although it was probably agitated in the county from which the gentleman from Posey (Mr. Owen) hails, and no doubt the people there are in favor of it. I know this much, sir, in relation to public opinion, that a proposition apparently plausible when presented, and advocated by a man of extraordinary talents, and all its favorable points exhibited to the people, there will probably be created a public sentiment in its favor. But this cannot be done upon all subjects.

Thus with the subject of a Homestead Exemption; although approved and strongly advocated by the gentleman from Posey, in his own county, he had the frankness to tell us that he believed his constituents were opposed to any considerable exemption of property from execution.

Now, sir, is there any danger in leaving this subject now before us to the consideration and action of the people, inasmuch as it is as yet a new subject with them? They will read our arguments—agitate this matter among themselves—consult together in regard to it, and hereafter elect members of the Legislature who will reflect truly their will in reference to it.—Most of the unwise legislation of Indiana and other States, has originated from the fact that Legislatures have attempted to legislate in advance of public sentiment. I hold to the doctrine, sir, that there is more good sense and greater wisdom among the masses of the people, manifested upon important questions, than can be found in any body of distinguished men selected from the people. Theirs is a general experience drawn from the whole body of the people. Every man brings to light some new idea, that aids in moulding public sentiment. When this sentiment is thus matured, it will result in wholesome laws, productive of the public good. But when we attempt, upon mere abstract reasoning, to frame laws upon subjects which have not been duly considered by the people, the consequence is, those laws will not be wise or beneficial in their results. Hence it is that Legislatures so frequently change laws they have passed. This is the cause of the efficient legislation in England; the legislators there follow, and do not lead, public sentiment. Taking this view of the subject, may we not safely trust to the action of the people upon it? We have lived and flourished under the present system for years, and may we not continue to live under it two or three years more, until we can ascertain what the public senti-

ment is, in regard to the radical change that is proposed? Is it not treating the people unfairly, not to consult their views in regard to the subject; and will we not hazard the adoption of our Constitution, (which we are making at such great expense,) by engrafting such a provision in it as is now submitted by the gentleman from Posey? If the people were assembled here to-day, and the facts were stated to them as I have stated them, would they not advise us to leave this matter out of the Constitution, to give them time to consider of the measure, and that if they approved it, they would send men to the Legislature to do what was right about it? Can any one doubt such would be their advice? If it was a matter that entered into the organization of the powers of government, it would be necessary to act upon it; but this is not the case. It is a subject which can more judiciously be acted upon by the Legislature, which body will always reflect public sentiment in regard to it. I trust this subject will be indefinitely postponed.

[Mr. Taylor here addressed the Convention. His remarks are out for revision.]

MR. DOBSON. I think, sir, that in all probability, the better plan will be to leave this matter out of the Constitution. The law as it now stands on the subject, is sufficiently satisfactory, as regards real estate; and it can be amended by an act of the Legislature, so as to embrace personal property. This section passed by a very close vote—that vote has been reconsidered, and the section is again open for our action; and the question to determine is, whether the public mind is prepared for the change it proposes to make, or not? It may be that it is in advance of public sentiment. I do not pretend now to argue the question of the correctness of the section, but simply whether it is in advance of public sentiment, or not. If it is, ought we to insert it in the new Constitution—thereby endangering the adoption of that instrument? If the Constitution should be rejected, not only will the people of the State have been put to a great expense for nothing, but they will lose the benefit of all the other reforms engrafted upon it. Now if the Legislature have not the power to pass a law securing the rights of women in the manner contemplated in this section, we can, by another section, give them that power; and it is my honest opinion that the subject should be left to that body.

Public sentiment in all instances should precede legislation, not follow it. In fact public sentiment never follows legislation; legislation made in advance of it hardly ever receives its approbation. Where a few individuals do all the thing as regards the character and execution of the provisions of government, and the people have no right to think, when, in short, there is no public sentiment, as is the fact in some countries, the case is different. It is not so in this country. Every citizen in this Union

has the right to investigate and act in regard to the important functions of government. As this is a new subject and one in regard to which there is much opposition in large districts of the country, I think the only safe course to pursue is to give the people time to think and act upon it for themselves. Think they will; you cannot keep them from thinking. It is a doubtful matter and therefore it appears to me the better policy is to leave it out of the Constitution. It is possible that its insertion would ensure the rejection of the Constitution. When the people have made up their minds in regard to it they can, through their representatives in the Legislature, take such action upon it as they may deem right and proper.

Mr. EDMONSTON. I rise, sir, to make a motion which I have not as yet made in this Convention; but it does seem to me that it is time to put a stop to this interminable debate. The minds of members, I believe, are made up on the question, and I do not think any further talking will in the least degree change their opinions. I therefore call for the previous question.

The call having been seconded—

The PRESIDENT. The question is, Shall the main question now be put.

It was so ordered by consent.

The PRESIDENT. The question will first be taken upon the amendment of the gentleman from Dearborn (Mr. Holman) to the instructions submitted by Mr. PETTIT on yesterday.

On this question the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 60, nays 69.

YEAS.—Messrs. Alexander, Anthony, Ballingall, Bascom, Beeson, Berry, Blythe, Bryant, Chandler, Chapman, Chenowith, Coats, Crumbacker, Dick, Dunn of Perry, &c., Duzan, Edmonston, Garvin, Gibson, Graham of Warrick, Hall, Hamilton, Harbolt, Hendricks, Hitt, Holman, Hovey, Kelso, Kendall of White, Kilgore, Kinley, Maguire, McClelland, McLéan, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Mowrer, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Spann, Steele, Tannehill, Wiley, Wunderlich, and Mr. President—60.

NAYS.—Messrs. Badger, Barbour, Beach, Beard, Bicknell, Biddle, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Elliot, Farrow, Fisher, Foley, Foster, Frisbie, Gordon Gregg, Haddon, Hardin, Helm, Helmer, Howe, Huff, Johnson, Jones, Lockhart, Logan, March, Mather, May, Moore, Morgan, Morrison of Wabash, Newman, Niles, Nofsinger, Pettit, Rariden, Schoonover, Shannon, Snook, Smith of Ripley, Stevenson, Tague,

Taylor, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wolfe, Work, Yocum, and Zenor—69.

So the amendment was rejected.

The PRESIDENT. The question is now upon re-committing the section with the instructions offered by the gentleman from Tippecanoe (Mr. Pettit).

Upon this question the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 35, nays 93.

AYES.—Messrs. Bright, Butler, Chandler, Clark of Tippecanoe, Colfax, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Farrow, Foster, Garvin, Gregg, Harbolt, Kelso, Lockhart, Mather, McClelland, Miller of Clinton, Miller of Fulton, Milroy, Moore, Nave, Newman, Nofsinger, Pepper of Ohio, Pettit, Rariden, Read of Clark, Ristine, Smith of Ripley, Smith of Scott, Spann, Taylor, and Walpole—35.

NAYS.—Messrs. Alexander, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Bowers, Bracken, Brookbank, Bryant, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Coats, Conduit, Cookerly, Crawford, Crumbacker, Dick, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Edmonston, Elliott, Farrow, Fisher, Frisbie, Gibson, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson, Jones, Kendall of White, Kilgore, Kinley, Logan, March, McLean, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Morrison of Wabash, Mowrer, Niles, Owen, Pepper of Crawford, Prather, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor and Mr. President—93.

So the section was not re-committed.

The PRESIDENT. The question now is, shall the section pass?

Upon this question the yeas and nays were demanded, and being ordered the Secretary reported the following result—yeas 55, nays 75:

YEAS.—Messrs. Alexander, Anthony, Beeson, Berry, Blythe, Bryant, Carr, Chapman, Chenowith, Coats, Crumbacker, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foster, Gibson, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hitt, Kelso, Kendall of White, Kilgore, Kinley, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Mowrer, Newman, Owen, Pepper of Ohio, Prather, Read of Monroe, Ristine, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Spann, Steele, Tannehill, Thomas, Wiley, Wunderlich, and Mr. President—55.

NAYS.—Messrs. Badger, Ballingall, Barbour, Bascom, Beach, Beard, Bicknell, Biddle, Bow-

ers, Bright, Brookbank, Butler, Carter, Chandler, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Frisbie, Garvin, Gordon, Haddon, Hardin, Helm, Helmer, Hendricks, Holman, Hovey, Howe, Huff, Johnson, Jones, Lockhart, Logan, Maguire, March, Mather, May, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Niles, Nofsinger, Pepper of Crawford, Pettit, Rariden, Read of Clark, Schoonover, Shannon, Sims, Snook, Stevenson, Tague, Taylor, Thornton, Todd, Trimble, Walpole, Watts, Wolfe, Work, Yocum, and Zenor—75.

So the section did not pass.

On motion of Mr. PETTIT,

The Convention adjourned until 2 o'clock, P. M.

AFTERNOON SESSION.

ORDERS OF THE DAY.

The Convention resumed the consideration of the orders of the day, the question being on the third reading of the following section:

"Every bill and joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms in the Latin, or any other than the English language; *Provided*, That the Legislature may publish the laws in the French and German languages, for the benefit of those who cannot read English."

Mr. BORDEN. It occurs to me that this should properly come up when we have the sections providing for law reform under consideration, and for that reason I shall move to lay the section on the table—not because I am opposed to the principle embraced in it.

Mr. MORRISON of Marion. I differ entirely with the gentleman from Allen in the views of propriety which he entertains in regard to this section. If you look at the previous sections you will see what is said in regard to bills, and the peculiar character they should have. This is only an additional feature, and I think it is quite as properly arranged under this head, as under the head of law reform. The committee on revision and arrangement have certainly a right to put it where they please, and they will doubtless take care that it goes in its proper place. The question is, shall we pass upon the section now, while the whole subject is fresh in our minds, or leave it until some other period when we probably will have again to go over this whole discussion?

Mr. BORDEN withdrew his motion to lay the section on the table.

Mr. GIBSON. Mr. President, I move to re-commit the section, with instructions to strike out the proviso. I hope that this proviso, having no kind of connection whatever with the section, will not be stuck upon it. I voted for the proviso yesterday, not because I thought it

was a proper provision, but because I had hoped that it would break down the section itself, believing as I did that it was far from being a suitable provision to introduce into this Constitution.

Mr. BORDEN. If this proviso is stricken out, Mr. President, I shall be under the necessity of voting against the section. I have a great many German constituents, to whom it is important that the laws should be published in their own language, and I must say, that I feel disposed to renew the motion to lay the section upon the table. [Loud cries of "no! no! no!"]

Mr. WALPOLE. This is a question of great importance to many of my constituents, and I believe is equally important to a large class of our constituents in other parts of the State. If the gentleman says he voted for this proviso merely as a rider to break down the section, I wish to have the vote recorded, in order that we may see how many more gentlemen are of the same way of thinking.

Mr. BORDEN. Does the gentleman from Hancock allude to me?

Mr. WALPOLE. No, I allude to the gentleman from Clark, (Mr. Gibson.)

Mr. WATTS. I have perhaps as many German constituents as any gentleman upon this floor. I presume, in the district that I represent, there are not less than a thousand German voters; yet I am opposed to the proviso, not that I would not be willing that they should make themselves acquainted with the laws of the country, but because I hold that if we cannot give them those laws in full, it would answer very little purpose, merely to publish the statute laws of the country in German, without the Constitution, and the decisions of the Supreme Court. And if the legal meaning of the words "may," and "shall" are the same in regard to public acts—as appeared to be the opinion of many lawyers on this floor the other day—it makes it obligatory upon the Legislature to publish the statute laws in French and German and English. Now I am not prepared for such a proposition. I think that we ought, by all practicable and reasonable means to encourage the speaking of the English language.

I, sir, who am pretty well advanced in years, should be glad to know it better than I do. I trust therefore that the section will be re-committed with instructions.

The question was then taken on the motion to re-commit the section, with instructions to strike out the proviso, and it was decided in the negative.

Mr. LOCKHART. I move to lay the section on the table.

On this motion the yeas and nays were demanded and ordered, and being taken resulted as follows—yeas 23, nays 87:

YEAS.—Messrs. Balingall, Blythe, Borden, Bourne, Bright, Carr, Clark of Tippecanoe, Dunn of Jefferson, Duzan, Gibson, Hall, Hel-

mer, Hovey, Kendall of White, Lockhart, Logan, March, Miller of Gibson, Milroy, Niles, Schoonover, Watts, and Mr. President—23.

YAYS.—Messrs. Alexander, Anthony, Bascom, Beach, Beard, Beeson, Berry, Bracken, Bryant, Butler, Carter, Chandler, Chapman, Chenowith, Clark of Hamilton, Coats, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Perry, Edmonston, Elliot, Farrow, Fisher, Foley, Frisbie, Garvin, Gordon, Graham of Warrick, Haddon, Harbolt, Hardin, Helm, Hendricks, Hitt, Holman, Huff, Jones, Maguire, May, McClelland, Miller of Clinton, Miller of Fulton, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimby, Walpole, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—87.

So the section was not laid upon the table.

The question then was on the final passage of the section, and the yeas and nays being demanded, ordered, and taken, resulted as follows—yeas 99, nays 21.

YEAS.—Messrs. Alexander, Anthony, Badger, Balingall, Bascom, Beach, Beard, Beeson, Berry, Biddle, Borden, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chenowith, Clark of Hamilton, Coats, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Frisbie, Garvin, Gordon, Graham of Warrick, Haddon, Harbolt, Hardin, Helm, Hendricks, Hitt, Holman, Huff, Johnson, Jones, Lockhart, Maguire, March, May, McClelland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimby, Walpole, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—99.

NAYS.—Messrs. Blythe, Bourne, Bright, Clark of Tippecanoe, Dunn of Jefferson, Duzan, Foley, Foster, Gibson, Gregg, Hall, Helmer, Hovey, Kendall of White, Logan, McLean, Miller of Gibson, Rariden, Schoonover, Watts, and Mr. President—21.

So the section was passed.

Mr. WALPOLE offered an additional section to the article, to the following effect:

"That no President, Director, or other officer or agent of any Railroad, Bank, Banking or other monied incorporated company in this

State, shall be eligible to a seat in either branch of the General Assembly of the State of Indiana, so long as he shall continue President, Director or other officer, or agent of such Railroad, Bank, Banking or other monied incorporated company, nor for the lapse of six months after he has ceased to hold such office."

Mr. W. observed that he had nothing further to say upon this subject, but he certainly wished to have his vote recorded upon the question, and if he could obtain a sufficient number of gentlemen to back him, he would like to have the yeas and nays.

Mr. GARVIN. I move to amend the section, by striking out the word "six."

Mr. WALPOLE. The section which I have offered, is an exact transcript of one which is found in the Constitution of the State of Florida, with the exception, that in regard to time, it prescribes twelve months.

Mr. SMITH of Ripley. I would like to know what the gentleman means by the words "other monied corporations."

Mr. WALPOLE. I mean those corporations which have extensive privileges—not merchants who act without authority of any special legislative act, but all those who are incorporated by act of Legislature, and who enjoy exclusive privileges, under their charter.

Mr. SMITH of Ripley. I think the proposition of the gentleman from Hancock covers too much ground. If he would modify it so as to include officers of Banks and Railroads, I think I would support his proposition.

Mr. GARVIN withdrew his motion to strike out the word "six."

Mr. GREGG. I would like to offer an amendment to the proposition of the gentleman from Hancock—it is as follows:—"Nor shall any number of this Convention be eligible to a seat in Congress during the first five years after the adoption of the Revised Constitution." [Laughter.]

Mr. RARIDEN (in his seat.) I do not see that there is any necessity for such a provision, for I think there is no danger of that honor being conferred upon any gentleman here.

Mr. DOBSON. If the gentleman from Jefferson would look at the Constitution of the United States, he will there learn that this is not a matter which appertains to the Convention. The Congress of these United States are the exclusive judges of the qualifications of those who may be elected as members of that body.

Mr. WALPOLE. If this Convention continues to proceed in the manner in which it has proceeded for the last two weeks, I think every gentleman on this floor will perceive that there will be no necessity for the amendment offered by the gentleman from Jefferson. Nor, sir, is it within the province of this body to determine a question of such a character. The design of the honorable gentleman is evidently to break

down the proposition which I have offered. Now all that I ask is fair dealing. If there is not merit in the proposition, then let it be voted down. I do object to this method of attaching riders to a proposition, in order to make it obnoxious.

The gentleman from Jefferson is well aware that whatever Constitutional provisions we may make, we can place no restrictions here as to those who are to be elected members of Congress. This must be obvious to every gentleman who understands the A, B, C, of the Constitution of the United States; and, when they vote in favor of such an amendment as this, they only do so in order that my proposition may fail. The other day I stated, very briefly, the reasons why such officers as those I have enumerated should not be eligible to become members of the General Assembly. My only object is that the Legislature of Indiana may be entirely free from the possibility of the imputation of any interested motives.

I spoke also the other evening of the immense influence that has been brought to bear upon senators and representatives, in favor of corporations; and I think I showed, beyond question, that, under this influence, the interests of the people were lost sight of. When you bear in mind that, in future, all incorporations are to be regulated by general enactments, is it not wise that every reasonable precaution should be taken to prevent combinations which might be injurious to the interests of the State. If we were to remain under the provisions of the old Constitution, there might be less danger of the effects of such influences, because the conflicting interests of some of these corporations, might, in many cases, operate as a statutory check upon each other; but, seeing that they are now to be all regulated by general laws, you invite a combination of the whole of them to procure such measures as they may desire, and thus increase the influence in a tenfold degree. It is, therefore, to keep the Legislature pure and free from the effect of such combined influences, that I am induced to offer this section; and I assure gentlemen that I offer it in good faith, and with no other view than to preserve the great interests of the people of the State.

On motion of Mr. SHERROD, the amendment of Mr. GREGG was laid upon the table.

Mr. RITCHEY. I would like to ask the gentleman who proposes this section, whether it will cover companies hereafter to be organized under a general act of incorporation, seeing that we propose to do away with isolated companies.

Mr. WALPOLE. Unquestionably. I think it is broad enough.

Mr. BLYTHE. I propose the following amendment to the section:

"*Provided, further,* That no member of this Convention shall be eligible to hold any office

provided for in the Constitution until the expiration of two years after its adoption."

I had hoped that some gentleman would have felt it his duty to attack the principle contained in the section offered by the gentleman from Hancock. I am not physically in a condition to do so; and I must content myself with simply pointing the author of the section, and the Convention, to some of those consequences which are likely to follow the adoption of the principle contained in it. Sir, what are we about to do? Has the gentleman from Hancock well considered the kind of legislation which may grow up under the sanction of a principle like this? Such a proposition, boldly announced in a Convention like ours, may well startle us. Stripped naked, the proposition is simply this: That those who pursue a certain private and lawful business, because they do pursue that business, shall be deprived of one of the most invaluable privileges of citizenship—the right to hold office. And the reason given is, that these men, if admitted to seats in the General Assembly, will legislate for their own interests, and not for the interests of the public. Do gentlemen not see that, if there is anything in this reason, it applies just with as much force to one class as to another?

This section aims a blow at a private lawful occupation. But, sir, if we exclude classes of men, because of their business, from the privilege of holding office, what is the next natural step? Why, sir, it will be to wage war upon opinion, and proscribe those who entertain opinions different from our own. To-day, we exclude the professional and business man, because of his profession or business; to-morrow, we assault those whose religious opinions differ from ours; and the reason which we give is, the public interest requires it. What next? Political proscription. All men must conform themselves to the political opinions of those who have power, under the penalty of political disfranchisement. Mr. President, I am unable to say more; but I sincerely hope that we will not disgrace ourselves and our State, by the adoption of this section. I protest against it as subversive of political equality, and most pernicious in its consequences.

Mr. WALPOLE. The gentleman from Vanderburgh asserts that the effect of the adoption of this section will be to exclude a certain portion of our citizens from the enjoyment of their political privileges. I offer the section on the grounds that all the powers conferred upon corporations must be conferred upon them by the Legislature; in a word, that they are the creatures of the Legislature; that by the provision contemplated by the Constitution it is intended that the legislative department shall reserve the power to amend, alter, or repeal any act of incorporation. These powers being given to the General Assembly the question is, is it proper that a gentleman representing one of these in-

corporated companies which derive all their authority from the Legislature, whose whole existence depends upon the good will of the General Assembly; is it proper to throw into the Senate and House of Representatives some twenty or thirty individuals whose whole object it will be to procure the passage of measures favorable to the interests of the companies whose agents they are! I say it is right they should be prohibited from being there, and I would appeal to the gentleman from Gibson, (Mr. Miller,) and to the gentleman from War- rick, (Mr. Graham,) and, indeed, to every gentleman in this Convention who was either a Senator or a member of the House of Representatives during the last Assembly, as to the immense influence which was brought to bear by men connected with the railroad and monied interests of Indiana. Will you allow the President or a Director of the Madison Railroad to come into your General Assembly? Assuredly not. And if he were there, which way would his interests lead? towards the stockholders or towards the interests of the State? So it is with your State Bank. Which way would their interests lean? Naturally towards the interests of those whom they represent. For this reason then, I think we ought to endeavor to keep the Legislature pure. The gentleman from Vanderburgh acknowledges that he offers his amendment merely as a rider to break down my propositions; that he considers the whole principle of prohibiting persons from filling any office as unjust, and yet he offers an amendment prohibiting the members of the Convention from holding a seat in the General Assembly, or any other office that may be created by this Convention; thus contradicting by his amendment the very position which he contended for as being right and just; he has given us his amendment, but has not ventured to say one word in support of its merits.

Mr. MOWER moved to lay the section and amendment upon the table.

Mr. HARDIN called for a division of the question.

The question was then taken upon laying the amendment of Mr. Blythe upon the table, and a division being called for, there were for the motion; ayes 84, noes 34.

AYES—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Berry, Biddle, Bright, Bryant, Butler, Carter, Chandler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Graham of Warwick, Haddon, Harbolt, Hardin, Helm, Helmer, Hitt, Jones, Kelso, Kinley, Logan, Maguire, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger,

Owen, Rariden, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Walpole, Watts, Work, Wunderlich, Yocum, Zenor, Mr. President—84.

NOES—Messrs. Blythe, Borden, Bourne, Bowers, Carr, Chapman, Conduit, Crawford, Dunn of Jefferson, Elliott, Foley, Gibson, Gordon, Gregg, Hall, Hamilton, Hendricks, Holman, Hovey, Huff, Johnson, Kendall of White, Lockhart, March, Milroy, Moore, Nave, Niles, Read of Clark, Shoup, Thornton, Trimble, Wiley, Wolfe—34.

So the amendment was laid upon the table.

The question then recurred upon the motion to lay the section upon the table, and it was decided in the negative, ayes 46, noes 79.

AYES—Messrs. Anthony, Ballingall, Barbour, Beach, Blythe, Bourne, Bryant, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Crawford, Crumbacker, Dunn of Jefferson, Gordon, Graham of Warwick, Gregg, Hall, Hamilton, Harbolt, Hitt, Hovey, Howe, Huff, Kendall of White, Kinley, Lockhart, Miller of Clinton, Mowrer, Nave, Newman, Niles, Owen, Pepper of Crawford, Ristine, Sherrod, Shoup, Smith of Ripley, Stevenson, Tannehill, Taylor, Thomas, Watts, Wiley—46.

NOES—Messrs. Alexander, Badger, Bascom, Beard, Beeson, Berry, Biddle, Borden, Bowers, Bracken, Bright, Butler, Chapman, Chenowith, Coats, Cole, Cookerly, Davis of Madison, Davis of Vermilion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Haddon, Hardin, Helm, Helmer, Hendricks, Holman, Johnson, Jones, Kelso, Logan, Maguire, March, May, McClelland, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Thornton, Trimble, Wallace, Walpole, Wolfe, Work, Wunderlich, Yocum, Zenor, Mr. President—79.

Mr. NAVE. I offer the following amendment to the section: "insert in the proper place, the words 'or Stockholder.'" [Cries of Consent, Consent, and No, No, No.]

Mr. N. said. It seems to me, Mr. President, that if we are to adopt the section offered by the gentleman from Hancock, it is also important that we exclude every stockholder in a monied corporation; because if those who hold the offices referred to are calculated to be effected, by the mere fact of their holding such office, I ask you if the stockholders themselves are not interested in the same sense, and perhaps to a much greater extent? It, therefore, we design to exclude from the Halls of Legislation, any men connected with these

institutions, I hold that we ought to do equal justice to the whole of them, and exclude every individual, however remote his interest in these Corporations may be—no matter whether he is a stockholder in a bank, or in a railroad, or in a plank road; he must be interested directly, in reference to all legislation bearing upon those Corporations; and if this is the principle by which we are to be governed, then we ought to exclude the whole.

But, Mr. President, I never conceal my proper position. I, for one, will state to the Convention, that I am entirely opposed to the proposition offered by the gentleman from Hancock—but if it is to pass in reference to those who hold offices in these corporations, then it ought equally to apply to those who hold stock. I am opposed to the section for the reason that it is a prohibition which may come in conflict with the very principles of republican government. Are we to say, because a man holds an office in a corporation, that therefore the country shall have no confidence in him, nor vote for him? If you are prepared to take this step, I trust you are also prepared to adopt the amendment I have proposed. If the one is proper, and the reason why we should so act in the one case, is good, then I say it applies with equal force in the other case. [Consent.]

The gentleman referred to the State of Florida. Are we to turn our attention to that little State, which borders upon the Gulf, and be governed in this enlightened State by precedents established in Florida, a State which is a hundred years behind us, both in intellect and civilization? [Cries of "consent," and applause.] No, sir, I am opposed to it, and therefore I insist that the position assumed by the gentleman from Hancock is directly in opposition to a republican form of government. I am in favor of allowing every individual to hold an office, who may be elected to fill it, whether he holds an office in a corporation or not.

Mr. DOBSON. It will be remembered by the Convention, that we have already adopted a section in the following language:

"No person, holding any lucrative office, under the United States or the State, shall be eligible to a seat in either branch of the General Assembly."

We struck out Postmasters, and we excluded justices of the peace, whose annual fees, in many instances, do not amount to sufficient to pay for their ink and paper. Now if we intend to carry out that principle, is it not equally as proper that we should exclude persons holding those offices mentioned in the section proposed by the gentleman from Hancock? Then, sir, there is another section, which, I have no doubt, we shall adopt—one which provides that no person shall hold more than one lucrative office at the same time. Now, if we exclude every individual who holds an office directly, ought

we not also to exclude those who hold office indirectly?

It seems to me sir, that this is good Republicanism—that an individual should not be borne down by the weight of office. Sir, the principle itself is a correct one, without regard to the question of interest. We all know that these corporations constitute in themselves a kind of small Legislature. We give them the power to make their own *by-laws*, to regulate and govern themselves, and the President or the Directors are controlled by these *by-laws*; and should any one of these be elected to serve in the General Assembly, it should be remembered that he is bound by his oath to attend to the interests of the people, and not to those of any body else. Now, sir, when these men come here, I take it that they do not come entirely free from a desire to promote other interests than those of the people; and, if it is good to exclude Postmasters and Justices of the Peace—if it is good to exclude those who hold office directly, I contend that it is equally good to exclude those who hold office indirectly.

Then, Mr. President, I think we have assigned reasons enough why that class of persons named in the section, should be excluded. I would not exclude them from any prejudice to them, as individuals, in consequence of the office which they may hold, but I regard this as a correct principle, that the man who comes to make the laws for a free people, should himself be free from all restraint which might arise from any interested motive. [Applause.]

Mr. TAGUE. I hope that the original section offered by my colleague will pass, and also the amendment of the gentleman from Hendricks, (Mr. Nave) offered according to his own words, with the view of breaking down the section. I hold stock in a contemplated Railroad, and I am perfectly willing to be excluded from all offices while I hold that stock. ["Consent, consent."] We are aware that our State is adapted to be a great commercial State, and that eventually we will be chequered all over with railroads, and plank roads, and other improvements; and that probably one-half of our inhabitants will hold stock in these works, or in banks or other corporations. And, I am aware, Mr. President—for I have seen it in this Convention—that men are very apt, even when they are sent to work for the good of the people—to work some little for SELF. [Applause.] Self-interest, sir, has shown itself in this body; and when we elect these men to come here to make laws, the probability will be that they will be mostly stock-holders, or office-holders, in these public works, and I, for one, would think that they would act in some measure from selfish motives.

I have, on another occasion, said here, that it is as natural for men to work for themselves as it is for sparks to fly from a fire; and if those improvements to which I have referred should

go on, and if our State should progress in wealth and power as I have no doubt it will, I would then say that it will be the rich that will hold the stock, and not the poor; that a poor man will not have much more chance in this country than a cat would in hell without claws, [vociferous applause, and shouts of "Say it again! Say it again!"] consequently I am in favor of the original section, and I will even go for the amendment of my friend from Hendricks.

Mr. PEPPER of Crawford. It strikes me, Mr. President, that there has been time sufficient consumed upon this question, and in order to save the time of the Convention, I move the previous question.

The call for the previous question was sustained.

The PRESIDING OFFICER (Mr. Thornton). The question is on the amendment of the gentleman from Hendricks.

Mr. NAVE. I ask the yeas and nays.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Borden, Bright, Conduit, Crawford, Dunn of Jefferson, Duzan, Garvin, Gregg, Hall, Hamilton, Harbolt, Holman, Howe, Moore, Mowrer, Nave, Ristine, Ritchey, Shoup, Smith of Ripley, Tague, Tannehill, and Yocum—23.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Beeson, Berry, Biddle, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermilion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gordon, Graham of Warrick, Haddon, Hardin, Helm, Helmer, Hendricks, Hitt, Hovey, Huff, Johnson, Jones, Kelso, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Washington, Newman, Niles, Owen, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, and Mr. President—103.

So the amendment was not adopted.

The PRESIDING OFFICER. The question now is upon adopting the section of the gentleman from Hancock.

Mr. WALPOLE. I ask for the yeas and nays.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Alexander, Ballingall, Bascom, Beard, Beeson, Berry, Biddle, Borden,

Bowers, Bracken, Butler, Chandler, Chapman, Chenowith, Coats, Cole, Cookerly, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Haddon, Hardin, Helmer, Hendricks, Holman, Johnson, Jones, Kelso, Maguire, March, McClelland, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nofsinger, Prather, Rariden, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Trimble, Wallace, Walpole, Wolfe, Work, Wunderlich, and Yocum—70.

NAYS.—Messrs. Anthony, Badger, Barbour, Beach, Blythe, Bourne, Bright, Bryant, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Crawford, Crumbacker, Dunn of Jefferson, Elliott, Gibson, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Helm, Hitt, Hovey, Howe, Huff, Kendall of White, Kinley, Lockhart, Logan, May, Miller of Clinton, Miller of Fulton, Mowrer, Nave, Newman, Niles, Owen, Pepper of Crawford, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Smith of Ripley, Steele, Tannehill, Taylor, Thomas, Thornton, Todd, Watts, Wiley, and Zenor—57.

So the section was adopted.

The question then recurred on ordering the section to be engrossed for a third reading, and the yeas and nays being demanded and ordered, were taken with the following result:

YEAS.—Messrs. Alexander, Ballingall, Bascom, Beard, Beeson, Berry, Borden, Bowers, Bracken, Chandler, Chapman, Chenowith, Coats, Cole, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Fisher, Foley, Foster, Frisbie, Garvin, Haddon, Hardin, Helmer, Hendricks, Holman, Jones, Kelso, Logan, Maguire, March, McClelland, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Nofsinger, Prather, Rariden, Ritchey, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Trimble, Wallace, Walpole, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—67.

NAYS.—Messrs. Anthony, Badger, Barbour, Beach, Blythe, Bourne, Bright, Bryant, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Crawford, Crumbacker, Dunn of Jefferson, Elliott, Farrow, Gibson, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Helm, Hitt, Hovey, Howe, Huff, Kendall of White, Kinley, Lockhart, May, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mowrer, Nave, Newman, Niles, Owen, Pepper of Crawford, Read of Clark, Read of Monroe, Ristine, Sherrod, Smith of Ripley, Steele, Tannehill, Taylor, Thomas, Thornton, Todd, Watts, and Zenor—57.

So the section was ordered to be engrossed for a third reading.

QUESTIONS OF FINANCE.

Mr. RARIDEN. I propose to amend the article by adding another section. I am aware, Mr. President, that the proposition I am about to make is perhaps perfectly new in the institutions of our country, and I hope that gentlemen will reflect upon it before they undertake to vote it down. The section is this:

"The Auditor and Treasurer of State, by virtue of their offices, may debate all questions of finance on the floor of the House of Representatives, but they shall not vote."

I am not going to make a speech, Mr. President, on this subject, but shall content myself by explaining what I intend by the proposition. I think the fact of allowing the financial officers of the State an opportunity of discussing matters of finance upon the floor is the most effectual method of protecting the treasury department that has ever been devised. I do not know that there is any such provision to be found in any Constitution within the limits of the United States, but I believe that in the British Parliament it is the practice to allow the financial officers an opportunity of discussing all financial questions upon the floor of that House. This Convention can perceive the propriety of it when they reflect that all answers and responses from the treasury department are in writing, prepared and duly deliberated upon. But if we give them the privilege of debating on the floor of the House it would give them facilities to unravel difficulties, and to unmask frauds, and it would stand both as a court of law, and a court of chancery. In a court of law you may call a witness and ask him any question you may desire; but in a court of chancery the testimony is taken in writing, and this has never been considered so effectual a way of getting at the truth as where you have the witness and the accused confronting each other. I propose then to give to those officers the right to debate all questions of finance—to give them the liberty of being brought before the House of Representatives.

We know, as a matter of history, that there never has been an investigation through the instrumentality of a committee, in regard to any matter concerning the treasury, that has ever resulted in any good to the public. These investigations have all been made in secret, and have generally been decided upon party grounds; and the end of it has universally been, that neither party gained much, and that it was thought best to conceal the whole.

This question, from its novelty, may perhaps strike gentlemen as wearing a forbidding aspect; but I do conceive that, if gentlemen will deliberate upon it, they will come to the same conclusion to which I have come, namely, that

it is a more effectual way to protect the treasury, than any other that can be devised.

Mr. RITCHEY. The gentleman from Wayne informs us that this is a novel proposition. There is no doubt whatever about that; and for the purpose of testing its strength, I move that it be laid upon the table.

Mr. STEVENSON. I would suggest to the gentleman from Johnson (Mr. Ritchey) the propriety of referring this question to the committee on finance.

Mr. KELSO moved that the Convention adjourn; which was decided in the negative.

Mr. RITCHEY. I withdraw the motion to lay the section on the table, and offer the following amendment: Add after the word "Treasurer," the words "and the Supreme Judges."

Mr. STEVENSON. I move to refer the matter to the committee on the legislative department; for I am satisfied that the Convention is not in a condition to consider it to-night.

Mr. FOSTER moved that the Convention adjourn.

The motion was decided in the negative.

Mr. RITCHEY. If the gentleman from Wayne is in earnest in his proposition then I think there is great propriety in the amendment I proposed. We are adopting a new Constitution, and the question of the Constitutionality of many acts, may come up, and I think it would be quite as well to admit the Supreme Judges to decide in advance whether the laws we are about to pass are Constitutional or not. This would prevent much loss of time; and I think it is as important that the Supreme Judges should come here and take part in the debates as the Auditor and Treasurer of State.

Mr. KELSO. I am not prepared to vote for the section. Yet I think there may be merit in it, for that simple reason, I consider it worthy of our notice. These officers make their reports in writing, and these reports are liable to be mis-understood and mis-construed; and where there is a difference of opinion among members of the Legislature as to the meaning of these reports, there may be no impropriety in allowing these officers to come before the Legislature and explain what they mean. That is what I understand to be the intention of the gentleman from Wayne. Now as to the Supreme Judges, it is their duty to give their decision upon the laws when they are made. The Auditor and Treasurer of State are not, according to my understanding of this proposition, to decide upon any law, but merely to explain their own reports. For that reason, I am in favor of having the matter referred.

Mr. PEPPER of Crawford moved to lay the section and amendment upon the table, which motion prevailed.

On motion,

The Convention then adjourned.

WEDNESDAY, DEC. 18, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. STEELE.

The journal of yesterday was read and approved.

Mr. READ of Clark presented the petition of the President and Trustees of the town of Clarksville.

The petition was read, and laid upon the table.

Mr. RARIDEN, from the committee on impeachment and removal from office, reported the following sections:

"SEC. —. All county and township officers shall be liable to be removed from office, on indictment and conviction for felony or misfeasance in office, in the Circuit Court of the county wherever they hold their offices.

"SEC. —. All State officers shall be liable to be removed from office by impeachment by the House of Representatives, to be tried by the Senate, for any crime or misdemeanor, and on conviction shall be removed.

"SEC. —. Any judge being convicted on indictment of any felony or corruption in office, may be removed from office by the judgment of the Supreme Court, on information in the name of the State.

"SEC. —. Any State officer may be removed from office, by a joint resolution of the General Assembly, for incapacity or for general negligence of the duties of office, two-thirds of the members elect of each branch voting therefor.

"SEC. —. The General Assembly shall pass laws regulating proceedings for the removal of officers from office, State, county and township, pursuant to the foregoing provisions."

The sections were read a first time, and passed to a second reading.

Mr. BRYANT, from the committee on the public institutions of the State, reported the following sections:

"SEC. —. It shall be the duty of the General Assembly to provide, by law, for the support of institutions for the education of the Deaf and Dumb, of the Blind, and for the treatment of the Insane.

"SEC. —. The General Assembly shall have the power to provide Houses of Refuge for the correction and reformation of juvenile offenders.

"SEC. —. The County Boards shall have the power to provide farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the sympathies and aid of society."

The resolutions were read a first time, and, together with the memorial of the pupils of the Deaf and Dumb Asylum and the remarks of the President of the Convention on presenting the same, were ordered to be printed.

Mr. GREGG (addressing the President).

Will it now be in order to move to amend the journal of yesterday?

The PRESIDENT. It is always in order to amend the journal at the time it is read.

Mr. GREGG. I happened to be in the Library at the time. I would like to have so much as relates to the motion I made yesterday, stricken from the journal. If it be allowed to remain, it will place the Convention in rather a ridiculous position.

SEVERAL VOICES. No! No! Stick him to it!

The Secretary read the portion of the journal referred to, as follows:

"Mr. Walpole moved to amend, by inserting the following section:

"'No President, Director, Agent, or other officer in any Banking or Railroad company, shall be eligible to a seat in either branch of the Legislature, or for six months after he shall cease to be such President, Director,' &c.

"Mr. Gregg moved to amend, by inserting, 'Nor shall any Delegate to this Convention be eligible to a seat in Congress for the next five years after the adoption of this Constitution.'"

Mr. BASCOM. I hope the amendment will not be stricken from the journal. If gentlemen are desirous of encumbering the journal and delaying the proceedings of this Convention with propositions intended for buncombe, I hope the Convention will hold them responsible, as the people most assuredly will. I ask for the yeas and nays on the motion to amend the journal.

Mr. GREGG. If there is any feeling on the subject, sir, I am willing that it should remain there.

The motion to amend the journal was withdrawn.

ORDERS OF THE DAY.

The PRESIDENT announced the first thing in order to be the section (on its third reading) which provides that no President, Director, Agent, or other officer in any Banking or Railroad company shall be eligible to a seat in either branch of the Legislature, or for six months after he shall cease to be such President, Director, or Agent.

The question being shall the section pass? Mr. KILGORE moved that it be indefinitely postponed.

I was not in in my seat yesterday, said Mr. K., when this section was ordered to be engrossed. If I had been, perhaps I could not have changed the result, any further than the addition of my single vote in opposition to it. I look upon it as an effort to ingraft upon the Constitution, one of the most odious provisions that has ever, perhaps, been ingrafted upon any fundamental law. What does the section propose? It proposes to create an invidious distinction between the different classes of the

citizens of Indiana. It imposes upon certain citizens of this State, a disability which is unjust and improper. Is it, sir, a crime to be a member of an incorporated company, which should render such member ineligible to a seat in the General Assembly? If it be, why not carry out the principle to the full extent? If the President or Directors are to be excluded, why not say the stockholders shall also be excluded? If it be feared that the President and Directors will bring to the deliberations of the General Assembly, an improper or undue influence, and if that be sufficient reason, for excluding them, the reason will be a thousand times stronger if applied to the stockholders. The President and Directors are the mere instruments—the mere agents of the corporate body. They are the active men of the body, the men who transact the business of the corporation. In nine cases out of ten, their interest is not to be compared with the interest of the stockholders. A man who does not own more than a thousand dollars worth of stock, may be elected a Director, and you propose to deny to him the right to a seat on the floor of the General Assembly, while at the same time, you will permit an individual who owns fifty thousand dollars worth of stock, and who can exercise ten times as much influence as the other, to be elected and to hold a seat in the General Assembly. A corporation is nothing more than an association of individuals for some specific object. Corporations are formed for manufacturing purposes—for the construction of roads, and for various other purposes. The business of a corporation is but an ordinary business transaction carried on by a number of individuals. You might as well exclude the foreman or manager of a mercantile establishment from a seat in the Legislature, from the fear that there may be brought to bear a combination of interests. You might as well exclude a man who is engaged in milling operations. You might as well exclude them from a seat in the Legislature, simply because there might be danger of their bringing an improper influence to bear for the promotion of the interest of the peculiar branch of business, in which they are engaged. You might perhaps, for a better reason—honest as the profession is—exclude lawyers, because they are obnoxious to the charge of being disposed to favor their own peculiar interest. You might exclude physicians, because there is great danger of their taking great pains to promote the interests of their profession; and for a reason, a thousand times more plausible, you might exclude the leaders of some religious sects. In fact, we all have a repugnance to the admission of ministers of the Gospel to a seat in the Legislature, because there is danger that the interest of Church and State may become united in the same bonds; in which case the liberties of the people would be trampled un-

der foot. There are many instances, where this has been the case.

And I would like to ask the gentleman from Hancock [Mr. Walpole,] whether he would exclude another class, with whom he is a great favorite—I mean the retailers of spirituous liquors, [A laugh,] for fear that there may be a union of interest, which will operate in favor of that class of individuals. Sir, I was never more astonished than when I was informed that a section like the one under consideration, had been introduced here. I know, by the vote by which the section was ordered to be engrossed, that the power is here to pass it—to engraft it upon the Constitution. I hope, however, that gentlemen will reflect upon the consequences which must arise from the incorporation of such a provision.

You propose to disqualify a man from holding a seat in the Legislature; and for what? Simply because he has been selected as a business man, as a man qualified to transact business for a number of individuals. You declare, then, that business qualifications are infamous—that it is disreputable to possess them—that it is so disreputable as to render a man unworthy of a seat in the Legislature of the State. What is the danger that you apprehend? Gentlemen say that there is great danger of the monied influence of the country operating to the prejudice of the people. Mr. President, it is not so abundant—and if it were ten times more abundant, I have more confidence in the honesty and integrity of the people of Indiana, than to believe, for a moment, that they are to be influenced by the monied institutions of the country.

But let us reason, in reference to this subject, upon another principle. It is a business transaction, and if the people of Indiana are interested, if their property is invested, in banks, I ask you if that interest has not a right to be represented in the Legislature, just as much as the farming interest? Have not the people of Indiana a right to select their own men to represent them, and have not those who are interested in the business in which corporations are engaged, the right to have those interests represented? So in relation to the various road corporations. Some counties may be deeply interested in the construction of plank roads, or rail roads. They may have invested their capital in such works. And I ask if, having invested their funds in that way, that interest is not entitled to be represented in the Legislature? You say to them: You must select some other man; no matter how much you may be interested in these works, you must select a man to represent you, who has no connection with them.

I hope that this section will be indefinitely postponed; leaving the matter where it should be left. It necessarily touches the monied interests all over the country, and there is no danger of any such interest obtaining an undue in-

fluence. There are demagogues all over the country, who will try to make it appear that such is the case. I do not include the gentleman from Hancock, when I speak of demagogues, for every one knows that he is the last man to play the demagogue—"Consent," and much laughter]—he rides into office upon no hobby, but obtains office through his own merits. Well, sir, I say unhesitatingly, that here are interests that should not be compromised, under any circumstances. But I am aware there are gentlemen here who may be fearful that unless they vote for this proposition, there will be some capital manufactured to their prejudice. I am willing to trust the people in this matter. There is no necessity for throwing restrictions around them. They are capable of judging who shall be their representatives. The man who is willing to trust to the patriotism of the people will throw no obstacle in the way of their electing whom they please. They are competent to guard their own interests.

Is this a subject that has been discussed, before the people? Is there any gentleman on this floor, who has taken upon himself to attack, before the people, the different plank road companies, and rail road companies throughout the State? Is there any gentleman who has ridden into the Convention upon that hobby? If there be, I have only to say, leave the people to act upon the subject, and they will act right. I hope the consideration of the section will be indefinitely postponed. The amendment that was introduced by the gentleman from Jefferson [Mr. Gregg] is as meritorious as the section itself. There would be just as much propriety in excluding a member of this Convention, from any office in the gift of the people, for five years, as in excluding the managers or business men of a company, the capital of each of whom might not exceed five hundred dollars. There may, indeed, be more propriety in excluding a member of this Convention. But it is not necessary in either case. The people have the right to elect, or not to elect, as they please. We hear a great deal about members of the Convention aspiring to higher offices, but I apprehend that the office we now hold is about as high as many of us will ever hold.

Mr. RARIDEN. The course I have pursued on this subject, renders it necessary for me, so far as I am personally concerned to defend the position which I have taken. I regret always to see measures of great magnitude assailed, and the motives of their authors and supporters impugned in any way or shape. It is much easier to denounce a measure that is in itself just and proper than to meet it with reason or argument. It is the shortest possible way of getting clear of a proposition that cannot be fairly met in the field of debate, to malign it with uncharitable suspicions, and denounce it as infamous and the offspring of demagogues. I would ask the gentleman

from Delaware (Mr. Kilgore) if he can stand up and look any man in this Hall in the face, and say reproachfully to him that he is a demagogue. If he can, he has more assurance than I supposed he had, at least more than the common herd of that kind of politicians.

Mr. KILGORE. I answer the gentleman by saying that I can. [Great laughter.]

Mr. RARIDEN. Well, sir, if the gentleman can do that, I can only say his face must be made of triple brass, and I leave the gentleman to the consolations which a knowledge of his own estimable qualities in the way of denunciation and declamation must afford to his imperturbable spirit.

As to the charge of demagogueism, Mr. President, I shall not attempt to defend myself against it. It having opinions of my own, and boldly avowing them and acting upon them, makes a man a demagogue, then I certainly am one; and I suppose the timid and wavering man, who, if he has any opinions, is always laboring to conceal them until he ascertains the current of public opinion, is to be considered the statesman. I must confess I have generally found those statesmen active and dexterous in whatever means will best advance their own political interests. And if such gentlemen do not succeed in trampling under foot all who cross the path of their ambition when before the people for office, it is because nature has not endowed them with the faculty of making their fellow men subservient to their wishes, and not for want of effort or good intentions. I do not say that a want of this element in their natures has prevented any member of this Convention from attaining what they may have sought—no, sir, but sometimes nature connects a confusion of intellect with the highest efforts of deception, and thus counteracts the aims of ambition in the way of office; and I have only to say that was integrity, honesty of purpose, and boldness of spirit, as prominently developed in the character of some men as is an over-weening thirst for place and distinction at any price, they would have accomplished the aims of their ambition much more speedily.

I suppose, sir, that this Convention is a good exponent of the public feeling of the State. Now, when a proposition of the character of the present one is presented to the House and acted upon without discussion, and when an overwhelming majority of the members adopt the measure, are we to be told that this majority, composed of two-thirds of the members, are mere demagogues? It may be so, but who has appointed the gentleman from Delaware judge of this matter? Who has elected him to sit like a second Daniel in judgment upon the action of this House, and the sentiments of the community at large. If this House is not exempt from demagogueism, can it be said that the State at large is free from the same influence? We had better select

such men as he is as *censors* to keep the public mind advised in regard to these things.

But, sir, as to the proposition itself. It does not embrace many organizations that the gentleman says it does, and which does not appear to be included. For instance, the directors and president of plank and other roads, they are not made ineligible, but monied corporations are made ineligible by this proposition to sit in the General Assembly.

MR. KILGORE. What does the gentleman mean by monied corporations?

MR. RARIDEN. Banks, insurance companies, and every institution that deals in money and exchange. Railroads should be included in these restrictions as I will show by and by.

But, sir, let us contemplate this matter calmly. This question of money circulation is one of great importance to the community. Monied corporations or individuals who may control a large proportion of the circulating medium may have interests that are separated from or adverse to the agricultural interests of the people of the State. Those who make their living by dealing in exchange and money have different sources of living from those raising beef, and wheat, and pork, yet their interests may assimilate. I assert, sir, that all banks, insurance companies, and all other associations whose main object is to deal in money, or who may have large pecuniary resources, will yet come under into one harmonious system of action and act together. Although the gentleman may flatter himself that the company with which he is connected is entirely exempt from any extraneous influence, yet I know enough of these matters to warrant me in saying that though the President of his road is the man of the road, yet I tell the gentleman that after a while there will be another head to these companies, by an affiliation of interests to which he and other directors and stockholders will have to succumb. A superior head—that is thoroughly conversant with the influences abroad and at home that affect these interests, and has a familiar acquaintance with monied institutions and their operation, and this head will control the Presidents and directors of these various roads, and the distinction of that head will be obeyed.

The gentleman inquires why not, with equal propriety say that the stockholders of roads shall be ineligible to a seat in the Legislature? The stockholders are composed principally of the farmers in the neighborhood of the road who purchase an interest in the stock as a source of revenue, and this stock is held by them as their farms are. They have the right to vote for directors to manage the interests of the company, but they do not represent the company. The directors represent the aggregate personal capital and power of the company, and the President generally represents them as well as the capital.

The directors select a President, and he, in conjunction with the directors, transacts the business of the company irrespective of the opinions of the stockholders. If the stockholders were to be made acquainted with the designs of the President and directors, it might make a good deal of confusion and difficulty. It is one of the objects of the directors that the stockholders shall not meddle with their plans, as in fact it could not be done to the profit of the institution. Divided counsels in such cases would not do.

To illustrate my meaning, I would say that when Mr. Biddle was President of the United States Bank, he, to all intents and purposes, governed every bank in the United States. He was the master-spirit—the head; and the lesser banks, from necessity, adopted the course he pointed out. So in regard to railroad companies. Whenever they shall have combined together, they will have one common head to direct their action; and although some one of the companies may differ as to the propriety of a certain course of action, yet they will be compelled to acquiesce in it. In this view you may see the connection which railroads may have with monied institutions. Look at the Madison Railroad; its means are equal to the united means of any five banks in the State—and neighboring banks must necessarily court it, and although those stocks may not be owned by the same persons, there must be a sympathy of feeling among all such institutions.

Whatever is for the interest of one so far as legislation is concerned, can be made by their concert of action for the interest of all, and there may arise certain things under this system prejudicial to the public interests. Where then would President and directors be found? But in general I admit public sentiment would regulate such evils. This is not true with reference to high tolls, for instance, for as the gentleman from Hancock truly observed, you cannot keep up competition with railroads in the carrying business. You cannot run a horse and cart, or a wagon, or stage against them, and thereby keep down prices. The gentleman says they should be represented on the floor of this House—to maintain and watch their own interests. Sir, these corporations form no component part of the body politic, or an element embraced in the compact of government by the people.

MR. KILGORE. I did not say that these organizations wanted or ought to have representatives of their own peculiar interests. I spoke of the great mass of the people who may have an interest in railroads, plank roads, or banks, and who have a right to have their interests represented.

MR. RARIDEN. There is no provision preventing the people from having a representative. But let us go back further. We exclude justices of the peace from seats in the House of

Representatives, and why? Because the people are jealous of their own interests. It would be the interest of each to preserve his own business at the expense of the people, and they are therefore excluded; and if they were not, justices might have an opportunity of increasing their suits, and might direct the legislation of the country so as to increase their interests, greatly adverse to the interest they ought to represent.

I say, then, sir, that these corporations form no part of the elements of sovereignty of government; they are mere creations of the Legislature, and as such should obey the creator, and not direct. It is the part of legislation to grant such power and durability as it may think proper to corporations; and shall we give them the power, in addition, to become the Legislature, and take into their own keeping their own interests and perpetuity?

Now, the gentleman from Delaware acknowledges that he is a director in one of these corporations. Now, sir, suppose he should be elected to the Legislature, what security have we that he would represent the interests of the State, in all cases, should it happen to be in opposition to the interests of the company with which he is connected? Pure and consistent as may be his general course of action, might it not be possible that he, through the frailties of human nature, might yield the interests of the State, upon some great question, to the interests of the company in which he might have a large pecuniary stake. This would be human nature, sir, and we must take men as they are, and not as we would wish them to be. If these companies act adversely to the public interests, the right of restricting their injurious exercise of power rests only with the Legislature, through its reservation of power over them. Nothing short of another railroad could stop extortion, should that be practiced or the exercise of the power reserved over them by the Legislature, of a restrictive character. Would a president or director be likely to perceive these impositions, or be very apt to check them by severe penal enactments? We could not expect such a thing, or from them a helping hand to terminate such abuses. We cannot expect railroads to have much competition, owing to the small amount of capital in the State, and therefore the power to make necessary restrictions should be confided to the Legislature, and that Legislature should be free from the influence of such associations.

I have been speaking, sir, of the intimate connection of railroads with monied institutions. The road men have their capital in the road, cars, &c., and they get the interest of the capital in its use, which generally pays a better interest than money invested in banks. The bank has its money in its vaults to loan out for interest, and to trade upon, and to make profit of. We are all familiar with the immense pe-

cuniary resources of the Madison Railroad; and it is easily to be perceived that that railroad will yet subsidize every other railroad that terminates or commences within reach of its influence. A controlling board will yet, if it does not now, control the movements of every minor board of directors, and not a whisper of dissent will be heard against the decisions of the ruling body. I am not pretending to say, sir, that this should not be so, or that it could be otherwise. They ought to harmonize in order to carry out their plans effectually, and make their capital the most useful. But I maintain that they should not be directly represented in the Legislature. Jealousy is a virtue in politics, though execrable in love. The people would be, and they ought to be, as jealous of representatives put forward to promote the interests of these corporations, as of justices of the peace. The people, sir, have always been, and always will be, jealous of any apparent infringement upon their rights by blending them with those of petty corporations; they want the power in their own hands, and then they will be more than just.

I have only to say, in conclusion, that, if this proposition is to be altered, I am, then, in favor of striking out the words occurring at the close, "six months preceding;" but more of this hereafter.

Mr. NILES. I have read, sir, that, in other ages, and in other countries, men were presumed to be corrupt and dangerous to the public interests, because of their religious opinions; and we have seen, in at least one State of this Union, clergymen disfranchised, because, forsooth, their calling was thought to be too sacred to permit them to mingle in public affairs. But the honor seems likely to be reserved to this Convention, of establishing the principle that every officer or agent of a bank, of a railroad, or insurance company, must be dangerous and corrupt, and ought to be placed in the same category with the convict just discharged from the penitentiary, but whose term of disfranchisement has not yet expired. From the votes already taken, it seems probable that this strange section—for strange it does appear to me—will be incorporated in the Constitution. And by adopting it what do we say? Why, sir, that all that large class of our fellow-citizens who are actively engaged in the prosecution of the most useful enterprises known to the present age—who are selected, not so much for their interest as for their ability and integrity, to direct the building and management of our railroads—all the men who, from a regard for the public welfare, may consent, without fee or reward, to assist in managing insurance companies, which may be organized among the people themselves, in various portions of the State, for their mutual protection against losses by fire, and all the men who may directly have anything to do with

banks, either under the present system or under a general banking law—should such an one be authorized—shall not be permitted to enjoy the same political privileges as other citizens. That is to say—the people, who know their neighbors, shall not have the power of electing any such man to the Legislature, though he be the man whom, of all others, they would prefer to elect.

And more than all this: we are about to say that, if a man own an hundred thousand dollars worth of stock in a company, but be too indolent, too incompetent, or too dishonest to be entrusted with any part in its management, he shall not be disfranchised; but another shall be disfranchised, if, with the smallest interest, he be chosen a director or agent.

Sir, my feelings are intensely strong against any such proscriptive doctrine. It is anti-republican and inconsistent with the spirit of the age. I would as soon disfranchise a man because of his religious or political opinions, as because of his being engaged in one or another lawful calling. As I would not compel the people to ask, when about to elect a man to the Legislature: is he a Christian; is he a Jew or Pagan; so I would not compel them to ask: is he a farmer; is he a doctor, a lawyer, a clergyman, or a railroad director? or is he a day laborer in the employ of a railroad company? I would only require them to ask, in their own time and way, is he our fellow-citizen? is he honest? is he competent? Admit that a railroad director is an honest man, and he will act uprightly in the Legislature. Do not disfranchise him simply because he is a railroad director. If the occupation is an honest and a useful one, fix no stigma upon it. But if it is of such a character as to create a suspicion against the integrity of any man engaged in it, why; then, forbid the occupation itself.

But, sir, there is another feature of this section still more odious, if such a thing be possible. It indicates an utter distrust of the capacity of the people for self-government. Suppose, sir, that there are in the county of Laporte a dozen men connected with a mutual insurance company, a dozen other men connected with railroads, and another dozen connected with banks; and suppose the people of the county were about to elect a representative to the Legislature. Suppose further that those people were all here this morning, I should hardly like to say to those intelligent men: "Gentlemen, you are incompetent to determine who of your own neighbors you ought to elect, therefore, I forbid you to elect either of those three dozen men." And I should dislike quite as much to say the same thing, and in a more substantial form, in the Constitution of the State.

There is one other thing to which I will allude, even at the risk of exciting personal ill will, which, of all men living, I would be most

anxious to avoid. It cannot have escaped the notice of gentlemen that, on yesterday, when this section was up on its second reading, it failed on a division; but when, a few moments afterwards, under a ruling of the gentleman who temporarily occupied the Chair, the yeas and nays were called on the same question, it was sustained by a decisive vote. It may have been accidental. I have learned to respect the motives of the members of this body. I would hope that the effect of the yeas and nays was not from any apprehension that the section would be popular with a certain class of people, or that its supporters might secure support in turn. I trust that the vote of yesterday was an inconsiderate one, and that the final decision of the Convention may be different.

Mr. OWEN. I had hoped, sir, to hear from the chairman of the committee, whose report is now under consideration (Mr. Bright). But I suppose—and that is natural enough—that from his peculiar situation and location, he is somewhat unwilling to step forward on this occasion; though, from unmistakable evidence, I know he is opposed to it.

I am differently situated to the gentleman from Jefferson, (Mr. Bright,) and perhaps it may not be improper for me here to say—so that no improper influence may be supposed to control my action on this subject—that I am not, nor have I ever been, either President or Director of any banking or of any railroad company; I do not owe one dollar in any bank in the world; and I am not, at this time, though I was, last summer, even in the Directory of a plank road company. I stand apart, therefore, from monied interests; hoping nothing, fearing nothing, from them.

In regard to what has fallen from the gentleman from Hancock, (Mr. Walpole,) I remark, that nothing can be more true than his assertion, that it is our duty to guard the public against the great influence of associated wealth. And this sentiment is not only true, but it is most important. The world was formerly ruled by iron; now it is governed by gold. [Cries of "paper! paper!"] There is more effective power now in ten millions of dollars, than there was, five hundred years ago, in a steel-clad army. The gentleman from Hancock does not deprecate, more than I do, the vast influence of wealth—of incorporated wealth. He does not desire, more than I do, to take effective measures to prevent its ruling here; but he and I differ as to the means. There are two ways of doing so; one is, to provide, by our Legislature, that there shall be no special corporations; no corporations wielding personal privileges and monied influence so vast, as shall be dangerous to the liberties of the country. The other is, first to permit such exclusive corporations, and then to disfranchise their officers. I am in favor of the first plan. I am in favor of providing that we shall have no corporation or moni-

ed institution in our State, so recklessly carried on, so feebly restricted, as that they shall be dangerous. And I am equally opposed to disfranchising those who may happen to hold office in any institutions permitted by law. It is wrong, in principle, to tolerate among us any occupation that should be disfranchised. The argument of the gentleman from Dearborn, (Mr. Holman,) is about as plausible as the argument sometimes employed to prove that clergymen ought not to be eligible to office. It might be said that their calling is of such a character, as, in a measure, to disqualify them as legislators; that they were accustomed to speak, there only where debate is all on one side, and reply is a breach of the peace. Such arguments are not just, but they are as plausible as those made by the advocates of the restriction now under consideration. I hold, that all professions, all occupations, which ought to be tolerated at all, should be free to all citizens, not convicted of infamous crimes.

The gentleman from Laporte, (Mr. Niles,) with whom it gives me pleasure to agree to-day, though yesterday I was compelled widely to differ with him, well remarks, that a man indebted, in some twenty or thirty thousand dollars, to a bank, may well be supposed to be under its influence. Will you institute an inquiry into the private circumstances of every candidate, and exclude by law all debtors to any monied institution? If this principle be carried out, where will be the end of it. and what the result?

Look, sir, at the associations having a monopoly of the electric telegraph. The use of that power secures large investments, and those investments yield large returns. Will you exclude an officer of any of these associations, from a chance of election to the House of Representatives?

I am sorry, sir, that anything has been said in regard to demagoguism. I am satisfied, that, in regard to the large majority of those who voted for this section, they voted for it from a sincere desire to prevent the ascendancy of a great monied power; and no man can deny that that is a laudable and excellent object. The only question is, how may we best effect that object; whether through general restrictions, as reported from the Committee on Corporations other than banking, or from the Committee on Banks, such restrictions as shall take from these institutions that power which is so dangerous to the liberties of the people; or by saying, in regard to a portion of our fellow citizens, following honest employments, that they shall be disfranchised?

Mr. DOBSON. I had supposed from the vote given upon this question on yesterday, that this matter would not be contested again; but the gentleman from Laporte (Mr. Niles) appears to think that the action of the Convention in regard to it was grossly inconsistent,

and I confess that, for the moment, it did appear to be so. I suppose that vote may be accounted for from the fact that there was a general misunderstanding as to the effect of the vote. It was not the result of the motives the gentleman has attributed to members. If there are any among us who are afraid of the people, they ought not to vote, or if they do vote, they should place themselves upon record, so that they may never be sent here again.

One word in regard to this fear of the people, which, it has been said, actuates many members here, in their votes. Sir, for one I fear no other power, except the power of Him who rules on high; and it is to protect the people's rights.

I want to pass the section; I want a pure ballot-box, and a pure representation. I want the people to rule. I want men to rule, not money.

The word "buncombe" is much commented upon; and it is said that when a man gives a vote for "buncombe," he is pandering to public sentiment. I would like to know, sir, what other sentiment he should pander too. I would like to know if he is not elected to carry out the will of his constituents. If that is *buncombe* then I am for *buncombe*. When the people are for a measure—then I am for it. Who is willing to oppose the interests of the people?

But let us notice the argument of the gentleman from Hancock, (Mr. Walpole,) and the gentleman from Wayne, (Mr. Rariden,) and more particularly the argument of the gentleman from Owen—I mean the gentleman from Posey (Mr. Owen). It is strange that we cannot keep things right between ourselves, much less that others should place us wrong. ["Consent," "consent."] The gentleman from Posey says that he holds no office in any of these institutions, and he says that his course in regard to them will be not to allow any of these institutions to become so vast, as to become dangerous.

Mr. OWEN. I desire to have them so restricted as that they shall not become dangerous.

Mr. DOBSON. Well, sir, the best way to manage a horse is to commence restricting him when a colt. When very young they should be handled gently, but *bitted* while the mouth is tender. If you want gentle oxen, the best way is to yoke them whilst they are sucking calves, and tie their tails together and let them go, and when they are grown up to oxen, any boy can manage them; but if you do this when they get two or three years old they will probably break their necks, or those of their owners. [Laughter.]

Mr. PETTIT (in his seat). Or pull their tails off. [Renewed laughter.]

Mr. DOBSON. Let us see, sir, what is proposed to be done. Members generally appear to be in favor of some general law with regard

to corporations. You will force them to band together, or, as the gentleman from Wayne has remarked, they will all pull at one string, so that if you touch one part of the string the vibration will be felt to its furthest extremity.

Now, sir, how will the interests of free banks, if that system is adopted, be affected by this arrangement. The State of Indiana, if we have free banks, will permit capitalists to come in under the conditions prescribed by law, and seek to invest their money here until the demand is supplied. What, sir, would be the amount thus invested. Probably for the present, some five or six millions of dollars would be sufficient, to be increased during the next twenty years, to perhaps ten to fifteen millions.

Now I ask if organizations possessing such an amount of means, are to be united together, to effect common objects of interest, if they will not be formidable and dangerous.

Then again the railroads, it is said, are to be banded together, so that there would be corporations owning some ten or fifteen millions of property, all coming under one general law. Then in addition would be your insurance companies, banking companies, saving institutions, all ready to supply the demand for capital, and all of these monied institutions together will probably have some twenty-five millions of dollars worth of property, to be increased to double that amount in a few years. Is that not large enough to be dangerous? I think it is.

Where, too, sir, is all this capital to come from? By whom will it be owned? Our people, or foreigners who now own our bonds? We must judge of the future by the past; and I understand that three-fourths of the stock of the Madison Railroad, is owned by Eastern capitalists, and that it is selling in New York at one hundred and two, and one hundred and four dollars, for one hundred dollar shares. Then, Mr. President, as this capital will be invested wherever there is a good opportunity for obtaining interest, pretty much all the capital of which I have spoken, will be owned abroad. Stocks that are owned by our own citizens will go into market and find its way East, or perhaps across the salt water, and the President and Directors of these institutions will be our own citizens, residing among us and transacting business, who feel not for the citizens of Indiana, but for those who have selected them as agents; for it is natural and right that they should act for those that pay them. Now, sir, I want no other instructions to control the action of our Legislature than such as our people send here. I don't want a capitalist, on the other side of the Atlantic, to sit in his office and instruct his agents in New York, to instruct his agent in Indiana to do certain things, which the people of Indiana do not want done, sir. It is enough that our people pay the interest on the stocks and bonds owned by capitalists abroad. They

ought not to wish to control the legislation of the country; and for one, if I can have my way, they never shall. They have not the right to vote, and I am not willing to give them the right or the opportunity to *instruct*. Our people are the sovereigns of Indiana. If they buy our stocks or bonds, it does not make them a part of the sovereignty; they acquire no political rights thereby. Property is not the subject or object of representation in this country, but people—the people that live in Indiana.

But the gentleman from Posey says, that these corporations will have their agents here in some underhanded way, do as we will. I admit, sir, that such agents may be sent here, and, for the time being, control to some extent the legislation of the State; but if these agents can occasionally do it, I do not wish to give the privilege to the President and Directors, of continually doing it.

One word, sir, in regard to the assertion that this section proposes to disfranchise every man holding property in our roads or banks. We say to every man who has not rendered himself infamous, that he is qualified to hold office. But we will not allow any man to hold two three, four, or more offices, and get pay for them all, because we do not consider that the business of these respective offices, if they be only two in number, can be faithfully attended to by one man. A remark was made by the gentleman from Delaware, (Mr. Kilgore,) that a man in an official station was not disqualified thereby from discharging the duties of any other office. Now, Mr. President, I do know, that a man cannot labor in two cornfields at the same time. He once pulled the wool over my eyes—does the gentleman recollect the election of Judge Rulon? I only refer to it, to remind the gentleman that men in high stations can, and sometimes do, wield an undue influence, and that which might be done for good, might be done for evil.

I want a man to come here without any other papers in his pocket, than his certificate of election. Let him resign if holding another office; let him come here to represent the interest of his constituents, and the interests of no body else.

Now, sir, as to disfranchising a man. We maintain that a man, to be eligible to election, must resign his situation in these corporations. A man cannot be a President of a bank at New Albany, and attend to his necessary duties there, and at the same time come here and attend to the duties of a Representative. We do not compel a President or Director to take office; but we say to them that—You must resign your present situation, if you wish to become eligible for election as a Representative. You say, in a section already adopted, that you will disfranchise the Justices of the Peace, Probate Judges, and other small officers—but with regard to those holding situations of great

profit, and who represent the interests of monied corporations, it is contended that the right to hold office as Representatives should be granted to them. Now, sir, I am not for having this done. I do not pretend to say that such men are corrupt, but I do say, that if you place a President of a bank upon this floor, he will have twice as much influence as my friend from Posey, (Mr. Owen). For instance: Suppose he finds any one wavering upon the bank question, he can go to him and observe, "Your son, just out of college, will make a good cashier or clerk in our bank. Nobody will know anything." The member, of course, would not openly take a bribe, nor would the President give one. There is honor among rogues, of course, and neither would care to speak of the matter to others. To another man, a Director of a railroad might say, "I believe you have a relative, who is a good engineer. I think I can get him a place." And thus would the influence of these monied corporations be almost irresistible. A merchant, who was a Representative, might want his credit propped up in the East; and as the position of a bank Director or President, or railroad President, enables him to wield a mighty influence abroad, he could easily give the merchant letters of recommendation to merchants in New York for goods. There are many ways of bringing over doubtful voters to the monied side of the question. I do not wish to say, sir, that these Presidents and Directors are dishonest and corrupt; but I do say that they have a mighty influence to wield, to advance their own interests, if it should become necessary. And I think, therefore, that we should seek to guard as much as possible against any unjust exercise of that influence. I trust the section will be adopted, and forever close up all the avenues through which corruption might flow, and let the people, our people, have the exclusive control of their own legislation. They have settled the country, drove off the Indian and wild beast, felled the forest, and made the wilderness to bloom as the rose, and they should have the privilege of governing themselves. Sir, they will do it, or not be governed at all. They will not give up their rights peaceably. Any burthen they impose upon themselves, they will bear patiently, but burthens imposed upon them by others, they will not submit to. Then why will gentlemen strive so hard to open an avenue through which foreign influence may be brought to bear upon the Legislature of the State? Better desist; the result may not be so fortunate as gentlemen anticipate. There never was much good feeling between the laboring class of the West and the capitalists of the East, and let us not give occasion for widening the hiatus that already exists between them.

Mr. COLFAX moved to lay the section upon the table, but withdrew his motion at the request of

Mr. KILGORE, who said that he desired merely to have the opportunity afforded him of making a personal explanation, in order to reply to the remarks of the gentleman from Wayne, (Mr. Rariden,) and the gentleman from Hancock, (Mr. Walpole,) who had made reference to him.

Mr. BASCOM said he would call for the previous question.

Mr. KILGORE remarked, that all he desired was an opportunity to reply to the attacks that had been made upon him by the gentleman from Wayne and the gentleman from Hancock, and therefore he hoped, as personal explanations had always been allowed in the Convention, that the motion for the previous question would be voted down. He had tried, hitherto, not to be troublesome to the Convention, and he trusted members would have generosity enough, not to second the call for the previous question.

Mr. BASCOM said that if the gentleman from Delaware was desirous of making a personal explanation in vindication of himself, of course he would withdraw his demand for the previous question.

He conceived that this Convention would be doing great injustice to itself, and also to the people of the State, if it consented to indefinitely postpone the consideration of this section. As had been well remarked by the gentleman from Owen, (Mr. Dobson,) if Directors and Presidents of the various monied corporations were allowed to hold seats in the Legislature, the influence they would wield in behalf of the companies to which they were severally attached would be very great, and pernicious. He considered it gross injustice to allow men of wealth and influence, and getting large salaries, the privilege of election to the Legislature, and deprive Justices of the Peace and petty Post-masters of the right to run for office, thus placing the less important officers side by side with the convicts from the penitentiary. A subject affecting the rights of women, could be elaborately discussed, but when the interests of the hardy yeomanry of the country were at stake, debate must be postponed. Several gentlemen had remarked that they were to have free banks, and he supposed the decree had gone forth that banks must be created, and he trusted that some provision would be made to prevent their Directors and Presidents from having seats in that Hall. The State Bank of Indiana already had its agents in that Convention. These monied interests had always been well cared for; experience had proven this fact. These associations had already, as was well known, had acts passed by the Legislature in their favor, that were detrimental to the public interests. All we propose to declare is, that no man shall enter the Legislature holding a prominent office under these institutions, without first resigning the situation he holds. He must stand on an equal footing with the hardy

yeomanry of the country. You must not come here holding lucrative offices, which will aid you in advancing your own schemes. This was the reason why he thought the section should pass; and experience of the past was one of the best arguments he could adduce in favor of the section. He considered it important that this section should pass, in order to prevent corporations from ruling the State.

Mr. KELSO remarked, that in regard to this subject he had only to say that he desired to vote against its indefinite postponement, and for the passage of the section. He was satisfied that if the interests of these companies and corporations were taken care of by the Legislature it was sufficient, and that they ought not to have direct representation, chosen from among their own officers, in that body.

I am, said he, of opinion that we should begin here to guard against the undue influences of corporations upon our legislative councils.

If we are to have created in the State of Indiana a host of free banks, (as many gentlemen fondly hope we shall,) I insist that now is the time to protect ourselves against their influence upon the legislation of the country as far as we possibly can. The farmer, in the Legislature, represents the agricultural interests of the State, and his own individual interest is commingled with it. So if the stockholder in one of those banks represents the general interest of the other stockholders, that is enough on their part; they then have a fair share of representation compared with other portions of community. This section only proposes to exclude the officers and immediate agents of the bank, and not the stockholders. Other portions of community are not represented in the General Assembly by the officers they have chosen to administer their municipal concerns at home. A Clerk of the Circuit Court, an Auditor or Sheriff, cannot be a Senator or Representative. And why, I ask, should the President or Cashier of a bank be permitted to fill a seat in that body?

There is always trouble enough to keep the monied power of a State within proper bounds, without permitting it to appear in the midst of the legislative councils of the State, clothed with additional official dignity, thereby adding in some degree to its power.

The present bank, sir, has exercised, during her short life, such an influence upon our legislation, in numerous instances, as ought at least to admonish us to deal cautiously in this matter; and for her improper interferences, it is proposed in this Convention to wind her up, and substitute in her place a system five hundred times worse. And yet we are told there is no danger in admitting the officers of this new system to rule the councils of the State.

With regard to the remarks of the gentleman from Laporte (Mr. Niles) and the gentleman from Delaware (Mr. Kilgore) in opposition to

this section, he had only to say to those gentlemen that he liked to see consistency of action in matters of this kind, especially among the leaders and great men of this body. He wished them to remember that they were now taking a directly opposite ground to one they had taken the other day. A proposition had been made, not long since, to allow the people to petition the Legislature to make arrangements about the boundaries of counties, such as would suit their own convenience. Those two gentlemen had gone against allowing the people that right. Was there any more danger in trusting the people in one case than the other? If the people, then, were not competent to petition and ask for certain boundaries in their respective counties, were they any more competent to select their own representatives from whatever classes of men they choose—when, too, by such selection their interests might be greatly imposed upon? It was somewhat inconsistent, he thought, that the friends of one measure should be so much opposed to the other. If the people are so well qualified in the one instance, can it be possible they are so very stupid in the other? He desired to see members act consistently in their positions, and more especially when they set up for instructors.

For one, he was opposed to having, ever by implication, the interests of the people and of the State government affected by banking or other monied institutions; and for fear that evil might be the consequence, he was in favor of locking the door before the horse was stolen.

He maintained there was greater danger that the people would suffer by the selection of bank officers to perform the legislation of the country, than that they would be injuriously affected by the changing of a county line or a part of a line.

He hoped hereafter those great men—for they were, in point of fact, both of them, great men, and in most cases he had found them not only correct but consistent—therefore, hereafter when a proposition to leave a matter of vital importance to the interests and well-being of community to the good-sense management of the people themselves is before us, he hoped the confidence of those gentlemen in the integrity and ability of the people to perform the task, would be found steadfast and unwavering, and that he should hereafter be blessed with their aid and assistance, which he considered of no small value, in any emergency that may be met with in this honorable body.

Mr. SHERROD called for the previous question.

The PRESIDENT. The question is, Will the Convention second the call for the previous question?

Upon a division, ayes 47 noes 49, the Convention refused to second the demand for the previous question.

Mr. RITCHIE said, that the Convention ap-

peared very anxious to have this matter disposed of, and he knew that it was not a very favorable time for making a speech in regard to it. Much excitement had prevailed among the members in regard to it, and he confessed that he had felt a little of it himself.

I have, continued Mr. K., had some experience as a representative of the people in the Legislature heretofore, and I know something in regard to the practical operation of those extraneous influences that are brought to bear upon the Legislature for the purpose of aiding certain interests in the State; but let me say in all my experience as a member of the Legislature, I cannot recall to my mind a single instance in which a controversy arose between the State Bank of Indiana and the Legislature in which he bank was not victorious, and at the same time it was emphatically true that I did not know of a single President, Cashier, or agent of the State Bank of Indiana in either of the two branches of the Legislature. If that be true, the gentlemen have not hit upon the proper remedy. If they can, without having a President or director, or officer in the Legislature, control the legislation of the country, it is useless and unnecessary to put this provision in the Constitution. The remedy will not answer the object sought. I am as much in favor of having pure legislation as any one can be, but I do not believe the remedy proposed will prevent the undue influence of banks and corporations upon your legislative assemblies.

I felt no doubt in regard to this measure, and voted yesterday for it, although I confess I did so with some misgiving. I then felt the influence of the bank had been supreme over the Legislature. After more mature reflection I came to the conclusion that the bank can exert an *out-of-door* influence over legislation about as successfully as if they were directly represented in the Legislature by their own officers. The Presidents, directors, and agents of these companies can come around the lobbies of your Legislative Hall, and effect their object just as well as if they were admitted within the General Assembly. There is therefore no necessity for the passage of this section.

We are told, sir, that we have excluded postmasters and justices at the peace, and most of the petty officers of the State from a seat in the Legislature and that, therefore, there is a much greater necessity existing for the exclusion of these corporation officers, who receive such large emoluments of office. This is true, sir, so far as the principle is concerned, but I do not admit that there was any necessity or propriety in doing what we have done in relation to these officers. I have heard of instances where in thinly settled counties the office of Postmaster has been a source of loss to the holder instead of profit, and it is unreasonable, to say the least, that they should, because of acting for the public convenience, be deprived of the privilege of

becoming candidates for the Legislature. I trust that gentlemen will not act hastily in regard to this important question. I know that many gentlemen have, while holding seats in the Legislature, been constantly beset by the agents of these corporations—this has been the case with myself; and therefore it is that gentlemen have set their faces so sternly against any connection, even impliedly, with corporations so far as the Legislature is concerned. I had the honor of hearing the message delivered by Governor Wallace in 1840, in which he stated that the State was "*literally shingled over with corporations.*" It is no wonder, in view of the multiplicity of these organizations, and their continued importunity, that gentlemen are found opposing them in every way; and I fear that in their opposition to corporations they may suffer their feelings to lead them to go further than a deliberate judgment would justify. It is better to spend a day or two upon this subject than to have an improper provision engrafted upon the Constitution.

Mr. FOSTER. It is somewhat amusing to me, to see the consistency of some gentlemen upon this floor, in regard to this question. It has been shown here, sir, that some gentlemen who opposed this section with great earnestness, were in favor of excluding petty post masters from seats in the Legislature with or without restrictions. Such a rule, sir, I consider of very questionable propriety, because the situation of post master in country places is generally a source of no emolument, whatever, but merely held for the convenience of the neighbors, and should not, therefore, debar a man from being a candidate for a higher office. A friend of mine, the gentleman from Washington, (Col. Schoonover,) told me a day or two since, that he had been deputy Postmaster in his county, for some three years, and that he lost by the office, twenty-seven dollars, or seven dollars a year. When, then, I see gentlemen who were so remarkably tenacious of the composition of the Legislature, as that they would exclude petty Postmasters from it, who receive no pay for their services of any consequence—I am really astonished that they are opposed to a measure of the character of the present one. We all know that money is power. It is true that it has been said frequently, that knowledge is power, but at the present day, I am disposed to think that money has much more power than even knowledge has—and, therefore, when money and knowledge are combined, they exercise great influence. And with all due deference, you will find that Presidents and Directors are not only monied men, but men of talents, and when both these powers are combined together, to effect a certain purpose, they will be found to be irresistible.

The gentleman from Johnson (Mr. Ritchie) says, that heretofore, the action of the Legislature in regard to these corporations, has been

governed by exterior influences. Now, sir, I would inquire if so much has been done by exterior influence, how much more would there not be accomplished by the addition of interior influences, by allowing Presidents and Directors of these companies to have seats in the Legislature. It is for this reason that I am in favor of this restrictive section.

The gentleman from Posey (Mr. Owen,) very correctly remarked, that in ancient days, it was the age of iron, but that now it was the age of gold—and that the age of iron did not have as much influence upon the masses, as the age of gold now.

We all recollect, sir, that during the existence of the United States Bank, that its President, Nicholas Biddle, wielded more influence than even the President of the United States. Had it not been for the restrictive action of the iron-hearted Jackson, we would have even now, been under the influence of a monied oligarchy. In like manner it may be said of this State, that as appearances indicate, the establishment of the free banking system, the time is not far distant when we, too, will be under the influence of banking and monied institutions, and the State will be dotted over with them. Not only these corporations have their lobby agents at work, but their toadies will be operating in our Legislature for the advancement of the interests of these institutions—as they have been at work in this hall. Thus have we seen it sir, in regard to the present section. Because it did not emanate from some leading man, we hear some one of the mouth-pieces of these corporations getting up, and calling the previous question. If gentlemen on this floor will act the part of toadies, I can only say, I love to taunt them with their toadyism. [Cries of “consent” and “order.”] This language may appear somewhat strong, but I can only say, I hold myself responsible both here and elsewhere, for every word I say. [Applause and cries of “order.”] There is, sir, a species of toadyism here—a kind of bowing to certain individuals, a worshipping of certain men and measures, which is like the worship of the eastern idolater—from the rising to the setting of the sun. Here a measure of vital importance was introduced by the gentleman from Hancock (Mr. Walpole) which should be fully debated, and investigated and yet the previous question is called upon it. How does this action contrast with the course pursued by gentlemen the other day, in regard to the question of permitting the State to borrow money. The amendment providing for that purpose was not democratic enough; you could not allow the State to borrow money at all. I voted to retain the amendment as long as I could, and then to retain the section as it stood; but I should have preferred the adoption of the amendment and leaving the matter for the decision of the people by a distinct proposition. Gentlemen who were opposed to that measure.

are opposed to the present measure. They would not give that power to the people then; but they are perfectly willing now to give it to the Presidents and Directors of these monied institutions. It is now very near twelve o'clock—and wishing to blow a little steam off at the expense of certain would be, *great* men—and after having said what I have I will just sit down. [Laughter and applause.]

Mr. DUNN of Jefferson. As I have but a few minutes previous to the ordinary time of adjournment to express my views upon the question before the Convention, I shall proceed to do so very briefly, leaving dissertations upon “demagoguism” and “toadyism,” to be made by gentlemen who are learned upon those subjects, and have a taste for discussing them.

And first, I desire to direct the attention of the Convention to an argument that is quite current on this floor, and has perhaps received a consideration to which it is not entitled. I refer to the argument, that, as we have declared that post-masters, justices of the peace, &c., shall not, while they are such officers, be eligible to an election as members of the Legislature, therefore, we should adopt the section under consideration excluding the presidents, directors, officers and agents of all banking or other incorporated monied institutions, and of all railroad companies, from eligibility to election as members of the Legislature while they hold such offices or employments, and until a period of six months has elapsed after they have ceased to hold the same. Sir, if we have acted unwisely in one case I do not consider that a good reason why we should act in the same manner in another case. I do not recollect how I voted upon the provision respecting post-masters, but if I voted for rendering them ineligible to seats in the Legislature I am ready to correct my mistake and vote for rendering those eligible whose offices are of little value, and are merely held for the accommodation of their respective neighborhoods. But, sir, there is an important distinction between the two provisions. Under the one adopted with reference to post-masters, justices of the peace, &c., if they desire to obtain seats in the Legislature they may resign their offices at any time, and be immediately eligible to election; but under the provisions of the section under consideration the officers and agents therein specified are not only ineligible while such, but for six months after they have ceased to be such officers or agents. They cannot resign their places or employments and be at once eligible to election, but must remain at quarantine six months before the people can be permitted to vote for them. Half a year must elapse before the days of their purification are fulfilled. Sir, if those corporations exercise so corrupting an influence upon their officers and agents as to require so extraordinary a provision as this, it is our duty to provide in our Constitution that no such cor-

porations shall ever hereafter be created in this State.

Gentlemen appear to lose sight of another consideration. They speak as if it were in the power of corporations, such as banks and railroad companies to elect whom they please to the Legislature, and thus acquire a controlling influence there. Now, I understand that the members of that body are to be elected by the people—that a majority, or at least a plurality of the voters of a district, decide who shall represent them in the Legislature. The people are sufficiently jealous of corporations, it seems to me, to be trusted in this matter. Are gentlemen afraid that corporations will corrupt the people? If so, I must say that the virtue that needs thus to be guarded is not worth a sentinel. If a man connected with any of these corporations presents himself before the people as a candidate, the fact of such connection becomes known, and if the people have any fears that as a representative he would act too friendly towards corporations they can decline to make him their representative. If corporations desire to place their peculiar friends in the Legislature they can find men who are no ways connected with them that will answer their purpose, and who will stand before the people unsuspected. This amendment, therefore, instead of doing any good may have a tendency to defeat the very object its friends wish to accomplish.

The gentleman from Hancock (Mr. Walpole) has worked himself into quite a passion about the efforts made last winter by certain railroad presidents to influence the action of the Senate. I will ask that gentleman if any such officer was a member of the Senate? None that I know of. There may have been some lobby members of that kind, and if such is the case, the gentleman in order to preserve the purity of the Senate ought to provide that no such contaminated persons should be permitted to enter the Senate Chamber. Nay, he should carry his precautions still further, and should provide that no such officers and agents should be permitted to communicate in any manner with the members of the Legislature. He should compel them to put on the badge of leprosy, and wherever they go cry "unclean, unclean" that the Honorable senators and representatives may escape from their infecting presence!

The same gentleman says that the railroad presidents are sworn to be true to the interests of their respective companies, and, therefore, are disqualified from acting as faithful and disinterested representatives of the people. There may be railroad companies that require their officers to take such oaths, but I know of none. But, sir, when a representative takes upon himself an oath to support the Constitution of the United States, and the Constitution of this State, and that he will faithfully discharge his duties

as a member of the Legislature, he takes upon himself a higher obligation than any corporation has a right to impose. Moreover, he has upon him the eyes of his constituents, whose confidence and respect he would soon lose if he voted for the advancement of any private interest to the detriment of the public welfare.

Another remark was made by the gentleman, which I will briefly notice, because sometimes these little things are magnified into an importance they do not deserve. He spoke of the privilege given to insurance companies to deal in bills of exchange as though it were something very alarming. It is a matter almost too trifling to be noticed. To deal in bills of exchange is a privilege which every citizen of the State enjoys. Insurance companies ought always to be prepared to promptly pay their losses. They do not, however, wish to keep their money locked up in their vaults, as so much dead capital, and therefore loan it out on short time, or purchase bills of exchange that will shortly mature or can be readily converted into cash. How the public interests are to be injuriously affected by permitting an insurance company to exercise a privilege, which any natural person in the State may exercise, is a little beyond my comprehension.

The gentleman from Owen (Mr. Dobson) remarked that by the election of the presidents and directors of banks and rail-roads to the Legislature, that body would be subjected to improper influences in the form of indirect bribery. Now, sir, I would inquire how the exclusion of these officers from seats in the Legislature will prevent bribery, either direct or indirect, if corporations can be found so base as to offer, or representatives so base as to receive bribes? Sir, if you expect to pass laws that will effectually prevent bribery you have entered upon a task very difficult of accomplishment. We must look for a better security than laws or constitutional provisions can furnish. We must trust to the sound discretion of the people, and believe that they will select as their representatives men too honest to be bribed.

Another idea that has been advanced in this discussion is that certain interests should not be represented in your General Assemblies. What are representatives for if they are not to protect and promote the interests of the people in their various avocations and employments? I hold, sir, that every interest of the people ought to have a fair hearing in your legislative halls. The State is not only bound to extend her fostering care over the agricultural, mechanical, and commercial interests of her citizens, but if she permits them to engage in the business of banking, or the construction of works of internal improvement, it is her duty to give to them the full and fair protection of her laws.

But, Mr. President, my opposition to the amendment under consideration is not founded upon a desire that your legislative halls should

be crowded with the officers or agents of incorporated companies. I have no wish that such should be the case, and I can see no reason to fear that it ever will be the case. If, however, the people, who are the sovereign disposers of those places of trust and responsibility, choose to select such men as their agents, they ought to have the right of doing so. And I venture to say, sir, that they will find among the officers, directors, and agents, of your banking institutions and railroad companies, as many men of integrity and ability as can be found among the same number of persons engaged in any other pursuits. I am opposed to the amendment because it is an attempt to disfranchise a class of our fellow-citizens on account of the business they follow. Such distinctions violate the first principles of a free government. If you begin to make such discriminations where are you to end. What class will you disfranchise next? The mover of the amendment says he finds a precedent for his proposition in the Constitution of Florida. I do not regard that as very high authority. He may find a precedent nearer home for the exclusion of another class of persons from the same privilege. The Constitution of Kentucky excludes from her Legislature all ministers of the Gospel. I do not myself conceive that legislation is the appropriate business of those who are called to preach, but I would not vote to deprive them of that privilege. My doctrine is that offices of trust, honor, and profit, should be open alike to citizens of all classes and pursuits. I have no fears that the people will ever permit any one class to obtain a preponderance over all others.

Pending the question, on motion of Mr. DUNN of Jefferson, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day, the pending question being on the motion to indefinitely postpone the section prohibiting Presidents, Directors, and other officers of incorporated companies, from being eligible to a seat in either branch of the General Assembly.

Mr. KILGORE. I ask the privilege of occupying the attention of the Convention, for a short time, in answering some of the arguments of gentlemen in favor of the section now under consideration; and I promise that I will occupy as little time in doing so as possible. In the first place, I would remark that I exceedingly regret that my friend from Switzerland, (Mr. Kelso), who is not now in his seat, should have declared, that the law of retaliation should hereafter be his rule of action upon this floor. That gentleman has always been distinguished for his independence, straightforwardness, and consistency; and he is the last man that I should have expected to hear announce, in this Hall, that, out of revenge for anything said, either in relation to his own opinions, or those of

other persons, he would, for once in his life, act inconsistently. It seems that the head and front of our offending is, that on another occasion, when the subject of county boundaries was before the Convention, we voted against leaving the question open to be decided by the people. It is not necessary now, that I should travel into that. The difference seemed to be an honest difference of opinion between the gentleman from Switzerland, and the gentleman from Laporte, (Mr. Niles,) to whom he referred, and myself. If we acted inconsistently upon this floor, certainly that could be no justification, on the part of my friend from Switzerland, in following our example; and I hope that he will not act inconsistently on this occasion, merely to revenge himself.

The gentleman from Owen, (Mr. Dobson,) seems to think that there is great danger, and anticipates much difficulty, if this provision, or one similar to it, is not ingrafted upon the Constitution. I know that that gentleman has had great experience in legislation; but he surely does not speak from experience, when he talks about bank Directors, and those interested in railroad and other corporations coming to members of the Legislature, and attempting to exercise improper influences upon them. Sir, his very countenance would forbid any such thing; and I venture the assertion that there is not a gentleman within the sound of my voice, who can point to a single instance, in which an officer of a bank or any other corporation in the State of Indiana, has ever approached a member of the Legislature, for the purpose of securing his aid in the passage of any measure by bribery or corruption. If such a thing has happened, sir, I venture the prediction that the man who was thus purchased, by his own acts and conduct held out inducements to the individual to offer the bribe.

Another matter, which seems to afflict the minds of gentlemen, is to me exceedingly astonishing. The minds of some gentlemen seem to be continually brooding over bribery and corruption, and all kinds of horrible notions. The gentleman from Hancock (Mr. Walpole) seems to think that the men whom the people honor with their confidence, and whom they elect to a seat in the Legislature of the State, will disregard the solemn obligations of the oath which they have taken to support the Constitution of the United States, and the State of Indiana, and to discharge their duties as Representatives; and that they will be carried away by some selfish motives—some peculiar interest, which they have more at heart than the good of the people. Sir, let me say, that "suspicion is the villain's virtue." An honest man is never ready to suspect and impugn the motives of others. It is those who are capable of being tampered with themselves, that are always ready to suspect others of being tampered with.

Before I take up the general argument, I

must be permitted to allude to an argument used by the gentleman from Wayne. I cannot tell why it is, that the gentleman from Wayne (Mr. Rariden) has, upon two or three occasions, and especially to-day, referred to me in a very personal manner. I am sure I did not charge that gentleman, nor any other gentleman, with playing the demagogue upon this floor.

Mr. RARIDEN. Let the gentleman from Delaware state to this House when he said he would not charge it, whether he did not charge it, and that in a most direct manner.

Mr. KILGORE. I was not at that time aware that the gentleman from Wayne (Mr. Rariden) had taken sides with the gentleman from Hancock (Mr. Walpole); but I thought he would, from the fact that he seems to occupy the same position towards the gentleman from Hancock, which South Carolina is said to have occupied in relation to John C. Calhoun, which was, that whenever Mr. Calhoun took snuff, all South Carolina would sneeze. [Laughter.] I spoke, Mr. President, of what demagogues might do; but I did not charge either of the gentlemen with being demagogues, or with being disposed to play the demagogue. But I had no objection whatever, to their making the application of my remarks if they chose to do so; and now I will say this much, that if the cap fits them, they are quite welcome to wear it. [Laughter.] I will be the last man to deny their right to its use.

Another matter to which the gentleman from Wayne has referred, is my want of success. I presume, sir, he means *political* success; if he does I have only to say, I have been fully as successful as the gentleman from Wayne. I have been defeated once in my life as a candidate for Congress. The gentleman from Wayne has been defeated twice or thrice; other gentlemen have been defeated as well as the gentleman from Wayne, and myself. Some of them, sir, have afterwards succeeded and have not had the mortification of finding the public confidence withdrawn from them forever. Others have been less fortunate, owing, perhaps, in some degree, to the means resorted to, in trying to attain the object of their aspirations. Others, Mr. President, have been enabled to succeed once in their lives, by such means as blasted all their future hopes and subject them to the mortification of encountering continual defeat as a well deserved chastisement for their political sins. Sir, had they not reared their fabric upon a sandy foundation, they could have withstood the storms and tempests of political opposition. The gentleman from Wayne understands me, sir. For myself, Mr. President, let me remark, once for all, I would rather live in an humble cottage built upon a rock, whose foundation I knew to be secure, than in a princely mansion erected on the sand, the foundation of which I should expect to be swept away with the first blast of opposition, especially, sir, if defeat and

political disaster had the same effect upon me that it appears to have upon some others, to make me a perfect Ishmaelite, so that I should turn my hand against every man, and thus solicit that every man's hand should be turned against me.

Sir, I would rather live in political obscurity all my life, than have the same feelings which some men manifest when they happen to meet with political defeat and disaster. But sir, this is a matter personal to the gentleman and myself, and this Convention can have no interest whatever in it.

Now, to the subject. The gentleman from Hancock (Mr. Walpole) says that the section does not embrace plank roads. Now if it does not embrace plank roads what does that prove? It proves that the gentleman from Hancock, who concocted this section, no doubt, upon consultation with the gentleman from Wayne, (for they seem to consult upon every matter brought before this body by either of them,) if it does not embrace plank roads, why is it that it does not? Are not these companies checking the State of Indiana all over? Have they not Presidents and directors? And if they are not to be included, why are the Presidents and Directors of Railroad companies to be included? Why, say they, because they are money-making companies.

Mr. WALPOLE (in his seat). Monopolies. That is the reason.

Mr. KILGORE. Well, we will talk about monopolies by and bye. They are now making money; but a plank road is not a monopoly. Is that the true reason, I will ask the gentlemen from Wayne and Hancock, or is it because there is another reason—that there are chartered companies constructing a plank road along the Cumberland road, which runs through both the counties which these gentlemen represent? Sir, have the chartered plank road companies, that have the privilege of constructing a plank road upon the Cumberland road, this great national highway, been required to open a public thoroughfare alongside of it! No such thing; they have the exclusive privilege of erecting toll-gates upon that road, and are not compelled to open any other for the public convenience. They have the privilege of constructing their plank road upon the county and State roads, that have ever been free and open to the public travel. They are not required to leave a pass open; but they hang their gates upon these roads, and compel every man who passes along to pass over their road, and to contribute to the stockholders of the company. Is it so with a single railroad company in Indiana? No, sir; not one of them is permitted to construct their road upon a public thoroughfare, unless it may sometimes happen to touch it in their course; and they must always leave room amply sufficient for the public travel. Now, let me ask what is the monopoly? The railroad which is

constructed upon the ground of the stockholders, purchased and paid for often at an enormous price, or the plank road which is made upon the common highway, which before was free to the use of all, but which is now blocked up from end to end with toll-gates, and every traveler forced, under penalties, to pass through them? We all know, sir, that the railroad companies have usually to purchase every foot of ground they may require, and that they have no exclusive privilege but that of enjoying their own property, in their own way. They cannot interfere with the public travel upon a common highway. Then, sir, there can be no monopoly. They do not compel the traveling public to use their road, whether they choose to or not. They do not compel the trading community to transport their goods, or the farmers their produce, whether they will or not. They leave the matter perfectly optional. They do not either compel the farmers and drovers to use their line, or to stay at home with their stock, in consequence of having deprived them of the usual route. No, sir; they leave the public thoroughfares open. They tell the farmers of the country: "You can go your own way, if you choose; but if you find it to your convenience and interest to employ our means, it is open for you to do so." We impose no necessity upon you; we do not interfere with your usual mode of travel; but we give you this means of conveying your produce to market at such a price, and if it suits your convenience to use our road, it is open to you on these terms."

And yet the gentlemen tell us that these roads are monopolies. How, sir, let me ask, is a road of this kind a monopoly? Does it compel any man to do that which it is not to his interest to do? No, sir; in all cases he does it as a matter of choice. Now, let us compare things a little, and see how much of a monopoly these railroads are. A farmer may load his produce on the cars at the town of Pendleton, if he pleases, or he may bring it in his wagon. Or he may put his hogs on the cars, or drive them along the usual road. He may get upon his horse, or into his buggy, and ride or drive to Indianapolis; or, if he finds it convenient, he may leave them at home and come by the conveyance which we tender him. Is that a monopoly? He can now bring his wheat on the cars for three cents per bushel, whereas, by the other road, it will cost him twelve and a half cents per bushel. He can bring his hogs for twelve and a half cents per head, no difference how large; whereas, to drive them the distance, would cost him at least fifty cents per head, including the shrinkage of each hog. Is that a monopoly? And, Mr. President, whilst we offer these facilities to the farmer, we do not shut up the usual road. No, sir; we leave it open for him to travel his own way, if he pleases. He cannot dispense entirely with his wagons and horses; he must have them to use round

his farm; and if he chooses to bring his produce to Indianapolis by that means, we do not prevent him; neither do we make him pay a tax for the privilege of doing so.

And yet, sir, this is one of the great monopolies, which the gentleman from Wayne, (Mr. Rariden,) and the gentleman from Hancock, (Mr. Walpole,) have denounced in such unmeasured terms.

It is the officers of such corrupt associations the gentlemen are in favor of excluding from a seat in the Legislature. Sir, if this is a monopoly, all I have to say is, the more we have of them, the better it will be for the people of the State of Indiana.

One word, sir, in relation to the power of the Madison Road over other interests. The gentleman from Wayne seems to be very much alarmed, lest the wealth and power of that Road should swallow up every other important public work in the State.

I do not believe, Mr. President, the gentlemen need have any fears that it will swallow any of the rail or plank roads which pass through that gentleman's district; and I am sure he need have no fear of its devouring the Whitewater Canal, in which that gentleman is so deeply interested; I pledge myself that it shall not interfere with him and his rights, at least. But those who are more immediately interested in the Madison Road are here, and they can speak for themselves. As far as my knowledge extends, she has kept within the limits of her charter; and the moment she transcends them, the gentleman from Wayne, being a good lawyer, knows the process by which that charter can be wound up. It was correctly remarked by the gentleman from Posey, (Mr. Owen,) that when we attempt to guard against the monied monopolies, we should guard against the abuse of the powers which we may invest in them by virtue of the act of incorporation. That is unquestionably the proper policy. If you attempt to guard them by restricting the privileges of those who may be connected with the association, where are you to stop? Sir, if you want to guard against the influences of these corporations you cannot guard against them by keeping these Presidents and directors out of the halls of legislation. If they can exercise influence at all, you cannot guard against them by this means. Sir, I do not believe such influences can be exercised; but even if they could, I would ask gentlemen if they would have half as much to fear from the bold and fearless robber who comes before them with the brand upon his forehead, as they would from the ten thousand little, sly, skulking, sneaking, incendiary robbers, who are always acting under false colors and with masks upon their faces. If a robber of the bold kind comes here, all eyes are at once fixed upon him, and they know how to manage him; but shut him out from the halls of legislation and what

do you find? You find your members assailed at every point, and before they are aware of it they will be corrupted, bought up, and made to do the bidding of the monied corporations of the country. Such success the gentleman from Hancock (Mr. Walpole) says has always attended the efforts of the Bank, and I am sure their directors have always been excluded from a seat in the Legislature.

One word further upon the subject, and I am done. The gentleman seems to have lost confidence in the people, and a wonderful influence, he says, is to be brought to bear at home. The great monied monopolies are to control our elections, and show their power at the ballot box. Sir, this is a great compliment to an honest people! The citizens of this country are to be bought up by these monied corporations! They are to place their candidate in the field, who is to come here to the exclusion of every one else, and in order to secure success, they are to go into the market and buy up the whole of the voters! This is truly a great compliment to the people of the State! A great compliment, sir, to suppose that the people of the country can be so corrupted as to forget every other interest save that of corporations, whose bidding they are willing to do for paltry gold! Sir, I have not yet lost confidence in the people of Indiana. I believe that they are above the influence of bribery. I do not believe that any such influence can be brought to bear upon them; and if I were disposed to play the demagogue—and the gentlemen are polite enough to say that they think I only went the ability—I would not want a more successful theme than to talk about these great monopolies. Sir, it is very convenient to make war upon banks, because they have been unpopular. But, sir, I will ask if there are not some of the Directors of the State Bank, now in this Convention? I will ask you whether you have not got the Presidents, or Cashiers, or Secretaries of the banking institutions here? If any of them are here, I venture the prediction that they are "free bank" men. [A VOICE—There are none here.] Well, when the matter comes to the test, the gentlemen will find that they are very numerous here. I know that there will be a diversity of opinion upon this subject; and I know another thing—that the efforts on the part of the gentleman from Hancock and the gentleman from Wayne, sometimes are very singular ones. The gentleman from Wayne is a State Bank man; the gentleman from Hancock is a State Bank man; the gentleman from Owen is a State Bank man. All of these men stand upon this floor as the advocates of this section. I believe, too, that the gentleman from Monroe is a State Bank man.

Mr. FOSTER. To be sure I am.

Mr. KILGORE. Now if influences are to be used they know how to use them; but what is their policy? Why, sir, it is to cripple the

strength of the free banking party by declaring that their officers, treasurers and directors, shall not be eligible to a seat on this floor. Sir, it is an insidious attack upon the free bank system, got up with the view of making members on this floor come out as advocates of a State bank. It is to exclude these men from the privilege of participating in the legislation of the country, in order that being driven from that ground they may become State bank men. [Applause.]

But, Mr. President, I have occupied as much time as I intended, and I have spoken more rapidly than I usually do in order that I might consume the less. I have spoken of railroads and compared them with plank roads in regard to the question of monopoly. I have endeavored to show that if there was danger of the one operating mischievously, there was as much in the other, because they are more numerous. Every man has a right to construct a railroad if he has the ability, and to charge tolls upon it, and do just as he pleases with it. And so it is with an incorporated company. They have a right to charge such rates of freight or passage as they may please; but they will undoubtedly fix them at such a rate as will make it the interest of those who want to ship their goods or to transport themselves from one place to another to use that mode of conveyance in preference to any other, and so long as this is done they will be used, and used profitably to the whole country as well as to the stockholders. Mr. President, I have done with this subject, and in conclusion tender my unfeigned thanks to the members of the Convention for their kindness in permitting me to occupy their time and attention as long as I have done.

Mr. SHOUP moved to lay the section and amendment on the table.

On this motion the yeas and nays were demanded, and ordered, and were taken, with the following result:

YEAS.—Messrs. Anthony, Badger, Ballingall, Beach, Bicknell, Blythe, Bourne, Bracken, Brookbank, Bryant, Carr, Carter, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Dunn of Jefferson, Elliott, Farrow, Fisher, Foley, Frisbie, Gibson, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Helm, Hitt, Hogin, Hovey, Howe, Huff, Kendall of White, Kilgore, Kinley, Lockhart, Mather, May, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Read of Clark, Read of Monroe, Ritchey, Shannon, Sherrod, Shoup, Snook, Smith of Ripley, Steele, Tannehill, Taylor, Thomas, Thornton, Todd, Watts, Wiley, Wolfe, Zenor, and Mr. President—79.

NAYS.—Messrs. Alexander, Bascom, Beard, Beeson, Berry, Biddle, Borden, Bowers, Butler, Chenowith, Coats, Davis of Madison, Dick, Dobson, Dunn of Perry, Edmonston, Foster,

Garvin, Hardin, Helmer, Hendricks, Johnson, Jones, Kelso, Logan, Maguire, March, McClelland, Miller of Gibson, Moore, Morgan, Morrison of Marion, Morrison of Washington, Pepper of Ohio, Prather, Ruriden, Schoonover, Sims, Smiley, Smith of Scott, Spann, Stevenson, Trimble, Walpole, Work, Wunderlich, and Yocum—47.

So the section was laid upon the table.

ELECTIONS BY THE GENERAL ASSEMBLY.

The PRESIDENT. The question now is upon ordering the 20th section to be engrossed for a third reading.

The section provides that all elections by the General Assembly shall be by a *viva voce* vote.

Mr. MILROY moved to amend the section by inserting the word "in," at the commencement of the section, and to translate "*viva voce*" into English, so as to make the section read—

"In all elections by the General Assembly," &c.

The question being taken, the amendment was rejected.

Mr. McCLELLAND moved to amend by striking out "*viva voce*," and inserting the words "living voice."

SEVERAL MEMBERS. That is the amendment we have just rejected.

The PRESIDENT. The amendment is the same as has just been rejected, and is, therefore, out of order.

Mr. McCLELLAND. With all due deference to the Chair, I beg to say that my amendment is different from that offered by the gentleman from Carroll.

The PRESIDENT. The Chair understands the difference to be precisely the same as the distinction between "tweedle dum and tweedle dee"—a distinction without a difference. [Laughter.]

Mr. HALL. I offer the following amendment to the section: Add at the end, "Provided that a plurality of votes shall elect." [Cries of "consent," and "no, no."] I hope this amendment will be adopted, for I am satisfied that it will save a great deal of time to the Legislature. I shall not, however, argue the question, but I ask the yeas and nays.

Mr. EDMONSTON. There seems to be a sudden reversion of sentiment on the part of members on this floor. A few days ago, a provision was passed, requiring a large majority, and now it is asked that a plurality may elect.

Mr. HALL withdrew his call for the yeas and nays, and the question being taken on his amendment, it was rejected.

Mr. KILGORE moved to amend by striking out the words "*viva voce*," and inserting the words "by joint ballot."

The amendment was rejected.

The section was then ordered to be engrossed for a third reading.

APPOINTMENTS TO OFFICE.

The PRESIDENT. The next question is on ordering the following section to be engrossed for a third reading:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under the State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections of the people."

Mr. HOLMAN proposed to amend the section by inserting the words "or elected," after the words "or appointed," and to strike out all after the word "State," in the 109th line, and insert "or to the Senate of the United States," so as to make the section read:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed or elected to any civil office of profit under the State, "or to the Senate of the United States."

Mr. CLARK of Tippecanoe. I very much doubt whether we have authority to fix the qualifications of Senator of the United States. I think that is a matter which is fixed by the Constitution of the United States. I will read the clause of the Constitution, to which I refer:

"No person shall be a Senator who has not attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen," &c.

Now, Mr. President, without much reflection upon this subject, it strikes me that this qualification is fixed by the Constitution of the United States, and if we have any authority at all, it is to prohibit the Legislature from electing certain persons. But I doubt whether we have the power of making any other disqualification than that which is already made by the Constitution of the United States. And moreover, even if there were not this Constitutional provision, I do not see why we should adopt this amendment. It is true that gentlemen may seek to influence Senators and Representatives, but it is impossible to make a wise selection, unless they select one in whom the people have confidence. We must select men who have been trained to legislative duties somewhere—either in our State, or in some other State; and I do not see any great objection to electing a member of the Legislature.

Mr. NAVE. I would be perfectly willing to vote for this amendment if it would amount to anything. On yesterday, the gentleman from Jefferson, (Mr. Gregg,) offered a proposition precisely similar to that which has been offered by the gentleman from Dearborn, and this morning he wished to withdraw, or rather to expunge the notice of it from the Journal. Now the truth is that the Constitution of the United

States fixes this matter, and declares who shall be eligible to the office of Senator of the U. S. and who shall be competent to fill a seat in the House of Representatives. Now suppose that we, as a Convention, should declare that certain men shall not hold the office, I take it for granted that notwithstanding such declaration, the individual whom we thus prohibited could take his seat in the Senate or House of Representatives of the United States. I think it is not for us to attempt to decide upon the qualifications or eligibility of any individual who may present himself for this office. The amendment, therefore, would amount to nothing; and there is no use in adopting that which is useless, and thereby stultifying ourselves.

The question was then taken on the amendment, and a decision being called for; there were ayes 48, noes 58.

So the amendment was not adopted.

Mr. PRATHER moved the previous question, which was sustained.

The section was then ordered to be engrossed for a third reading.

DEFAULTING COLLECTORS.

The PRESIDENT. The next business in the order of the day is the 25th section, which will be read a second time.

The section was read as follows:

"No person who may hereafter be a collector or holder of public moneys shall be eligible to a seat in either branch of the General Assembly, or to any office of trust or profit under this State, until he shall have accounted for and paid over, as by law of this State required, all sums for which he may be liable."

Mr. COLFAX moved to strike out the words "a seat in," and insert, in lieu thereof, the words "elected to."

The amendment was rejected.

Mr. WOLFE proposed to amend the section by inserting after the word "moneys" the words "or attorneys at law who shall have received and collected the money of another, and refuses to pay the same over to the proper person, or to his authorized agent, on demand." He hoped this amendment would be adopted. He could see no reason why a public officer, who might hold over a small amount of money, should be denied the eligibility of election any more than an attorney or any other person who held the money of another and refused to pay it over. He did not see why the one class of delinquents should be disfranchised any more than the other. If he could get gentlemen enough to support him, he should call for the yeas and nays.

Mr. KELSO proposed to amend the amendment by adding "or any other man who does not pay his debts when due." [Laughter.] He would undertake to say that there was no class of men in the community of the same number as attorneys, and to whose hands the same

amount of money was entrusted, who paid it over with as much punctuality as they did. This was a common business matter between the attorney and his client. When a man placed in the hands of an attorney an account to be collected, he did not ask for any security. He got none and he asked for none. The attorney who refused to pay over the money received for his client, stood in the same relation to his client as any other debtor. But the law looking upon the relation subsisting between attorney and client, had provided that if the attorney refused to pay over money thus received, he might be debarred from practising his profession. That was the best security a client could have, and was a great deal better than much of the security that was given in the ordinary transactions of life in which much larger amounts were involved. And if the lawyer, for this reason, was to be rendered ineligible, why not also render ordinary debtors ineligible? He asked nothing for the attorneys of the State of Indiana which he was not perfectly willing to give to every other class of men, but he did not want to have anything thrown up there as a slander upon the profession.

On motion of Mr. SHERROD, the amendment and the amendment to the amendment were laid upon the table.

The section was then ordered to be engrossed for a third reading.

OFFICERS OF BANKS, ETC.

Mr. KELSO offered the following additional section:

"No president, cashier, director, or other officer of any bank, banking, or other incorporated monied institution of this State authorized or empowered by law to issue bills, notes, deal in bullion, coin, bills of exchange, or promissory notes, shall be eligible to be elected to the General Assembly during the time he holds such office, place, or situation, or acts as such officer, or during the lapse of three months after he has ceased to hold such office, place, or station."

Mr. EDMONSTON. I would suggest to the gentleman from Switzerland whether it would not be better to withhold that section until we finish the article.

Mr. KELSO. I would be very willing to do so, but I understand that after the last section of the article is engrossed, it will then be out of order to move an additional section, the article being finished.

Mr. WALPOLE hoped the gentleman from Switzerland would strike out that part of the section which related to time—the three months.

Mr. MATHER moved to lay the section on the table.

Mr. WALPOLE demanded the yeas and nays.

The yeas and nays were ordered, and being taken resulted as follows:

YEAS.—Messrs. Anthony, Badger, Balingall, Barbour, Beach, Beard, Bicknell, Blythe, Bourne, Bracken, Brookbank, Bryant, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Farrow, Frisbie, Gordon, Graham of Warrick, Gregg, Haddon, Hitt, Hogin, Hovey, Howe, Huff, Kendall of White, Kilgore, Kinley, Lockhart, Logan, Mather, May, Miller of Clinton, Miller of Fulton, Milroy, Mowrer, Nave, Newman, Niles, Owen, Pepper of Crawford, Sherrod, Shoup, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Wiley, Wolfe, Zenor, and Mr. President—63.

NAYS.—Messrs. Alexander, Bascom, Beeson, Berry, Biddle, Borden, Bowers, Butler, Chandler, Chenowith, Coats, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Holman, Johnson, Jones, Kelso, Maguire, March, McClelland, McLean, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nofsinger, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Trimble, Wallace, Walpole, Watts, Work, Wunderlich, and Yocum—63.

So the section was not laid upon the table.

THE PRESIDENT. The question now is on adopting the additional section offered by the gentleman from Switzerland.

The yeas and nays being demanded and ordered, were taken, and resulted as follows:

YEAS.—Messrs. Alexander, Bascom, Beard, Beeson, Berry, Biddle, Borden, Bowers, Butler, Carter, Chandler, Chenowith, Coats, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Holman, Johnson, Jones, Kelso, Logan, Maguire, March, McClelland, McLean, Miller of Clinton, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nofsinger, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Trimble, Walpole, Watts, Work, Wunderlich, and Yocum—67.

NAYS.—Messrs. Anthony, Badger, Balingall, Barbour, Beach, Bicknell, Blythe, Bourne, Bracken, Brookbank, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Farrow, Frisbie, Gibson, Gordon, Graham of Warrick, Gregg, Haddon, Hitt, Hogin, Hovey, Howe, Huff, Kendall of White, Kilgore, Kinley, Lockhart, Mather, May, Miller of Fulton, Milroy, Mowrer, Nave, Newman, Niles, Owen, Pepper of Crawford, Sherrod, Shoup, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Wal-

lace, Wiley, Wolfe, Zenor, and Mr. President—62.

So the section was adopted.

THE PRESIDENT. The question now is on ordering the section to be engrossed for a third reading.

MR. KELSO asked for the yeas and nays.

The yeas and nays were ordered, and being taken resulted as follows:

YEAS.—Messrs. Alexander, Bascom, Beard, Beeson, Berry, Biddle, Borden, Bowers, Butler, Chandler, Chenowith, Coats, Cole, Dick, Dobson, Dunn of P., Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Holman, Johnson, Jones, Kelso, Logan, Maguire, March, McClelland, McLean, Miller of Clinton, Miller of Gib., Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nofsinger, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Trimble, Walpole, Watts, Work, Wunderlich, and Yocum—66.

NAYS.—Messrs. Anthony, Badger, Balingall, Barbour, Beach, Bicknell, Blythe, Bourne, Bracken, Brookbank, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Farrow, Frisbie, Gibson, Gordon, Graham of Warrick, Gregg, Haddon, Hitt, Hogin, Hovey, Howe, Huff, Kendall of White, Kilgore, Kinley, Lockhart, Mather, May, Miller of Fulton, Milroy, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Sherrod, Shoup, Spann, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Wiley, Wolfe, Zenor, and Mr. President—62.

So the section was ordered to be engrossed for a third reading.

SALE OF REAL AND PERSONAL ESTATE ON EXECUTION.

MR. PEPPER of Ohio. I offer the following as an additional section to the article:

"No law shall be passed subjecting real estate to sale under execution for less than two-thirds of its appraised value, nor personal property for less than one-half of its appraised value."

This is a section which proposes that by a Constitutional provision we shall forbid the sale of real property under execution for less than two-thirds of its appraised value, and personal property for less than one-half of its appraised value. I shall not detain the Convention with any lengthened remarks upon the subject, but I desire to have an expression of the opinion of this body in regard to this matter. To me it seems to be a matter of some importance that we should have a settled rule in regard to the sale of real estate under execution—a rule that

would work equal justice to all parties. By our present laws real property cannot be sold for less than its full appraised value. This provision may be continued for a year or two longer, or it may be changed at any time. I think that a permanent rule would be desirable, and for the purpose of testing the question I hope the Convention will accommodate me with the yeas and nays on the adoption of this section.

Mr. MATHER. Would it not be in order to refer that matter to the Legislature?

Mr. SMITH of Ripley. Certainly; you can move to refer it wherever you please. [Laughter.]

Mr. MATHER. I move to lay the section on the table.

Mr. PEPPER demanded the yeas and nays. The yeas and nays were ordered, and being taken resulted as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Barbour, Beach, Beard, Beeson, Bicknell, Blythe, Borden, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carter, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Kendall of White, Kilgore, Kinley, Lockhart, Logan, Maguire, Mather, McLean, Miller of Gibson, Morgan, Morrison of Washington, Mowrer, Murray, Newman, Niles, Nofsinger, Read of Clark, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—84.

NAYS.—Messrs. Bascom, Berry, Carr, Chapman, Chenoweth, Cole, Cookerly, Duan of Perry, Elliott, Gibson, Gregg, Harbolt, Hardin, Hendricks, Holman, Jones, Kelso, March, May, McClelland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ritchey, Sherrod, Smith of Ripley, Smith of Scott, Tague, Tannehill, Wallace, Walpole, and Wiley—40.

So the section was laid upon the table.

PUBLICATION OF THE LAWS.

The PRESIDENT. The next business in the orders of the day is the twenty-seventh section, and the question is, Shall it be engrossed for a third reading?

The section was read, as follows:

"No law of the General Assembly, of a public nature, shall take effect until the same shall be published in prints and circulated in the several counties of the State by authority, except in cases of emergency."

Mr. SHOUP moved to strike out the words

"in prints." He thought it was desirable that the Legislature should determine in what mode the laws should be published.

The amendment was adopted.

Mr. EDMONSTON moved to strike out the words "of a public nature."

The amendment was adopted by consent.

Mr. WOLFE. I move to strike out the section, and insert the following:

"No law of the General Assembly shall take effect in the State until the same shall be published in print and recorded in the Clerk's office, duly certified, except in cases of emergency."

The motion to strike out the section was laid upon the table.

Mr. NEWMAN proposed to amend the section, by adding at the end the following words: "Which emergency shall be declared in the preamble, or in the body of the law."

Mr. N. stated his reasons for offering this amendment, but his remarks were wholly inaudible to the reporter.

Mr. MORRISON of Marion said he was decidedly in favor of the amendment.

The amendment was adopted by consent, and the section was then ordered to be engrossed for a third reading.

APPOINTMENTS TO OFFICES VESTED IN THE GENERAL ASSEMBLY.

Mr. BORDEN offered the following, as an additional section:

"No member of either branch of the General Assembly, during the time for which he may be elected, shall be eligible to any office the appointment of which is vested in the General Assembly."

Mr. B. said that his object in offering the amendment was simply this: if this section, or a similar one, was not inserted, a member of either branch of the General Assembly could be elected State Trustee or State Agent. The amendment had nothing to do with the Governor or the appointment of a United States Senator. It was simply a provision of the old Constitution.

The question being taken, the amendment was adopted.

The section was then engrossed for a third reading.

The provisions of section twenty-nine having been previously reported by the committee on finance and taxation, and adopted by the Convention,

On motion of Mr. KELSO, this section was laid upon the table.

COMPENSATION OF MEMBERS OF THE GENERAL ASSEMBLY.

The PRESIDENT. The next business in the orders of the day is the following section, on its second reading:

"The members of the General Assembly shall receive for their services a compensation

to be fixed by law, and paid out of the public treasury; but no increase of compensation shall take effect during the session at which such increase may be made."

Mr. READ of Clark moved to amend the section, by adding the following proviso:

"*Provided*, That after the first fifty days from the commencement of the session, the compensation for the services of each member shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. This proviso shall not apply to the first Legislature which is to convene after the adoption of this Constitution."

Mr. R. said that unless the Convention adopted a provision of this kind, the people would lose all the benefit that was expected to accrue from having biennial instead of annual sessions. He was satisfied, from his own experience, that this provision was highly necessary; and he might say, that he stood there as a living witness that the Legislature could do more work in fifty days than they could do in one hundred. [Laughter.] Gentlemen might laugh as they pleased, but this was the truth notwithstanding they laughed at it. Before the adoption of the six weeks rule the Legislature of the State used to sit from ten to eleven weeks, but a number of years ago the six weeks rule was adopted, and it has been adhered to; and no member of the Legislature, since that time, had dared to move for its repeal, except, perhaps, in one or two instances. This provision he regarded as one of the radical constitutional reforms of the day, at least so far as the matter had come under his purview, and he would again repeat that he stood there a living witness that a provision of the kind was imperatively required.

If the Convention did not adopt it, they might depend upon it that under the change of system from annual to biennial sessions, those sessions would be protracted for three or four months. One great object of the Convention being called was to secure economy in this respect, and he felt fully convinced that if the pay was reduced after a reasonable time for performing the business of legislation, this economy would be effected. This was a reform which the people loudly called for, and he should demand the yeas and nays, in order—when it was found that the legislative sessions were protracted to four or five months—to show who had seconded him in this motion.

Mr. KELSO. I am quite willing to assist the gentleman from Clark in obtaining an opportunity of recording his vote on this question; but I cannot refrain from saying at the same time, that if that gentleman is here, as a living witness, that a Legislature can do as much in fifty days as they can do in one hundred, he ought to live forever, and be embalmed when he is dead, [great laughter.] for he is the first and the last man that has ever made such a wonderful discovery. Now, sir, we have very near-

ly destroyed legislation in Indiana already. There is a measure or two behind yet, and when they come in, let us see in what position we will be placed. Biennial sessions are agreed upon; that strikes out at once a hundred per cent. of your legislation; and if we adopt it, we shall take away three-fourths of all the balance that we have legislated about for the last ten years. Then, sir, if you adopt the amendment which has just been proposed by the gentleman from Clark, that will just destroy it all. Then, sir, if you carry it a little further and give the Governor the right to control any majority under two-thirds, that will make it about twenty per cent. better than no legislation at all. The Indian squaw said that enough was enough, of every thing except whiskey. Now I think we are not only getting enough here, but of many things, decidedly too much. Sir, as I understand it, if the representatives chosen by the people, under the new Constitution, should squander away their time unnecessarily, and not attend to the business of the people, all that is necessary in such a case is to have an expression of the popular voice upon the subject; and in my experience during the last fifteen or sixteen years, I have ever found the legislative body obedient to the will of the people. We know that although there is no such provision in the old Constitution, in the year 1842, the six weeks rule was adopted; and I must say, that ever since then the legislation of Indiana has been like the young wolf, all the time getting one year older, and two years worse.

A MEMBER. What! the gentleman from Sullivan? (Mr. Wolfe.) [Great laughter.]

Mr. KELSO (laughing). I had no allusion to the gentleman from Sullivan. Sir, such a provision in the Constitution makes it perpetual. It cannot be remedied except by another Convention. Whereas, if we leave it to the Legislature, and the evil contemplated by the gentleman from Clark, should fall upon the people, I have no doubt that in three or four, or ten years hence they will be able to find as honest a Legislature as they found in the year 1842, and they will make a provision to prevent future Legislatures from overstepping their time. If the evil should fall upon the people, they have the power in their own hands, and can correct it. Certainly it is better to leave it as it is. If the people do not complain, we do not need to be so particularly careful of their rights, as finally to destroy them. Sir, there is such a thing as "killing people by kindness," and it appears to me that there are some gentlemen on this floor, who are so inflamed with a love of the people, as to be apt in the madness of that ardent passion, to destroy the peoples best interests. This is a matter which I contend, can safely be left to the Legislature and the people themselves.

Mr. WATTS. I am here a "living witness with" my friend from Clarke [a laugh]. I served with

him in the Legislature as far back as the year 1827 and I must say that I am sorry to hear him rise in his place here and inflict such a slander upon the State of Indiana. I had always thought that it was honorable to be a member of the Legislature, and that men elected to fill such an office were not likely to come here and fool away their time at the expense of the people for the mere sake of the *per diem* allowance. Sir, I must say that in all my experience I do not think that I ever saw a set of men who would hold out their sessions for the small pittance of three dollars a day. I think this a matter which is purely legislative, and one which should be fixed by the people themselves. If the Legislature should fix the amount too high the people can soon correct the evil. I can say in reference to the gentleman from Clarke, that I have always found him a hard working industrious member of the Legislature.

Mr. BERRY. I have an amendment to the amendment which I wish to offer. With the permission of the Convention, I will read it. Add at the end of the proviso, in capital letters, the word "BUNCOMBE." [Cries of "consent, consent, consent," laughter and applause.]

The PRESIDENT. The question is on the amendment to the amendment offered by the gentleman from Franklin. Are the Convention ready for the question?

[Shouts of "aye, aye."]

The question being taken on the addition of the word "Buncome," it was carried by acclamation.

The PRESIDENT. The question now is on the amendment as amended.

Mr. EDMONSTON moved to lay the amendment on the table.

Mr. READ called for the yeas and nays.

They were ordered, and taken, and there were—yeas 66, nays 48—as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Beach, Beard, Bicknell, Blythe, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Colfax, Crawford, Crumbacker, Davis of Madison, Dick, Dunn of Jefferson, Edmonston, Garvin, Graham of Warwick, Harbolt, Helmer, Hitt, Hogin, Holman, Howe, Kelso, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, Mather, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Mowrer, Murray, Newman, Nofsinger, Owen, Pep-per of Crawford, Read of Monroe, Shannon, Shoup, Snook, Steele, Stevenson, Thornton, Todd, Wallace, Watts, Wiley, and Mr. President—66.

NAYS.—Messrs. Bascom, Beeson, Berry, Borden, Chenoweth, Clark of Hamilton, Coats, Conduit, Dobson, Elliott, Farrow, Fisher, Foley, Frisbie, Gordon, Hall, Hamilton, Hardin, Hendricks, Hovey, Huff, Johnson, Jones, Logan, March, May, McClelland, McLean, Milroy, Morgan, Morrison of Washington, Nave, Pra-

ther, Read of Clark, Ritchey, Schoonover, Smiley, Smith of Ripley, Smith of Scott, Tannehill, Thomas, Trimble, Walpole, Wolfe, Work, Wunderlich, Yocum, and Zenor—48.

So the amendment was rejected.

Pending the question on the engrossment of the section—

On motion,

The Convention adjourned.

THURSDAY, DEC. 19, 1850.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read, and approved.

The PRESIDENT laid before the Convention a communication from the Governor, Auditor, and Treasurer of State, in relation to procuring a room for the Convention.

The above named officers, in their communication, state in effect as follows: That the Masonic Hall is the building that is best calculated for the accommodation of the Convention, but that the agent of the stockholders refuses to let the Hall for the price which they are authorized to give; that he proposes, however, to fit up the Hall for the use of the Convention, provided they agree to pay twelve dollars a day for it so long as they occupy it, and that if the Convention should conclude to give that price, the room will be fitted up by the twenty-seventh instant. A majority of the officers, however, express the opinion that an arrangement can be made with the Legislature so that the Convention may remain in this Hall without desks.

The communication having been read,

The PRESIDENT. What disposition will the Convention make of this communication?

Mr. BORDEN. As it is important that some decision should be made in regard to this matter, I move that the rules be suspended, for the purpose of considering it now.

The PRESIDENT. It does not require a suspension of the rules.

Mr. TANNEHILL. It appears to me that if we take action upon this communication and comply with the proposal contained in it, it will be rather premature, for we do not know that the Legislature will accede to it.

Mr. MOORE moved the following resolution:

"Resolved, That this Convention will remain in this Hall."

Mr. GIBSON moved to amend the resolution, by adding "and that we keep the desks."

The question was taken on the amendment of the gentleman from Clark, and it was not agreed to.

The question being on the adoption of the resolution,

Mr. GREGG proposed a substitute for the

resolution, providing that the Governor, Treasurer, and Auditor, contract for the Masonic Hall, and that it be fitted up by the twenty-fifth instant, and that the Convention meet in that building on the twenty-fourth instant and continue its sessions until it gets through with its labors.

The PRESIDENT. Does the gentleman from Owen accept the substitute?

Mr. MOORE. No, sir.

Mr. GREGG. I move my proposition, then, as an amendment to the resolution of the gentleman.

The PRESIDENT. The question must be taken in the order in which the resolutions are offered.

Mr. STEVENSON. If it be in order, I would like to offer such a resolution as this:

"Resolved, That the Convention accept the proposition of the Governor, Auditor, and Treasurer, and that the necessary preparations be made by those officers for the accommodation of the Legislature."

If they will give us this room, without the desks, I shall be satisfied.

The question being on the resolution of the gentleman from Owen,

Mr. GIBSON. I wish to make this remark: I am satisfied myself that a majority of this body do not design or intend to sit here, but there is another portion of the members of the body who do desire to remain here, and there is another, and a larger portion, who desire to adjourn. These last will vote for remaining here, knowing that if that proposition prevail they will ultimately be able to carry the motion for adjourning over until the Legislature finish their session.

Mr. GREGG. Do I understand that my amendment is not in order?

The PRESIDENT. The Chair will remark to the gentleman from Jefferson, that he offered his resolution as a substitute for the original resolution, and the gentleman from Owen having refused to accept it as a substitute for his own, is a matter of course the question must be first put upon the resolution of the gentleman from Owen.

Mr. GREGG. But I propose to strike out all after the word "Resolved," and insert my resolution as an amendment.

The PRESIDENT. That motion cannot be entertained. The resolutions are distinct and separate.

Mr. KELSO. My opinion is, and the Convention may take it for what it is worth, that there are more now in favor of remaining where we are and not adjourning over, than there are in favor of taking the Masonic Hall at the price at which it is offered. I, for one, am for remaining here. When the Legislature meets, if we cannot do better, rather than have any difficulty I shall be for going somewhere else. But we have got accustomed to this place, and

can get along very well if we are permitted to remain. I am opposed to incurring the expense of hiring the Masonic Hall. That is one ground of my opposition to it; and another is, that if we are to be as near to the Legislature as that, we might as well be in the same building. I shall vote in favor of the proposition of the gentleman from Owen.

Mr. FOSTER. I am decidedly in favor of the proposition of the gentleman from Jefferson. The Governor, Auditor, and Treasurer, have intimated that they can make arrangements for the Legislature. I would like to know if the Legislature ever authorized these officers to make arrangements for them? It appears to me that they are assuming an authority that does not belong to them. The House of Representatives certainly have more right to this Hall than we have. We have the power to go where we please. I am aware that the opinion of the Governor and of some members on this floor is, that we ought to adjourn until after the Legislature shall have finished its session. I differ with them entirely. I have been here at my post since the commencement, and I want to remain here until we finish our labors. It was anticipated by the Legislature that the Convention would have got through by this time, but the probability is that we shall be in session for six weeks or two months longer.

We are told that we may remain in this Hall, but the Representatives of the people may not agree to it. Now what is twelve dollars a day in comparison with what we are spending daily? It is a mere drop in the bucket. I want to go to a place where we can proceed with our deliberations undisturbed. My opinion is, that if we remain here there will be so much turmoil and confusion that little or no business will be transacted. I hope the resolution of the gentleman from Jefferson will be adopted.

Mr. PEPPER of Ohio. I hope this question will be settled without any manifestation of feeling. It is becoming somewhat a grave question, although it should not assume that character. We have spent some days on the subject of procuring a suitable Hall for the Convention. I am not in favor of either of the propositions. I should be very much in favor of having a contract made for the occupation of the Masonic Hall by the Convention, but I think the terms are too high, and I am not willing to risk a controversy with the approaching General Assembly. It may be that they will acquiesce in the proposition made by the executive officers, but I am also inclined to believe that many of them will be dissatisfied. This is the place provided for the accommodation of the Legislature, and I suppose that neither the executive officers nor this Convention have any proper authority to prevent them from occupying this Hall. I have no doubt, however, that the executive officers have taken every

reasonable pains to procure a room for us, and I think we should properly appreciate the exertions they have made. I think we should take some steps to procure a suitable place for ourselves, leaving to the Legislature, to whom it properly belongs, the use of this Hall.

Mr. FOLEY. I am entirely in favor of acting upon the recommendation of the executive officers, and of remaining here. The gentleman over the way, (Mr. Foster) thinks that twelve dollars a day is a trifle not worth considering.

Mr. FOSTER. It is a trifle in comparison with the other expenses of this body.

Mr. FOLEY. If our expenses are great then it appears to me we ought not to add to them. This is the place where we ought to stay until our labors are completed.

Mr. KILGORE said, he should not detain the Convention with a speech upon this occasion. He had merely to say that upon the score of economy, if for no other consideration, the Convention ought to have a room fitted up for them at once. Gentlemen seemed to be terrified at the idea of paying twelve dollars a day for the rent of a room. What would it amount to? So far as dollars and cents were concerned it would be a mere trifle, compared with the expense which the State would have to incur, if the Convention should be detained for some days after the Legislature assembled in procuring a suitable building for their accommodation. He felt quite satisfied that neither branch of the Legislature would consent to occupy the Supreme Court room. They would never consent to be crowded within so small a space. What would be the result? Perhaps a week would be consumed in hunting up, and furnishing a room for the Convention, in order that the House of Representatives might get possession of their own Hall; and this at an expense of six hundred dollars a day. Six hundred dollars would pay the rent of the Masonic Hall for fifty days. The value of the time that had been already consumed upon this subject, was equal to what would be required to pay the expense of any suitable room that might be procured. The Masonic Hall was usually rented for twenty dollars a night. He thought, therefore, it was idle to talk about twelve dollars a day being an extravagant price for the use of that Hall, by the Convention. He hoped, therefore, that the question would be decided without further discussion. Whatever was done should be done quickly.

Mr. GREGG. I have no desire to protract debate upon this subject, but I beg leave to say that I am as much opposed to our incurring unnecessary expense, as the gentleman from Decatur (Mr. Foley), or the gentleman from Switzerland, (Mr. Kelso) can possibly be. I admit, sir, that it is very desirable to have an eye to economy in small matters as well as great—but then we should be careful that we do not waste

at the bung, while we are endeavoring to save at the spigget. We have heretofore spent two full days in discussing this subject, which is equal to twelve hundred dollars; and now we bid fair to spend another half day, which will swell the amount to fifteen hundred, a sum more than sufficient to pay the rent of the Masonic Hall for the next three months, should we continue in session so long, together with the expense of all door-keepers, firewood, &c.; I think, therefore, it is high time we should bring this matter to a close.

Now, I am not one of those who would stifle debate upon important questions where principle was involved. Indeed, I regard it as poor economy to save *our time* and the *people's money* at the sacrifice of *principle*. But upon mere matters of expediency, such as this, where the only question involved is whether we shall pay one hundred or three hundred dollars a month, rent for a suitable place for our deliberations, it is the extreme of folly to waste time in debating it.

I do not know, Mr. President, that I can better illustrate the great folly of such discussions, than by relating an anecdote which was once told me by a gentleman who was a member of the Legislature when the incident occurred. I will not mention names, for that might be considered invidious. Suffice it to say, that it was some fifteen years ago, about this time of the year, and the Legislature in session in this house. A member of this body, entertaining a proper regard for the health and comfort of himself and colleagues, introduced a resolution, directing the door-keeper to procure a thermometer to hang up in this Hall, the better to enable the firemen to graduate the temperature of the atmosphere here. Now, one would naturally suppose that such a proposition as this, would have been adopted at once without opposition. But such was not the case, for the question was gravely debated for a day or two—thus spending some three hundred dollars of the people's money in talking about the propriety of purchasing that little instrument hanging there, which cost, at the outside, about one dollar and fifty cents. And one member, it is said, absolutely opposed the proposition on the ground that he did not believe there were ten members in the House who knew how to wind the d—d thing up, or set it right if it should get out of order, and that it would become necessary to hire an extra hand to keep it properly regulated. [Much Laughter.]

Mr. OWEN from his seat. That is a fact, for I was a member of the Legislature when it occurred.

Mr. GREGG. And now, Mr. President, that we may not fall into the same absurdity in regard to this matter, I will call for the previous question.

The previous question was seconded, and the main question ordered to be now put.

The question being upon the amendment proposed by the gentleman from Jefferson.

Mr. KELSO demanded the yeas and nays, and they were ordered, and being taken, were—yeas 62, nays 67—as follows:

AYES.—Messrs. Anthony, Ballingall, Barbour, Beach, Beard, Biddle, Blythe, Borden, Bourne, Bracken, Bright, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Davis of Madison, Dick, Dunn of Jefferson, Foster, Frisbie, Garvin, Gibson, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Helm, Helmer, Hovey, Howe, Huff, Johnson, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, Milroy, Mooney, Morgan, Mowrer, Murray, Nava, Newman, Niles, Owen, Prather, Rariden, Read of Clark, Read of Monroe, Smith of Ripley, Tannehill, Thomas, Thornton, Watts, Wiley, Wunderlich, and Mr. President—62.

NOES.—Messrs. Alexander, Badger, Bascom, Beeson, Berry, Bicknell, Bowers, Brookbank, Butler, Carter, Chandler, Chenoweth, Coats, Condit, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foley, Gordon, Harbott, Hardin, Helmer, Hendricks, Hitt, Hogin, Jones, Kelso, Logan, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Moore, Morrison of Washington, Notsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Ruchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Stevenson, Taylor, Todd, Trimble, Walpole, Wolfe, Work, Yocum, and Zenor—67.

So the amendment was rejected.

The question then being on the adoption of the resolution of the gentleman from Owen.

The yeas and nays were ordered, and being taken, were—yeas 62, nays 78;—as follows:

YEAS.—Messrs. Alexander, Anthony, Bascom, Berry, Bicknell, Carter, Chandler, Chenoweth, Clark of Hamilton, Coats, Colfax, Condit, Crumbacker, Dobson, Elliott, Farrow, Fisher, Foley, Garvin, Harbott, Hardin, Hendricks, Hitt, Hogin, Kelso, Kinley, March, Mather, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morrison of Washington, Notsinger, Pepper of Crawford, Pettit, Ruchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Trimble, and Walpole.—72.

NOES.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Beeson, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chapman, Clark of Tippecanoe, Cole, Cookerly, Crawford, Davis of Madison, Dick, Dunn of Jefferson, Dunn of Perry, Foster, Frisbie, Gibson, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Helm, Helmer, Holman, Hovey, Howe, Huff,

Johnson, Jones, Kendall of White, Kilgore, Lockhart, Logan, Maguire, May, Mooney, Morgan, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Schoonover, Smith of Ripley, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President.—78.

So the resolution was not adopted.

Mr. WATTS offered a resolution to the effect that the Convention accept the Masonic Hall, upon the proposed terms, deducting the expense from the *per diem* of members.

Mr. PETTIT. I move to amend the resolution by adding, "and that we will take double our present pay." [A laugh.]

The PRESIDENT. The gentleman will send up his amendment in writing.

Mr. PETTIT. Oh, I don't know that it would pay me for the trouble.

Mr. KELSO. I move to amend by adding the word Buncombe.

The PRESIDENT. The gentleman will send up his "Buncombe" in writing. [Renewed laughter.]

Mr. OWEN. If the proposition of the gentleman from Dearborn should be adopted, the amount to be deducted from the *per diem* of each member would be just eight cents. Now, sir, I am of opinion that there is scarcely a man here who would be unwilling to pay eight cents a day in order to avoid a collision with the Legislature, in order to be provided with a convenient and comfortable place for holding the sittings of the Convention. ["Consent."] Since this matter came up, I have heard it said—not to me, individually, but it was said to others who repeated it to me, and in such away that I have no doubt of its truth—that more than one member of the Legislature, who has been in this city since this matter has been discussed, have declared their belief that a difficulty will arise if the Convention undertake to retain possession of the Hall. Now, without talking about the abstract right, it is, in my estimation, a matter of importance that we should avoid coming in conflict with the Legislature; as we shall inevitably do, if they find themselves inconveniently situated, in consequence of our remaining here, and if this should be the case, our business would be delayed for three or four days at the least, whilst our expenses would continue to be six hundred dollars every day.

Mr. COOKERLY. I am decidedly in favor of the Convention going to the Masonic Hall.

A MEMBER. "You voted the other way."

Mr. COOKERLY. Certainly I did; and if the same vote were to be taken again, under the same circumstances, I would vote as I did then. I wanted to give my reasons at the time I voted, and was prevented by the previous question. The gentleman from Jefferson, after

making a speech, moved the previous question. I will vote for no man's proposition who does that. Gentlemen talk about expense. There is more expense incurred by wasting time in debate than there would be if we were to hire the Masonic Hall for six months. I move, sir, to re-consider the vote by which the proposition of the gentleman from Jefferson was rejected.

Mr. DOBSON. I will state to the Convention, and I hope there will be an end to this matter, for I really think we are consuming too much time about it, that I shall vote for the re-consideration in order that the proposition of the gentleman from Jefferson may be adopted, for I believe it is what we must ultimately do or we shall spend twice the amount that the Hall will cost, for no useful purpose whatever.

Mr. KELSO. I want to say a single word in reference to this matter. [cries of "question," "question."] Gentlemen may rest assured that I shall not be put down. They may cry "question" as long as they please. Gentlemen talk a great deal about economy, and yet they seem to imagine that they can justify themselves in adding three hundred and sixty dollars a month to our expenses, and that for house rent alone, in addition to which we shall have to pay for the removal of fuel and stationery; and there are various other contingencies that will swell the aggregate amount. I will undertake to say, that when the whole is summed up, we shall have a very considerable increase in our expenditures. It is said that if the expense be borne by the members of the Convention, it will be but a trifle to be paid by each. But do gentlemen reflect that they are proposing to pay for the use of this room, in the Masonic Hall, sixteen per cent on the whole cost of the building. And, sir, I undertake to say that our pay is sufficiently meagre already; it is quite low enough without being reduced for the purpose of paying the rent of a room. The truth of the matter is, this whole cry about saving of expense, is for Buncombe. Let us examine it for a moment. Fifteen minutes are allowed each member for the purpose of making a speech. Every speech, of fifteen minutes, costs the State thirty dollars. How many such have been made upon this question? And how many fifteen minute speeches, that might well be spared, have been made upon other questions? If gentlemen are so anxious to save expense, why not select ten or twelve of the most experienced men of the Convention, and let them go out into a committee room and prepare a constitution; and, in the mean time, the balance of us suspend our labors. Would not this be a great saving of expense?

Well, if the Convention are determined to go to Masonic Hall, let them go—all I ask is an opportunity to record my vote.

Mr. WATTS. I wish to say a single word in reference to the remarks of the gentleman from Switzerland. If he is so anxious to have

"Buncombe" added to the proposition that I have offered, I am willing that there shall be a full length likeness of himself attached to it.

Mr. KELSO. If that is done, there will be a man of more talent than the mover of the proposition represented.

Mr. PETTIT. The amendment which I proposed in a jocular mood, a little while ago, was moved without any intention that it should be entertained, or a vote taken upon it. But, sir, one word in regard to the proposition of the gentleman from Dearborn. For one, I am in favor of going to the Masonic Hall, although I have no special predilection for that Hall, in preference to any other—I have no special love or hatred for the members of that institution. I am not a Mason myself, nor a member of any secret society. But I believe that if we go there, we shall be accommodated, and the business that we have to do will progress without interruption. In regard to the proposition that the expense shall be borne by the Delegates in this Convention, I am opposed to it. There may be men who are able to come here and make a Constitution, or legislate for the people of Indiana, without pay. It may suit the gentleman from Posey to do so. He may be abundantly able and willing to pay his own expenses. But I am neither the one nor the other. I am neither able, nor am I willing, to come here or elsewhere, to legislate for nothing and pay my own expenses. I do not know how it is with other gentlemen on this floor. I have heard it asserted, and I doubt not it is true, that there are abundance of men who go to the British Parliament, who would willingly pay thousands of pounds a year for a seat in Parliament, instead of asking pay for their services. There are, no doubt, plenty of such men in this country, who would do our National and State Legislation for nothing, and be glad of the chance. Sir, in the British Parliament they legislate benefits and advantages to themselves, and they may do so here. But of all the miserable—I will not say demagogueism, that is a term that is so indiscriminately used, that it has almost lost all signification—but of all miserable pretences, that is the worst which cries down the salaries of public officers—which clamors for a reduction of the compensation paid for the services of public officers. Sir, if you would have good and efficient service, you must expect to pay a liberal salary. He who would persuade you of his willingness to serve the public for nothing, is a man who has sinister views—a man who would sacrifice the public, who would rob the treasury. He who proposes to accept a seat in the Legislature without compensation, would not hesitate to take a bribe. The Bank Director, who would take a seat in the Legislature for nothing, would give to an endorser, twenty-five thousand dollars of the Madison bank funds. Sir, he who proposes to serve the public for nothing, has a design to

carry out, and he will accomplish it, if in his power, without being particular as to the means to be employed in accomplishing it.

Mr. President, I hope this vote will be reconsidered, and that we shall leave this Hall, and give the Legislature an opportunity to sit in their accustomed Hall.

Mr. SMITH of Ripley. I have been, I think, a very silent member for a long while. [A laugh.] And to-day I intended to vote for this proposition without saying a word. ["Consent."] And I should not have said a word but for some remarks that have been made. I promise the Convention, however, as I perceive they are in good humor, that my remarks shall always be brief, and that I shall speak at very "short intervals." [Renewed laughter.] I wish, on this occasion, merely to say, that I have voted for going to the Masonic Hall, and I did so, as I explained on a former occasion, because I thought it would be a great imposition on the Legislature, if we were to stay here. I think so now. And I think that by removing, we shall effect a great saving, both of time and money; because our labors will not be retarded, as they would be if we remain here. I am willing to submit to the exaction of exorbitant rent, rather than incur still greater evil.

Mr. RITCHEY. I voted against going to the Masonic Hall, and I do not wish to see that vote reconsidered. Gentlemen assume that we are necessarily to involve ourselves in a collision with the General Assembly. For myself, I believe there is no danger of any such thing. While at home, a few days since, our Representative was enquiring what arrangements were to be made in reference to this subject, and I stated to him I had understood that the report which has been made this morning by the executive officers, would be made. He expressed his approbation and pleasure. He said he would rather sit in the Senate Chamber than in this Hall. I believe, sir, that if you leave the matter to the State officers, it can be satisfactorily arranged. Sir, we are incurring expense enough already, and there have been complaints enough on that subject. I hope the vote will not be reconsidered.

Mr. FOSTER. I hope, sir, that the motion to reconsider will prevail, and I believe that it will, for I am inclined to think, that since that vote was taken, some gentlemen have recovered their senses. Now, sir, it is notorious, that some gentlemen voted against going to the Masonic Hall, with the view of adjourning until February, knowing that if the Convention removed to the Masonic Hall, where we shall find ourselves comfortably situated, the motion to adjourn over will fail. I am determined to stick here, and if possible, to keep the Convention here at their work, so long as there is a shot in the locker.

Mr. EDMONSTON. I am satisfied that the

minds of members are made up, and I therefore again call the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being—Shall the vote by which the amendment of the gentleman from Jefferson was rejected, be reconsidered?

The yeas and nays were demanded, and they were ordered, and being taken, were—yeas 75, nays 54—as follows:

AYES.—Messrs. Anthony, Badger, Balingall, Barbour, Beach, Beard, Biddle, Blythe, Borden, Bourne, Bracken, Bright, Bryant, Butler, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Edmonston, Elliott, Foster, Frisbie, Gibson, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Huff, Johnson, Jones, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morgan, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Sims, Smith of Ripley, Thomas, Thornton, Wallace, Watts, Wiley, Wunderlich, and Mr. President—75.

NOES.—Messrs. Alexander, Bascom, Beeson, Berry, Bicknell, Bowers, Brookbank, Carter, Chandler, Chenowith, Coats, Conduit, Crawford, Crumbacker, Dunn of Perry, Farrow, Fisher, Foley, Garvin, Gordon, Harbolt, Helmer, Hitt, Hogan, Kelso, Logan, March, Mather, May, McClelland, McLean, Miller of Fulton, Moore, Morris of Washington, Nofsinger, Pepper of Crawford, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Steele, Stevenson, Taylor, Todd, Trimble, Walpole, Wolfe, Work, Yocum, and Zenor—54.

So the vote was re-considered.

The question recurred on the adoption of the amendment of the gentleman from Jefferson, viz.:

"That the Governor and Auditor contract for the use of the Masonic Hall, &c.," and being taken,

It was, without a division, decided in the affirmative.

The question being on the adoption of the resolution as amended,

The yeas and nays were ordered, and being taken, were—71 yeas, 57 nays—as follows:

AYES.—Messrs. Anthony, Badger, Balingall, Beard, Biddle, Blythe, Borden, Bourne, Bracken, Bright, Brookbank, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Elliott, Foster, Frisbie, Gibson, Graham of Warrick, Gregg, Haddon, Hall, Hamilton,

Helm, Hendricks, Holman, Hovey, Howe, Huff, Johnson, Jones, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morgan, Mowrer, Murray, Nave, Newman, Niles, Owen, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Sims, Smith of Ripley, Tannehill, Thomas, Thornton, Wallace, Watts, Wiley, Wunderlich, and Mr. President—71.

NOES.—Messrs. Alexander, Bascom, Beach, Beeson, Berry, Bicknell, Bowers, Butler, Carter, Chandler, Chenowith, Coats, Conduit, Crawford, Crumbacker, Dunn of Perry, Farrow, Fisher, Foley, Garvin, Gordon, Harbolt, Hardin, Helmer, Hitt, Hogin, Kelso, Logan, March, Mather, May, McClelland, McLean, Miller of Fulton, Moore, Morrison of Washington, Nofsinger, Pepper of Crawford, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Steele, Stevenson, Taylor, Todd, Trimble, Walpole, Wolfe, Yocum, and Zenor—57.

So the resolution as amended was adopted.

DIVISION OF COUNTIES.

Mr. BRIGHT, from the committee on the legislative department, reported back the original section in relation to Senatorial and Representative districts, to be composed of contiguous counties—without amendment.

The report was concurred in.

Mr. COLFAX rose and remarked, that he desired to draw the attention of the Convention to one fact which, in the hurry of concurring in the committee's report, had doubtless been overlooked by the members generally. The Convention before re-committing the section, had added to it a provision that counties with two-thirds of a Representative ratio should be entitled to a Representative. This the committee had taken the responsibility of striking out entirely, after the Convention had placed it in the section. Besides this, a motion which he had offered to authorize the Legislature to make single districts, was still pending, when the section with that amendment, had been re-committed. A motion to lay that amendment on the table had failed, by nine majority, but the committee had also thrown it out, and reported in its stead the original prohibition, absolutely prohibiting single districts. These facts had doubtless escaped the attention of many members, and it seemed to him as if the vote should be re-considered, and an opportunity offered to concur with amendments. He had himself voted in the negative against concurring, and could not therefore move to reconsider, but he hoped that some gentleman who had voted in the majority would make such a motion.

Mr. BORDEN, having voted in the affirmative, moved to re-consider the vote by which

the Convention concurred in the report, which motion prevailed.

Mr. COLFAX then moved to concur in the report of the committee, with an amendment, "striking out the proviso which prohibits counties from being divided for representative purposes, and inserting a proviso, that counties with a population equal to two-thirds of a representative ratio, shall be entitled to a Representative; and provided further, that the Legislature may, by a general law, provide for the election of Representatives by single districts, in counties entitled to more than one Representative."

Mr. BERRY called for a division of the question; and the question was taken on concurring in the report of the committee—cutting off Mr. Colfax's amendment—and decided in the affirmative, ayes 67, noes 59.

THE PRESIDENT. The question now is: Shall the section be engrossed for a third reading?

On this question, the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 69, nays 58:

YEAS.—Messrs. Badger, Balingall, Beard, Beeson, Berry, Bourne, Bowers, Bracken, Bright, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Conduit, Cookerly, Crawford, Dick, Dunn of Jefferson, Elliott, Farrow, Fisher, Foley, Foster, Gibson, Gregg, Haddon, Hardin, Helm, Hendricks, Holman, Johnson, Jones, Kinley, Logan, Maguire, McLean, Miller of Clinton, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Nofsinger, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Shoup, Snook, Smith of Ripley, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, Wolfe, and Zenor—69.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beach, Biddle, Blythe, Borden, Brookbank, Bryant, Chandler, Chenowith, Cole, Colfax, Crumbacker, Davis of Madison, Dobson, Dunn of Perry, Edmonston, Frisbie, Garvin, Gordon, Graham of Warrick, Hall, Harbolt, Helmer, Hitt, Hogin, Howe, Huff, Kelso, Kendall of White, Kilgore, Lockhart, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Moore, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Sherrod, Sims, Smiley, Smith of Scott, Steele, Stevenson, Taylor, Trimble, Walpole, Work, Wunderlich, Yocum, and Mr. President—58.

So the section was ordered to be engrossed for a third reading.

Mr. Pepper of Crawford said:

Mr. PRESIDENT: I would inquire if it is now in order to introduce a resolution pursuant to

the notice given on yesterday, relative to changing the fourteenth rule?

The **PRESIDENT**. It is in order.

Mr. PEPPER of Crawford. Well, sir, I offer for adoption the following resolution:

Resolved, That the fourteenth standing rule be so amended that it shall require thirty members to call the ayes and noes on every question, except on its final passage

Sir, I offer this resolution not for Buncombe, I am influenced by no such motives; but for the sole purpose of saving time which is uselessly wasted in calling the ayes and noes on every trifling question that may arise.

The Convention is in session but five hours a day, and for the last two weeks fully one-fifth of the time has been consumed in calling the ayes and noes. I hesitate not to say that if this resolution be adopted, it will hasten our labors and shorten the session very materially.

We have now been in session more than ten weeks, and judging from the amount of unfinished business on hand, the first of March will find us here, unless we establish some rule that will bring us to act directly upon questions that should legitimately claim our attention, and cease to bestow so much time on those questions that do not belong to constitutional reform. Leave all questions that are legislative in their character—all untried Utopian experiments, to the Legislature, then if they work badly, they can be repealed; but place them in the Constitution, there they must stay as long as the fundamental law remains unchanged.

I doubt not it is the sincere desire of delegates to bring the labors of the Convention to as speedy a close as will be consistent with the public interest; pass this resolution, and we shall have made one step, at least, towards consummating that desirable end.

Mr. KELSO hoped that the Convention were not disposed to make any further restrictions upon the rights of members than now existed. The demand for the previous question, which had become so frequent, he thought would be sufficient. This doctrine of certain members entering a special protest against the action of the whole Convention, would, if carried out, encumber the Journal, and waste more time than would be gained by it.

While up, he would remark that he thought the call for the previous question was a restriction too often imposed upon the Convention. The gentleman from Jefferson (**Mr. Gregg**) had that morning, after making a speech upon the subject of going to Masonic Hall, moved the previous question, thus preventing gentlemen from having an opportunity of expressing their sentiments upon the question. He did not wish to increase the restrictions already imposed upon them.

Mr. SMITH of Ripley said that he had hitherto almost always agreed with his friend from Switzerland (**Mr. Kelso**) in regard to the differ-

ent subjects that came up for consideration, for the reason that he was almost always right. But he was compelled to differ with him upon this question. It was very obvious that, if, out of one hundred and fifty men, ten or twenty members would not rise to second a call for the yeas and nays, that the taking of them was clearly against the general sense of the Convention. The way in which they were filling up the journal now would render it one of the most extraordinary and enormous journals that ever emanated from a deliberative body. He considered that these propositions, upon which the yeas and nays had been ordered so frequently, should have been considered in committee of the whole, and then the journal would not have been encumbered with yeas and nays, or the time of the Convention have been wasted in taking them. He thought, at any rate, that if the proposition urged upon the committee on rules at the commencement of the session of the Convention, to require one-third of the members to demand the yeas and nays, had been adopted, they would have been advanced two weeks further in their business; and he ventured to say, if the proposition of the gentleman from Crawford (**Mr. Pepper**) was adopted, it would shorten their sittings, even yet, something like two weeks.

Mr. GREGG said he desired to say one word by way of explanation. He regretted exceedingly that his call of the previous question that morning should have so much disturbed the gentleman from Switzerland (**Mr. Kelso**). The Convention was well aware that he (**Mr. G.**) was not in the habit of resorting to that question to curtail debate. Indeed, it was the first time in his life that he ever called the previous question, in this or any other deliberative body. Nor had he been troublesome in the way of speaking, not having made a speech of any length upon that floor for the last three weeks, nor did he think he should for the next three weeks to come. He deeply regretted that the gentleman from Switzerland should have taken his motion unkindly, for he was the last man in that body that he would desire to cut off from the privilege of debate, as he had a standing bet that he (**Mr. Kelso**) would beat the Kentuckian alluded to by him early in the session, as having made one hundred and ninety-nine speeches in the Kentucky Convention. From present indications, he had no fears that he shall lose the wager, and hoped the gentleman would not be restrained.

Mr. KELSO would simply state, in reply to the explanation of the gentleman from Jefferson, that he (**Mr. K.**) would corroborate his (**Mr. G.**'s) statement, that he had not occupied the attention of the Convention during the last three weeks, for the very good reason that he had been present participating in its deliberations but a small portion of that time; and perhaps the notice he had given, that he would not

trouble the Convention again for some three weeks to come, was merely a polite intimation that he was going to be absent during that period. He had only to say that he (Mr. K.) should speak whenever, to discharge the duties he owed his constituents, he felt it to be his duty to speak.

Mr. HENDRICKS moved to amend the resolution by striking out the word "thirty" and inserting the word "twenty."

Mr. BASCOM moved to lay the amendment to the amendment upon the table.

Upon this motion, the yeas and nays were called for, and being ordered, the Secretary reported the following result—yeas 48, nays 73:

YEAS.—Messrs. Bascom, Beard, Berry, Bidle, Butler, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Cookerly, Crumbacker, Dobson, Dunn of Perry, Fisher, Gordon, Hamilton, Hardin, Helmer, Hitt, Holman, Kelso, Kendall of White, Kilgore, Kinley, Logan, March, McClelland, McLean, Miller of Gibson, Milroy, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Read of Clark, Ritchey, Schoonover, Smiley, Steele, Todd, Wallace, Walpole, Wolfe, Work, Wunderlich, and Yocum—48.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Beach, Beeson, Blythe, Bourne, Bowers, Bright, Brookbank, Bryant, Carr, Carter, Chapman, Chenoweth, Colfax, Conduit, Crawford, Davis of Madison, Dick, Dunn of Jefferson, Edmonston, Elliott, Farrow, Foley, Foster, Frisbie, Garvin, Graham of Warrick, Gregg, Haddon, Hall, Harbolt, Helm, Hendricks, Hogin, Howe, Huff, Jones, Lockhart, Maguire, Mather, May, Miller of Clinton, Miller of Fulton, Mooney, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Shannon, Sherrod, Sims, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Taylor, Thomas, Thornton, Wiley, Zenor, and Mr. President—73.

So the amendment to the amendment was not laid upon the table.

Mr. STEVENSON moved to lay the amendment and the amendment to the amendment on the table.

Upon this question a division was asked for, and by ayes 47, noes 48, it was decided in the negative.

So the amendment and the amendment to the amendment were not laid upon the table.

Mr. WALPOLE said that he had taken particular notice of the vote to lay these propositions upon the table, and he had observed that those who voted for it were the speaking men of the Convention, such as Mr. Owen, Mr. Pettit, Mr. Niles, Mr. Smith of Ripley, and others. These gentlemen had voted against laying these propositions upon the table, because they knew, whether their votes were registered or not, that they could, through the

medium of their published speeches—at an expense of some twenty or thirty thousand dollars to the State—inform their constituents of the positions they occupied upon the different questions up for consideration. There were some seventy or eighty members who never addressed the Convention; and it was now proposed to deny them the privilege of recording their votes upon important questions, unless they took part in the various debates, which was but seldom the case. He desired, as far as practicable, to make this body a responsible body, and this could not be done if they were to adopt a rule requiring that thirty members were requisite to second a demand for the yeas and nays. He had seen gentlemen of talents and experience, who, upon important questions, had several times demanded the yeas and nays, but, even with a rule requiring but ten members to second the call, could not get a sufficient number to demand them. It was apparent, then, that the evil would be much greater if thirty, instead of ten, was to be the number requisite to order the yeas and nays. Thirty would do for men who came there to blow their own trumpets, and to speak to the people through the medium of newspapers, but such an arrangement would defeat the object of the silent yet attentive and laboring men of the Convention, who desired to see their votes go forth to their constituents on important questions.

He could always make his own course manifest, as he believed, when occasion required it; he could, at any rate, make his positions understood; but there were gentlemen present who were naturally diffident, and who did not wish to engage in swelling the unnecessary discussions that were often entered into upon subjects, but desired simply to record their votes in regard to them, inasmuch as they were engaged in framing what was probably to remain the organic law of the land for ages.

As to the argument of gentlemen that they could have the yeas and nays always taken upon the third reading of a bill when it was upon its final passage—that was of no weight whatever. There were scores of important amendments submitted before the final passage of propositions that upon which gentlemen desired to record their votes. The number of ten had been decided upon as a compromise, when this rule fixing the number necessary to demand the yeas and nays was before the committee on rules for decision; and he was in favor of adhering to it—especially as questions yet to come up would be still more important than those that had been passed by. He much preferred for one to have the right of recording his vote upon propositions, than to have the right of speaking upon them, and he believed this was the opinion of the people.

Mr. RITCHEY said he hoped the Convention would not adopt the proposition before

them. The people had a right to know the votes of their representatives in this body, upon every question that came up for their consideration. For one, as a member, he felt bound to record his vote, as far as was practicable, upon every proposition of any importance that arose. If gentlemen favored this proposition of requiring thirty members to call the yeas and nays, on the score of the economy of time, he had only to inform these gentlemen they would most likely be disappointed in their expectations, for he would assist every man who desired the yeas and nays with twenty-nine others in calling the yeas and nays. He had heretofore not done so unless the question was one of general importance; but if the number was to be fixed at thirty he would obligate himself to do what he could to get thirty men to call the yeas and nays upon every question that members should feel themselves justified in calling for them. He would move that the resolution and amendment be indefinitely postponed.

The question being upon the indefinite postponement of the resolution and pending amendment,

Mr. MATHER remarked that the gentleman from Hancock (Mr. Walpole) had given the Convention a brief list of the speaking members in that body. For himself he considered it a compliment that he had not been included within that number, though he should not have taken it otherwise if he had, for he did not think that he was chargeable with occupying much of the attention of the Convention in debate. He felt anxious to get along with the business before them as speedily as possible, at the same time having a due regard to the discharge of the duties they were sent there to perform. This it was that had influenced him to vote against laying this proposition on the table, and the reason why he should vote for its adoption.

Who, he would ask, was it that called for the yeas and nays the most frequently; was it not the speaking members themselves? Certainly it was; and what was the object in view. These very gentlemen who were called the speaking members of the Convention, and who demanded the yeas and nays most frequently, desired to have them because they had not confidence enough in the people to believe that they would trust their statements of their votes without the printed record to prove the truth of them. For one he needed no such evidence among his constituents. He had no fears, if he was asked how he had voted, as to how he should make that vote evident. If there was any doubt about it he had no question but that he could find Honorable gentlemen on that floor who would recollect his vote, and if he could not he was willing to take the consequences of it.

Mr. DOBSON said if gentlemen would examine the law authorizing this Convention, and

the duties prescribed to it under that law, they would not cavil so long over the subject under consideration. Among other duties laid down in that law it would be found in the eleventh section:

"It shall possess the same power to adopt rules, expel a member for disorderly conduct, and punish contempt that are now exercised by either House of the General Assembly in similar cases."

Thus the Convention was to have the same power to adopt rules that the Legislature had. Now, one of the rules in the Legislature was that any two members had the right to call the yeas and nays; and he believed it was the design of the Legislature that the Convention should conform to that rule. It was also prescribed in section fourteen that

"The roll containing the draught of the amended Constitution adopted by said Convention, and the proceedings of said Convention, shall be deposited in the office of the Secretary of State."

Now, not only were they bound to prepare their journal, but their proceedings also, to be deposited in the office of the Secretary of State. Now he would ask gentlemen if they were going to suppress that which was a necessary part of their proceedings. The Legislature had entrusted them with certain powers to use, and those powers they should exercise and carry out to their full extent, but they were not to go beyond their original scope.

The law authorizing the publication of their journal, votes, and debates, had been approved by the people, and now were they going to suppress the very gist of the matter, the votes of the members, even in a limited degree, when the people wished to see them, and had a right to see them? If the people, as he had already shown, had authorized the publication of their entire proceedings he did not think members of the Convention should complain of it, as it was a duty prescribed at their hands by the people. He would ask gentlemen if they were not willing to give this information to the people if they asked for it at their own expense?

He would remark in reference to the speaking members who had been alluded to, that they were not the best to stand fire when they came to voting, having placed themselves right upon the journal of debates, but not always so upon the register of their votes. Some gentlemen who would advocate publicly a question a short time previous to action upon it, would turn round and vote directly the other way when the question came up for final decision, and he wished the people to know this fact.

Mr. CRUMBACKER said, he did not think there would be any saving of time in the transaction of the business of the Convention, by the adoption of the proposition before them. This would be apparent from the fact that there

were some eighty members of the body who were not in the habit of speaking; and if the Convention saw fit to deprive them of the privilege of recording their votes upon questions that come up for consideration, they would certainly take their time to express in the Convention their sentiments in regard to these subjects. There would be no time saved by the adoption of the proposition; for there were subjects constantly arising, upon which they would desire to set themselves right before their constituents, and they would speak if they could not vote. He was opposed, therefore, to the adoption of the amendment to the rules.

Pending the question,

On motion Mr. CRUMBACKER,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the resolution of the gentleman from Crawford (Mr. Pepper), to amend the 14th rule of the Convention, so as to require thirty members to call the yeas and nays; with an amendment moved by Mr. Hendricks, to strike out "thirty," and insert "twenty."

The pending question being on the indefinite postponement of the resolution and amendment,

Mr. HOLMAN. I hope that, for the reasons already given in a very satisfactory manner, by the gentleman from Hancock, as well as for another reason, which, I have no doubt, has struck the mind of every gentleman here, that the motion for the indefinite postponement of this matter will be adopted. I have not, I believe, with only two exceptions, occupied the attention of the Convention for more than half an hour at any one time. I have been content to record my vote, and to let that vote express my sentiments. If, however, a rule of this kind should be adopted; if thirty, or even twenty members should be required to call the yeas and nays upon important questions, for one, I have no hope that they ever will be called. I should have no reasonable expectation of having an opportunity of recording my opinions in that way; and I should be obliged, therefore, to express my opinions in words. And I will venture to say, that the additional number of speeches that will be made on this floor, for the purpose of enabling gentlemen to place themselves right upon the record, will occupy twice the length of time that would be required to take the yeas and nays. The taking of the yeas and nays occupies about six minutes. I have watched the clock several times, while they were being called. I believe that more time has been consumed in efforts to change our rules, than in any other way. I hope that the rule will remain unchanged.

Mr. SMITH of Ripley. I would like to say another word or two, Mr. President, and yet I exceedingly regret to trouble the Convention.

The gentleman who has just taken his seat, has not occupied a great portion of the time of the Convention in speaking; yet, I think he has spoken enough to be placed in the category of the gentleman from Hancock (Mr. Walpole). He has spoken a little upon some subjects. But, sir, let us pay attention to his meaning for a moment. He wishes to place himself right on the record, and he tells us that if the yeas and nays had not been called, he would not, perhaps, have troubled the Convention with any remarks. Let us inquire, however, what will be the operation of this rule upon a majority of the speakers here. The yeas and nays are called; and I appeal to the Convention, if gentlemen do not rise and speak, simply because the yeas and nays are called, in order that their remarks may accompany and explain the reason of their votes. Sir, that is, perhaps, the most fruitful source of all the speaking which we have in this Convention. When the yeas and nays are not called, a man does not rise up and inflict upon the Convention a speech in explanation of his position, but he gives his vote in silence.

Now, sir, a word in regard to the argument made by the gentleman from Hancock (Mr. Walpole); and which, I believe, has been regarded as the premium argument in this discussion. What was it? He turns round and says to the non-speaking members: "It is your right, gentlemen, to record your votes here. You are not here to speak, but to vote." Another remark in regard to that, is this—that those non-speaking members are those who make no propositions here; and if they were not called out to give effect and potency to the resolutions which are offered by gentlemen who do speak, they would always be right of record. ["Consent."] Yes, sir, when they were merely called upon to vote upon a proposition that had passed to a third reading, they would be right of record. But the gentlemen who are speaking members, and who make propositions for Buncombe alone, are the men who want to show the country that they got a strong vote upon this or that proposition, and they call upon the non-speaking members, for the purpose of obtaining their endorsement to their speeches. Sir, that is the true position in regard to the matter. The gentleman from Hancock (Mr. Walpole)—from Dearborn (Mr. Helman)—and from Switzerland (Mr. Kelso), are all speaking and long speaking members, and the movers of as many propositions as any gentleman in this Convention. They would feel great mortification at being voted down unceremoniously—to avoid this, they call the yeas and noes. Sir, it is the speaking members that make propositions, do the speaking, and perpetually call the yeas and noes. I hope the appeal of the gentleman from Hancock, (Mr. Walpole,) will be lost upon the members of this Convention, whom it is calculated to deceive and mislead.

Now, the gentleman (Mr. Walpole) called

attention to a proposition offered by himself. What was it! He came in and offered a proposition to disfranchise the Presidents and Directors of banks, railroads, &c.; and how did the Convention treat it? It was offered without the yeas and nays, and it was immediately voted down. But he was not content with that, and he got it re-considered, and he got the yeas and nays ordered, and what were the proceedings? Why, sir, that every man must be heard, and we have, consequently, had a great number of speeches upon this floor, upon it, occupying one day fully; and, after all these speeches, the Convention voted it down by a more decided majority than they did without the yeas and nays. This is the true history of that subject. Now, suppose that we are sensible men—and I don't know whether the supposition is a plausible one—(A VOICE—"not at all plausible;")—but if we are not sensible men, we should be—does not every gentleman know here, that when a plausible proposition is drawn up by those men who are skilled in such business—propositions which are designed only to make a show upon the journal—does not every sensible man of this Convention know that if you do not call for the yeas and nays, the proposition is voted down immediately? but that, when you call the yeas and nays upon it, men will be heard, and upon the yeas and nays, will get up a long and interminable debate? Certainly this is the case.

Now what was the argument of the gentleman from Johnson? Pay attention to it. He said he had been opposed to calling for the yeas and nays, but that if gentlemen adopted the proposition now before the Convention, he would enter into a conspiracy with thirty men to call and order the yeas and nays at any time right or wrong. That was his argument if I apprehended the gentleman aright.

Mr. RITCHEY. Then the gentleman misapprehended me. I said I had been opposed to calling the yeas and nays on many occasions when they were demanded, although I had not joined in the call; and that if this resolution were passed, gentlemen would enter into a conspiracy of that kind, so as to have the yeas and nays whenever any one of them required them.

Mr. SMITH. Well, sir, I think such a conspiracy would not be right, and that gentlemen ought to be governed by right and reason in the matter.

Now I will pay my respects for a moment, to my friend on the other side of the Hall, the gentleman from Switzerland. He said that if he was like the gentleman from Ripley, he would be found voting in favor of a principle one day, and against it the next.

Mr. KELSO (interposing). I beg the gentleman's pardon. I said I would be very sorry to be like the gentleman of Ripley. [Laughter.]

Mr. SMITH. Did he not say that the gentleman from Ripley had voted the other day—

how? Why for the proposition that a majority of all the members of the Legislature should be required to pass any law. Yes, sir, I did vote so. But, sir, the gentleman from Switzerland says that the gentleman from Ripley on the very next day, voted against a similar rule in regard to this Convention. Well, sir, I did so. But what did he do? He voted that a majority of the whole should be required to pass any section in the Convention, while he was against a majority of the whole being required to do the same thing in the Legislature. Let us look at the reason for a moment. I voted that a majority of the Legislature should be required to pass any act, and I know that I voted right; I voted by the correct rule of reason; and why? We were notifying the world and the State by our action, that if a member should come to the Legislature, that was the Constitutional rule. And let us look at another good reason for it. It would notify my friend from Switzerland, and others like him, that when he came here, he would have to stay here, and not devote one-third of his time to professional business in the county from which he came.

Now look at the other side of the rule. The gentleman from Switzerland votes that a majority of the whole shall be required to pass any proposition in the Convention after the action of the Convention is half exhausted. No such notice was given to the Convention, and a universal leave has been given members to go home and stay there; and then my friend in the absence of a great many members of this body, proposes that it shall require a majority of the whole number to pass any measure. I would like to hear the gentleman explain his reasoning as well as I have done. Mr. President, if there is to be a conspiracy upon this floor, to demand the yeas and nays on the most unimportant matters, I am willing that the rule should stand as it is. But I say if we adopt the rule, and act as sensible men, with the view of bringing the Convention to a seasonable close, I think we should do right. Should we adopt it, and act in a spirit calculated to accommodate ourselves to each others views, we shall bring this convention to a close at least two weeks sooner under the rule proposed, than under that rule which now governs us in this matter. [Cries of "question, question."]

Mr. CLARK of Tippecanoe. A little while ago, Mr. President, when a proposition was made to lay this motion on the table, the gentleman from Ripley in order to hold us to the responsibility of a vote, called for the yeas and nays on the motion. Now I should like to know whether we are to take his speeches, or his acts, as indications of his true sentiments. [Laughter and applause.]

Mr. SMITH (interposing). Surely there was no impropriety in calling the yeas and nays. But if thirty gentleman differed with me I would give it up.

Mr. CLARKE. I quite agree with the gentleman in his last remark, that there is no impropriety in calling for the yeas and nays. I am for the rule as it is. We have heard much objection against the Legislatures of past years, because they have Legislated without responsibility. We pass divers rules, so as to make Legislatures responsible to their constituents. Now do we want to escape the responsibility to our constituents? No, sir, I would rather diminish the number required for calling the yeas and nays, for I wish every gentleman to have the firmness to state his opinion when the yeas and nays are called. Sir, I see no reason why members of this Convention should not be held to a strict responsibility to their constituents. No man who assumes to be a statesman, ought ever to take a false position; but ought at all times, to take such a one as he is not ashamed to vote for. Now divers questions come up in the shape of amendments; and on the engrossment of importance, as well as on the final passage of the section itself. I want the opportunity of showing my constituents how I voted, because I cannot always explain to them that the yeas and nays could not be taken. I think it ought to be the privilege of every member, to record his vote on important questions, in order that he may show his constituents how he voted.

Mr. STEELE. Some days ago I had occasion to remark, that the only way to get along with the business of the Convention, was for each gentleman to endeavor to regulate his own mind. Let the gentleman from Ripley, (Mr. Smith), who has consumed so much time in making speeches, confine himself to the point in hand, and not run all over the world. [Applause.] Sir, if ever a Buncombe speech has been made in this house, the gentleman who was last up has just made one. It is an old adage, and a good one, that "Murderers are always afraid of ghosts;" and those very gentlemen are the men who have murdered time here, and who still come up and ask you to spend more time, by adopting the general rule offered by the gentleman from Crawford, (Mr. Pepper); for with that rule it will not unfrequently take from half an hour to three quarters, to get a vote spread upon the Journal. It will procrastinate, rather than advance, the interest of the State, and the progress of business in the Convention. ["Consent."] Yes, sir, it is true, and I am in the habit of giving you the truth. ["Consent."] I use plain language, that cannot be misunderstood, when I say, that in order to progress with public business, gentlemen must learn to govern themselves. Let them look to natural rules, and to my example. [Applause.] This is the kind of preaching we want in this audience; and when men like my friend from Ripley, who consumes so much time in making long speeches, will forbear to make them—speeches long enough to cover the whole ground

from the Atlantic to the Pacific—we will get along much better. [Laughter, and "hear, hear."] I hope that the motion of the gentleman from Crawford will be indefinitely postponed, and I have one reason to offer that gentleman, why I hope so—because the very man who offered it, was the first man to rise in his seat and demand the yeas and nays on the motion to lay the question on the table. Yes, sir, he sprung like a steel trap, and demanded the yeas and nays. I hope that gentlemen will excuse me for what I have said. I am now through, and I hope the motion for the indefinite postponement will prevail.

Mr. MILROY moved the previous question, which was sustained.

Mr. WALPOLE. Mr. President, what is the question?

The PRESIDENT. The question is upon striking out thirty and inserting twenty.

The yeas and nays being demanded and ordered, were taken, and resulted as follows:

YEAS.—Messrs. Anthony, Badger, Ballingall, Beach, Beard, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carter, Chapman, Chenoweth, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Fisher, Foley, Foster, Garvin, Gordon, Graham of Warwick, Gregg, Haddon, Hall, Hardin, Helm, Helmer, Hendricks, Hoggins, Howe, Huff, Johnson, Jones, Kinley, Lockhart, Maguire, Mather, Miller of Fulton, Milroy, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Thomas, Thornton, Watts, Wiley, Wunderlich, Yocum, Zenor, Mr. President—76.

NAYS.—Messrs. Alexander, Bascom, Beeson, Borden, Chandler, Clark of Hamilton, Crumbacker, Dunn of Perry, Edmonston, Elliott, Farrow, Frisbie, Harbolt, Hitt, Holman, Kelso, Kendall of White, Logan, March, May, McClelland, McLean, Miller of Clinton, Miller of Gibson, Morrison of Washington, Mowrer, Nofsinger, Pepper of Ohio, Ritchey, Schoonover, Smiley, Steele, Stevenson, Tannehill, Todd, Trimble, Walpole, Wolfe, Work—39.

So the amendment was adopted.

The question then recurred on adopting the resolution as amended, and the yeas and nays being demanded, ordered, and taken, resulted as follows:

YEAS.—Messrs. Anthony, Badger, Beach, Blythe, Bourne, Bryant, Carter, Chapman, Colfax, Conduit, Davis of Madison, Dick, Dunn of Jefferson, Edmonston, Elliott, Farrow, Foster, Frisbie, Garvin, Graham of Warwick, Hall, Helm, Hendricks, Howe, Maguire, Mather, Miller of Clinton, Miller of Fulton, Mooney, Morrison of Marion, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Monroe, Shannon, Sherrod, Shoup,

Sims, Snook, Smith of Ripley, Stevenson, Thomas, Thornton, Watts, Wiley, Mr. President—51.

NAYS.—Messrs. Alexander, Ballingall, Bascom, Beard Beeson, Borden, Bowers, Bracken, Butler, Chandler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Perry, Fisher, Foley, Gordon, Gregg, Haddon, Harbolt, Hardin, Helmer, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of White, Kinley, Lockhart, Logan, March, May, McClelland, McLean, Miller of Gibson, Milroy, Morgan, Morrison of Washington, Mowrer, Nofsinger, Pepper of Ohio, Read of Clark, Ritchey, Schoonover, Smiley, Smith of Scott, Steele, Tannehill, Todd, Trimble, Walpole, Wolfe, Work, Wunderlich, Yocum Zenor—65.

So the resolution was not adopted.

ORDERS OF THE DAY.

The **PRESIDENT**. The Convention will now proceed to the consideration of the orders of the day, the question being on the final passage of Sections from 23 to 28, inclusive of report No. 12. The first question is, will the Convention adopt them separately, or together?

The Convention decided on the separate adoption of the Sections.

Section twenty-third was then read, and the yeas and nays being ordered on its passage, it was adopted by the following vote:

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Berry, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bryant, Butler, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Friable, Garvin, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kendall of White, Kinley, Lockhart, Logan, Maguire, Mather, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—109.

NAYS.—Howe, Kelso, March, and Murray—4.

The question then being on the adoption of section twenty-four,

Mr. DOBSON proposed that it should be re-committed, with the following instructions:—
“That Senators and Representatives shall no

be eligible to any other office during the term for which they were elected.” His object, he said, was this: he believed that one man should fill but one office at a time; that when a man undertook to perform one piece of business, he should complete that before he undertook to perform another. He wanted the Constitution to be plain in regard to that matter.

Mr. BORDEN. The Convention yesterday adopted a section which I offered, and which I think will answer the object of the gentleman from Owen.

Mr. DOBSON. Was that section adopted?

The **PRESIDENT**. The provision offered by the gentleman from Allen, was attached to another section.

Mr. DOBSON. If the other section passed, then there is no use for this twenty-fourth section at all.

Mr. HOLMAN. I think the Convention will perceive, in a moment, that the section offered by the gentleman from Allen (Mr. Borden) yesterday, and the amendment contemplated by the gentleman from Owen, (Mr. Dobson,) are entirely different things. The one provides that no person who may be elected to either branch of the Legislature shall be eligible to hold any other office during the term for which he may have been elected. The proposition of the gentleman from Allen is of a different character, namely: that he shall not be eligible to any office the appointment to which is vested in the Legislature. It will be recollected that we do not intend to confer upon the Legislature the power of appointing. There may possibly be two or three offices the appointment to which will be vested in the Legislature, but the great body of them are to be filled by election, by the people. Thus it will be seen that the provision of the gentleman from Allen applies to but one, two, or three cases at the farthest. The proposition of the gentleman from Owen, on the other hand, proposes the establishment of a great principle. The proposition is just such an one as is laid down in reference to the office of Governor; that no man shall be eligible to an office during the term of the office for which he may then be elected. It will be observed that the section, as it now stands, is extremely defective, when considered in reference to the plan proposed by the gentleman from Owen (Mr. Dobson). The present section provides that Senators or Representatives shall not be appointed to any civil office of profit under the State, which shall have been created or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections of the people.

Now, in the first place, I take it for granted that there will be a constitutional provision prohibiting the Legislature from creating any new office. I suppose there is no doubt whatever that this will be done. That being so, then, as

a matter of course, this section amounts to nothing at all. It is saying, in effect, that in every case Senators or Representatives may be eligible to office during the term of his present office. I hold that a due regard for the public service, and even for the sanctity of the ballot box, requires that men should not be allowed to exercise the influence and power of one office, during its term, for the purpose of advancing their prospects for another. My object is this: there may be a question whether we can change the present mode of electing a Senator of the United States, and inasmuch as this principle can be established in reference to all other offices, without exception, I propose that we leave it just as it is; and when it is remembered that a general rule is to be established prohibiting men from obtaining one office while they are in the occupation of another, there will be no prospect hereafter of the Legislature electing by legislation any man holding an office under the United States. I would, therefore, propose the following amendment to the instructions:

"No senator or representative shall, during the term for which he shall have been elected, be appointed or elected to any civil office of profit under the State."

Now before I submit that proposition to the Convention, I wish to call attention to report No. 17, sec. 3, in which it will be found that the following section is reported:

"The Governor shall be ineligible to any other office during the term for which he may be elected."

I suppose that provision will be adopted by the Convention. We ought to treat the members of the General Assembly in the same way, and I would even go so far as to run down this matter to the county officers if possible, so as to cut off many fruitful sources of corruption.

Mr. MURRAY. The object of this amendment appears to be to prevent a man from holding any office to which he may be elected, even if he should resign the one that he may then be holding at the period of his election. Contending that persons who hold offices under banking institutions should be excluded from serving as representatives of the people, it occurs to me that when internal improvements become common, as they soon will be all over the State, the people will feel themselves called upon to invest their capital in them. Being thus interested they will require persons to see to their interests in the Legislature; and it seems to me that there are many ways in which influences of an improper character might be used over and above the influences that may be exercised by the officers themselves. Every member would suspect an officer the moment he rose in his place to defend his cause. Jealousies would spring up in the minds of members; and it occurs to me that generally speaking they would effect their object much better by endeavoring

to obtain the aid of some disinterested person to represent their views. If we are to suppose that bank officers are all liable to corruption, we must also suppose that officers of every other institution have the same liability. It seems to me, however, manifestly absurd that a man should not be permitted to resign an office and to hold another one if the people choose to confer it upon him.

The question was then taken on Mr. Holman's amendment to the instructions of Mr. Owen, and it was rejected.

The question then recurred on the motion to re-commit with instructions, and it was rejected.

Mr. RARIDEN. I propose to amend the section by striking out all the words which create a disability upon the members of the General Assembly from being elected or appointed to any other office during the term for which they were elected as members of the General Assembly. I do not wish to occupy the time of the Convention to simply to test the wishes of the Convention on this question.

The question was then taken on the amendment, and it was rejected.

Mr. HOLMAN moved to recommit the section with instructions to insert the words "or elected" after the word "appointed" in the 108 line, and to strike out all after the word State in the 109 line. He said he did not wish to discuss this question, as a vote had already been taken which indicated the feeling of the Convention to be that the subject was not one of very much moment. His opinion, however, was that it was a question of vast moment, and if he could obtain nine members to aid him in a call for the yeas and nays he should like to have them.

Mr. SHOUP said he thought the Convention had had talk enough on that question, and he would therefore move the previous question.

The previous question was sustained, and the main question being ordered to be now put, the yeas and nays were demanded, and ordered on the motion to re-commit the section with the instructions offered by Mr. Holman, and were taken with the following result:

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Beard, Borden, Bourne, Bowers, Carter, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Perry, Elliott, Foley, Graham of Warrick, Hall, Hamilton, Hendricks, Hitt, Holman, Johnson, Jones, Kendall of White, Kinley, March, Mather, McLean, Miller of Fulton, Milroy, Mowrer, Murray, Niles, Read of Clark, Shannon, Sherrod, Sims, Smiley, Snook, Stevenson, Trimby, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, and Yocum—50.

NAYS.—Messrs. Bascom, Beach, Beeson, Berry, Biddle, Blythe, Cracken, Butler, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Davis of

Madison, Dick, Dunn of Jefferson, Edmonston, Foster, Frisbie, Garvin, Gordon, Gregg, Haddon, Harbolt, Hardin, Helm, Helmer, Hogin, Hovey, Howe, Huff, Kelso, Lockhart, Logan, Maguire, May, McClelland, Miller of Clinton, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Smith of Ripley, Smith of Scott, Steele, Thomas, Thornton, Todd, Wiley, Zenor, and Mr. President—68.

So the motion to re-commit the section did not prevail.

The question then recurring on the adoption of the section, it was adopted as originally reported by the committee. The following is the vote:

YEAS.—Messrs. Alexander, Anthony, Badger, Balingall, Bascom, Beach, Beard, Beeson, Berry, Biddle, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carter, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dick, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Garvin, Gordon, Gregg, Haddon, Hall, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Johnson, Jones, Kendall of White, Kinley, Lockhart, Logan, Maguire, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Trimby, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—109.

NAYS.—Messrs. Dobson, Dunn of Perry, Foley, Graham of Warrick, Holman, Howe, Kelso, and March—8.

THE PRESIDENT. The question now is on the adoption of section 25, and the chair would suggest to the Convention the propriety of dispensing with the yeas and nays on each section separately, as their merits have been copiously discussed. A great saving of time to the Convention as well as of cost to the State, would thus be effected.

MR. READ, of Clark, moved to dispense with the rule.

MR. WALPOLE. I object. If we dispense with the rule in this case, we may in every other.

The question then being taken on the motion of Mr. Read, to dispense with the rule, it was decided in the affirmative.

THE PRESIDENT. The question now is on the passage of the section.

MR. STEPHENSON said he would direct the attention of the Convention to the words in the 115 line, "as by law of this State required." The object of the section was to prevent defaulting collectors and holders of the public money from being eligible to a seat in the General Assembly. But from these words, it was made to depend upon an act of the legislature, when it must be obvious to every gentleman, that the section was perfect without these words. [Consent.]

MR. CLARKE, of Tippecanoe, said that the reason why those words were inserted, was to exclude defaulters to the general government, and to confine the provisions of this section to defaulters in this State. That might be a good reason or a bad one, but that was the view with which the words were inserted.

The question being taken, the motion to strike out the words was rejected.

The question then recurring on the adoption of the section, it was decided in the affirmative.

THE PRESIDENT. The next question is on section 26.

The section provides that the president, directors, &c., of banks and corporations shall be ineligible to a seat in either branch of the General Assembly.

MR. SHERROD moved to recommit the section with instructions to amend it so as to include the keepers of Faro Banks and all persons engaged in gambling operations.

MR. KELSO said he did not think hard of any gentleman for offering instructions. There was no doubt that a great many gentlemen were of opinion that whatever instructions they thought were right they should have them acted upon, and there was still less doubt that whatever gentlemen were most acquainted with they were most apt to propose. [Laughter and applause.]

MR. SHERROD. I did not intend to hurt the feelings of the gentleman from Switzerland—

MR. KELSO (interposing). I can assure the gentleman from Orange that he did not do anything of the kind.

MR. SHERROD (continuing). But, sir, there appears to be a feeling that no man connected with a bank, or with any corporation whatever, can be an honest man. Then, sir, if that is so—if it is true that men connected with these corporations are dishonest, let them be all put in the same class. ["Consent, consent."] That is the doctrine that I maintain. If you prohibit the one, because he is dishonest, why not prohibit the gambler? [Great applause.]

MR. MATHER moved to lay the motion to re-commit on the table.

MR. SHERROD demanded the yeas and nays.

MR. HENDRICKS inquired whether the motion to lay the instructions on the table carried the section with it?

THE PRESIDENT. That is the rule. The

section will be laid upon the table if the motion to lay the instructions on the table should prevail.

The yeas and nays were ordered and taken, and resulted as follows:

YEAS—Messrs. Anthony, Badger, Ballingall, Beach, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dick, Dunn of Jefferson, Farrow, Frisbie, Graham of Warrick, Gregg, Haddon, Hall, Helm, Hitt, Hovey, Howe, Huff, Kendall of White, Kinley, Lockhart, Logan, Maguire, Mather, May, Miller of Clinton, Miller of Fulton, Milroy, Morgan, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Read of Monroe, Sherrod, Shoup, Snook, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Wiley, Wolfe, Zenor, and Mr. President—65.

NAYS—Messrs. Alexander, Bascom, Beard, Beeson, Berry, Biddle, Borden, Carter, Chandler, Chenowith, Coats, Cole, Dobson, Dunn of Perry, Edmonston, Elliott, Foley, Foster, Gordon, Hardin, Helmer, Hendricks, Hogin, Holman, Johnson, Jones, Kelso, March, McClelland, McLean, Miller of Gibson, Mooney, Morrison of Marion, Morrison of Washington, Nofsinger, Prather, Rariden, Read of Clark, Ritchey, Schoonover, Shannon, Sims, Smiley, Smith of Ripley, Smith of Scott, Trimble, Walpole, Watts, Work, Wunderlich, and Yocum—52.

So the section and instructions were laid upon the table.

The next question was on the adoption of section 27, which was passed by consent.

The next question was on the adoption of section 28.

MR. GRAHAM moved to re-commit the section, with the following instructions:

“No member of either branch of the General Assembly, shall be eligible to any other office in this State, during the term for which he has been elected.”

MR. GRAHAM demanded the yeas and nays, which were ordered, and taken, and resulted as follows:

YEAS—Messrs. Alexander, Anthony, Badger, Balingall, Bascom, Beard, Beeson, Carter, Colfax, Crumbacker, Dobson, Dunn of Perry, Elliott, Foley, Frisbie, Graham of Warrick, Hall, Hamilton, Hendricks, Holman, Johnson, Jones, Kendall of White, March, Mather, McClelland, Miller of Fulton, Milroy, Nave, Owen, Ritchey, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Trimble, Walpole, Watts, Wolfe, and Yocum—41.

NAYS—Messrs. Beach, Berry, Biddle, Blythe, Borden, Bourne, Bracken, Bryant, Butler, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Conduit, Cookerly, Crawford, Davis of Madison, Dick, Dunn of Jefferson, Edmonston, Farrow, Fisher,

Foster, Garvin, Gordon, Gregg, Haddon, Hardin, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Kelso, Kilgore, Kinley, Lockhart, Logan, Maguire, May, McLean, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Murray, Newman, Niles, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Snook, Smith of Scott, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Wiley, Work, Wunderlich, Zenor and Mr. President—75.

So the section was not re-committed.

The next question was on the adoption of the 29th section.

The section was adopted.

And then, on motion,

The Convention adjourned.

FRIDAY DEC. 20, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BADGER.

The journal of yesterday was read and approved.

There being no reports to be made from committees, the Convention proceeded to the standing orders of the day.

DISTRICTS.

The first thing in order being the section, upon its third reading, which provides that Senatorial and Representative districts shall be composed of contiguous counties, and that no county, for Representative purposes, shall be divided.

MR. STEVENSON moved to re-commit the section, with instructions to strike out the words “and no county, for Representative purposes, shall ever be divided.”

I was very anxious at one time, said Mr. S., that the Convention should adopt a section requiring the Legislature to divide the large counties; but upon this question, I am satisfied the Convention has come to an adverse decision. It appears that they are determined not to do it. But I think it is going too far to declare, in the new Constitution, that the Legislature shall not hereafter divide the large counties. I think the question should be left open, so that the Legislature may be at liberty to do as they think best hereafter.

The question being on the motion to re-commit, with instructions,

MR. STEVENSON demanded the yeas and nays, and they were ordered.

MR. BORDEN said, it appeared to him that although a majority of the Convention might be of the opinion that it was impolitic to divide the counties, still the question should be left open, so that if the Legislature should deem it proper to divide them hereafter, it might be done. He thought there could be no harm in leaving it to the discretion of the Legislature;

at all events, it would be decidedly wrong to insert a positive prohibition, in the Constitution, because they could not now properly determine what might be necessary to be done hereafter, in regard to this matter.

Mr. BRIGHT. In justice to myself, let me say to the Convention, that this question of dividing counties in representative districts, was directly referred to the committee, under a resolution proposed by the gentleman from Putnam, and the committee determined that no county should be divided for representative purposes. This was done, not at my suggestion, but it resulted from the suggestion of the gentleman from Putnam, (Mr. Stevenson.)

Sir, a great deal may be said on both sides. There are reasons why counties should be divided, and there are many reasons why they should not. If we would consult convenience in this matter, we would not make minute divisions for representative purposes. The extent of territory embraced within the limits of a county is small enough. The inconvenience of dividing them into small districts, is a strong argument against it. These are the considerations that weighed with the committee, and it was on account of them, that the committee decided to report the section as it stands.

Mr. WALPOLE. My known hostility to corporations, and the influence they exert upon legislation, requires that I should say a few words upon this question. I regard it as one of the most important questions that can be addressed to the consideration of the Convention. It is a question whether the agricultural interests of the country shall be swallowed up by the commercial interests. That it has been, and is so, is unquestionably true. What is the case in this Convention? Madison sends three delegates, not one of which represents the agricultural interests. Indianapolis, or the county of Marion, has four. Terre Haute three, Fort Wayne two, not one of them representing the agricultural interests.

Mr. COOKERLY. I beg leave to correct the gentleman.

Mr. WALPOLE. Does the gentleman not live in Terre Haute?

Mr. COOKERLY. No, sir, I live a mile and a half from the town, in the midst of an agricultural community.

Mr. WALPOLE. No matter. How is it with the other commercial points in the State? There are three delegates from Laporte, Evansville and Vanderburgh county send three, all representing the commercial interests, and after your districting system shall have been adopted, you will have other representatives from those commercial towns, and your free banking system will tend still farther to increase the number of those representatives; and, sir, they will hold in their hands the destinies of the State. Their energies will be directed to the breaking down of the agricultural interests.

It is to prevent this that I desire to leave the power to the General Assembly so to district the State that each part of it shall be fairly represented. The proposition as it now stands precludes the Legislature from dividing counties for representative purposes. I hope the matter may be left open, that the Legislature may act upon it as the necessities of the State may require.

Mr. MAGUIRE said he was opposed to restricting the Legislature in reference to the districting of the State. That which would be good policy at present might not be good policy for all time to come. He was in favor of the proposition of the gentleman from Putnam, to re-commit the section, with the instructions which he had proposed.

Mr. COOKERLY remarked that the power ought to be left with the Legislature to district the State or not. This the present proposition did. He thought the Convention would be satisfied with it.

The question being upon the re-commitment of the section with instructions.

The yeas and nays were ordered, and being taken were—yeas 67, nays 54—as follows:

YEAS.—Messrs. Anthony, Badger, Bascom, Beach, Biddle, Blythe, Borden, Bourne, Brookbank, Bryant, Butler, Chapman, Chenoweth, Clark of Tippecanoe, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Farrow, Frisbie, Garvin, Gordon, Graham of Warrick, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Huff, Kelso, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, March, Mather, McClelland, Miller of Fulton, Milligan, Milroy, Moore, Murray, Niles, Owen, Pepper of Crawford, Pettit, Sims, Smiley, Smith of Ripley, Smith of Scott, Stevenson, Taylor, Thomas, Thornton, Trimble, Walpole, Watts, and Yocum—67.

NAYS.—Messrs. Ballingall, Barbour, Beard, Beeson, Berry, Bicknell, Bowers, Bracken, Bright, Carr, Carter, Chandel, Clark of Hamilton, Dunn of Perry, Edmonston, Elliott, Fisher, Foley, Foster, Gregg, Haddon, Hitt, Hogin, Holman, Howe, Johnson, Logan, May, McLean, Miller of Gibson, Mooney, Morgan, Nave, Newman, Nofsinger, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Snook, Tannehill, Todd, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—54.

So the section was re-committed.

Mr. DUNN of Perry. Is it in order to move additional instructions.

The PRESIDENT. Certainly the gentleman can offer additional instructions.

Mr. DUNN of Perry. I will move then that the committee be instructed to strike out the section, and substitute a provision that each

county having two-thirds of a representative ratio, shall be entitled to one representative.

The question being on the adoption of the instructions.

The yeas and nays were demanded.

Mr. COOKERLY. I want to get rid of this question; and, sir, I move that the instructions be indefinitely postponed.

Mr. WATTS rose to a question of order. This identical proposition, he said, had been offered and voted down two or three times.

The PRESIDENT remarked that it was in order to offer the same instructions on a different day, and at a different stage of the question; and that it was for the Convention to determine whether they would adopt the instructions or not.

Mr. GRAHAM of Warrick. It is true that this proposition has been before the Convention on three several occasions; and, sir, it was adopted by a vote of the Convention. That vote was subsequently re-considered, and it was then rejected. If there be not a majority, there is at least a very respectable minority in favor of it. It is a proposition that many of us are anxious to see carried out. I think, therefore, the section ought to go to the committee. I hope the motion of the gentleman from Vigo will not be adopted by the Convention. It is not altogether proper to treat the friends of the proposition thus cavalierly.

Mr. COOKERLY withdrew the motion to postpone indefinitely.

Mr. PETTIT said that it seemed to him that the proposition was a very absurd one. It was too late in the day to talk about representation upon such a basis; it was too late a day in the science of government to adopt any such proposition. The representation of acres, and not of persons, was a thing that he could never consent to. The Convention had settled the question as to the ratio of representation, and it would be as well not to undertake to disturb that decision. Representation should be based upon population, and upon nothing else. Those upon whom the laws are to operate should be the basis of representation. Every man in the State should have a voice in making the laws. He was in favor of representation by single districts. He was for dividing counties into small divisions, and giving a representative to each. He was glad that the section had been re-committed.

Mr. BASCOM. If the gentleman from Tippecanoe will allow votes to be given on this floor according to his own criterion, he will allow me three votes to his one. The gentleman talks about representation resting upon a fair and just ratio. If he will examine the representation here, he will find that I represent double the number of voters that he does.

We ask it as a matter of right, that the smaller counties shall have a separate representation. We have been swallowed up long

enough by the large counties. I ask an equal voice for my county according to her population. If you give us a representative for a two-thirds ratio, we ask nothing more; but so long as you attach us to another county, and take double population to make a ratio, we have reason to complain that injustice is done to us.

Sir, the northern part of the State has not half the voice she ought to have. The evil has been justly complained of by the smaller counties, and I hope that we shall be able to obtain redress. The smaller counties have as deep and as abiding an interest in the welfare of the State as the larger counties; and they ask that their interests shall be looked to, and that equal justice shall be meted out to them. This is all that we ask. If gentlemen give us this, we shall be satisfied. All that we ask is a representation according to the mode proposed by the gentleman from Perry. I hope the gentleman's proposition will be adopted.

Mr. HOVEY. I do not think that the people should be compelled, by a Constitutional provision, to vote in their own townships. It may be a good principle as a *law*, but there is no necessity of embracing any provision of that kind in the amended Constitution. There are hundreds of men, dissatisfied with the township law, who will vote against the Constitution we may frame, if we embrace that provision. I am fearful that we will need all the friends that we can obtain, for the adoption of the amendments we may make, and would warn Delegates not to heat the Constitutional boiler too hot, without leaving open the safety valves, or it may collapse, when it comes to be tested.

Mr. EDMONSTON. This matter has been thoroughly discussed, and I merely rise for the purpose of saying a single word in reply to the argument of the gentleman from Tippecanoe. He maintains that the principle of representing territory and not population, is wrong; and in order to sustain his argument, he shows that the populous counties have all the representation.

Mr. PETTIT. If the gentleman will allow me, I say no such thing. I say, divide up the Counties, and let one Representative come from each Representative District.

Mr. EDMONSTON. It is no matter whether you divide them up, or let them elect by County ballot. The principle is the same. Now I ask whether it is just and right, that those Counties that are populating so fast, that in five years they will have a population equal to five times the Representative ratio, should not have justice done them? If you do not adopt this proposition, a very large portion of their population will be unrepresented. Is it not right, then, in view of the immigration that is pouring into the State, that you should legislate to meet the wants of these people, and not keep the power in the hands of the present populous Counties?—if it is not compatible

with the principles of free government! There is a rush of population to the new Counties—they are taxed equally with the most populous Counties, and are not half represented.

Mr. RITCHEY. I regret the vote that has been taken this morning, to recommit the section with instructions, principally for the reason that if you leave the matter open, you put it in the power of the Legislature, in times of excitement, to gerrymander the State. Sir, it will no doubt be recollected that Ohio, a few years ago, was thrown almost into a state of anarchy by this means.

Now, leave it to the Legislature to decide this matter, and let such a state of excitement prevail, as there was in 1840, and you will leave it in the power of the dominant party to gerrymander the State. I hold that liberty should not be given to either party, to gerrymander the State, in order that party ends may be secured. For that reason, I regret exceedingly, that the section has been recommitted; and I hope that the sober second thought will induce us to keep it in the shape which it now is.

Sir, it is said that there is great inequality in the representation of the State. I admit it. The great north has grown up with unexampled rapidity; but when the census shall have been completed the north will have justice done her, and in the course of five or six years a new apportionment will take place.

I have voted for a similar proposition to that of the gentleman from Perry on two or three different occasions, and I did it in the belief that the principle is right; but I am wearied with the continual applications of the friends of the measure to have it engrafted in this Constitution. The Convention has decided the question two or three times, and I now feel myself under no farther obligation, coming, as as the proposition does, in connection with a proposition so injurious to our system of representation, to support it.

Mr. BARBOUR. I have not risen to discuss the question, but merely to remind gentlemen that the practical operation of this provision will be to give a county of two thousand voters the same representation in the halls of the Legislature, as a county that has three thousand voters. A principle of this kind, should not for a moment be entertained. Why can we not leave the matter to the Legislature? There is no doubt that they will act judiciously in reference to it. Your Constitution, if there were no other objection to it except this, would not be sustained by the people. They desire that there should be an equality of representation.

Mr. DOBSON. From the indications that we have had here a few days ago, I supposed that this principle would have been agreed to. It is true it does not mete out exact justice to all, but gentlemen will remember that it is utterly impossible, without disregarding county lines entirely, to have a fair representation,

based upon population; and I go for *men* being represented, and nothing else. But at the same time I wish to avoid another difficulty; that is, the difficulty of legislating on the subject, and giving to the dominant party too many votes. I say it is impossible to do complete justice, without disregarding county lines. We should then approximate as near as we can to what is correct, and avoid, as far as possible, doing injustice to any portion of the State.

And again, you should keep the large counties from doing injustice to the small, for if you have counties represented in the way in which they have been heretofore, the large counties will have the power, and they will be very apt, like individuals, when they have the power, to act for their own particular benefit.

In relation to the position assumed by the gentleman from Vigo, I will ask him whether if two thousand be the ratio, it is not great injustice to say, that a county containing fifteen hundred voters, shall have no representative, while one having twenty-five hundred shall have two?

For the purpose of obviating this difficulty then, we ought to district the State, and to keep the question out of the Legislature, and say that each county having a certain number of voters should have one representative, and then leave it to the Legislature to dispose of the balance as they please,

How would you get a ratio unless you disregarded county lines? You must have some rule. A county having eighteen or nineteen hundred voters, otherwise would have no representative. You cannot have the exact number in each county. You must do injustice to one county, in one way, or else do injustice to another county, in another way. And I take it, that each average county having a separate interest, ought to have a separate representation in the Legislature. And that representation ought to be equalized. It ought to come from every portion of the State, and be as equally apportioned to each county as possible.

Now this system of transferring floats, or surpluses from one county to another, is there any justice in it? I ask you to look back to the year 1840. Look at the districting that took place in that year. The county that I represent, had for five years, a sufficient number of voters to be entitled to another representative, during all that time, not represented at all. Where did that surplus go to? The gentleman from Hancock recalled it to my recollection this morning by his remarks. It went to the counties of Vigo and Jefferson. Why did it go there? Simply because they had the power to take it. I know no other reason; there was no justice in it.

I would like to have a rule adopted that would be nearer right, if I could get it, but I would rather have this, than none at all, and I say I have no fears for my own counties. Each of

them having a little over an average number of voters or polls, they will each have a representative, and so will each of the larger counties, some of them have two.

The average counties have nothing to fear. But I want justice to be done to all, and in such a way that it cannot be undone by the Legislature. Therefore I hope that those counties having two-thirds of a ratio will have the privilege of sending a representative to the Legislature.

Mr. MAGUIRE. If I were engaged, as a legislator, in making an apportionment of Representatives, I should undoubtedly feel it my duty to give a Representative to such counties as at the time of making the apportionment should contain over two-thirds of the number fixed as the ratio. I think the Legislature has heretofore, and there is no reason to doubt that they will, hereafter, do ample justice to counties thus situated. The provision would not at all affect the county of Marion at the next apportionment, for we have a surplus of several hundred, both for Senators and Representatives. I could not, however, excuse myself for voting to place permanently in the organic law, a provision that two-thirds should be equal to a whole. The true principle, as I suppose, upon which to base representation is population or polls, and we can do nothing rightfully here, but to establish correct general principles, and leave the application to the Legislature. I think there need be no reason to fear that the Legislature, when called upon from time to time, to make an apportionment of Senators and Representatives, will act with liberality towards the small counties. They cannot do otherwise than give a Representative to counties that come nearly up to the ratio. As I said before, I would unhesitatingly carry out the principle of this proposition if I were acting as a legislator and dividing the representation among the counties, but I cannot think it is our duty to go further in the fundamental law than to settle correct general principles. According to the return of polls recently made, there are about fifteen counties, which contain over two-thirds of the ratio for a Representative, and which would, under the two-thirds principle, be entitled to a Representative each. Assuming the number of polls at 187,000 and the number of Representatives at one hundred, and the ratio for a Representative will be 1870. The fifteen counties to which I have referred as having over two-thirds of the ratio, contain in the aggregate 22,643 polls, which is 5,407 less than the full number for fifteen Representatives. This 5,407 polls must of course be thrown upon the 85 remaining Districts, and would raise the ratio in them from 1870 to 1933. Take Wells and Dubois (both of which lack a few votes of two-thirds) into the calculation, and the ratio will be increased to 1966. It may thus be seen that the provision under consideration would but

slightly increase the ratio in the other Districts, and could work but little injury anywhere. I dislike therefore to vote against it, and would not if I did not think it wrong to place such a provision in the Constitution, which if adopted by the people may continue for half a century—and if I did not believe that the Legislature will always do justice to the small counties. I shall add no more. I did not feel at liberty to vote against the proposition without these brief remarks.

Mr. NEWMAN. I have listened to the remarks of gentlemen on this question with some interest. It is true that a fraction of one thousand over the representative ratio will not be entitled to a Representative as I understand the proposed provision, nor would nineteen hundred and ninety-seven over such ratio, if two thousand voters should be adopted as the ratio, whilst this provision gives to a county possessing two-thirds of a Representative ratio—say thirteen hundred and sixty-seven voters—the right to a Representative in the Legislature. This, sir, to my mind, renders this provision manifestly an unjust one—one that ought not to be incorporated in the organic law.

We say by it that two-thirds of the ratio—say thirteen hundred and sixty-seven voters—are entitled to a Representative; but thirty-nine hundred and ninety-seven voters shall not have more than one Representative. It does not provide that a fraction of two-thirds over the representative ratio shall be entitled to a Representative for such fraction, and this to my mind is a provision which should not even be thought of.

It is undoubtedly true that the small counties of the State have an advantage over the larger counties as regards representation. There never has occurred an instance in the apportionment of the representation in which this has not been the case. For example, the county of Wayne, with forty-eight hundred voters, had three Representatives and one Senator; while the county of Marion with fifteen hundred votes is entitled to one Representative. Our county has something like eighteen hundred votes as the fraction over the senatorial ratio, for which we get nothing; and we have a fraction of three or four hundred over the representative ratio. It is manifest that this overplus of strength goes to some other portion of the State; and it must be distributed among the smaller counties somewhere. It does seem to me, then, that gentlemen can safely trust the Legislature to take care of this matter; and with facts of the kind I have mentioned before them, they will be able to settle the question satisfactorily.

Justice has uniformly been done to the small counties, and I think there can be no kind of doubt that that will continue to be the case.

The question was then taken upon the amendment offered by the gentleman from

Posey (Mr. Hovey) to the instructions offered by the gentleman from Perry (Mr. Dunn),

And it was not concurred in.

Mr. BERRY moved to amend the pending instructions by adding the following:

"And any county having one or more Representatives and an excess of two-thirds of a ratio for a Representative over such member, shall have a member for such excess."

Mr. WATTS moved to lay the instructions and amendment on the table.

Mr. BORDEN called for a division of the question.

The PRESIDENT. The question will be first taken upon laying the amendment of the gentleman from Franklin (Mr. Berry) to the instructions offered by the gentleman from Perry (Mr. Dunn) upon the table.

On this question the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 70, nays 52:

AYES.—Messrs Anthony, Badger, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Blythe, Borden, Brookbank, Bryant, Butler, Chenowith, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, &c., Edmonston, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Helmer, Hitt, Hogin, Howe, Huff, Kelso, Kendall of White, Kilgore, Lockhart, March, Mather, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Moore, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Sherrod, Sims, Smiley, Smith of Scott, Steele, Taylor, Todd, Trimby, Walpole, Wolfe, Work, Wunderlich, Yocum, and Mr. President—70.

NAYS.—Messrs. Balingall, Barbour, Berry, Bourne, Bowers, Bracken, Bright, Carr, Carter, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Conduit, Cookerly, Crawford, Dunn of Jefferson, Farrow, Fisher, Foley, Gregg, Harbolt, Hardin, Hawkins, Hendricks, Holman, Hovey, Johnson, Kinley, Logan, May, Mooney, Morgan, Nave, Newman, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Shoup, Snook, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, and Zenor—52.

So the amendment to the instructions was laid upon the table.

The PRESIDENT. The question will now be taken upon laying the instructions offered by the gentleman from Perry (Mr. Dunn) upon the table.

Upon this question the yeas and nays were demanded, and being ordered, were taken with the following result—yeas 62, nays 63:

AYES.—Messrs. Badger, Balingall, Barbour, Beard, Beeson, Berry, Bourne, Bowers, Bracken, Bright, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe,

Conduit, Cookerly, Crawford, Dunn of Jefferson, Elliott, Farrow, Fisher, Foley, Foster, Gregg, Haddon, Hardin, Hendricks, Holman, Hovey, Johnson, Jones, Kinley, Logan, Maguire, McLean, Mooney, Morgan, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Shoup, Snook, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, and Zenor—62.

NOES.—Messrs. Badger, Bascom Beach, Bicknell, Biddle, Blythe, Borden, Brookbank, Bryant, Butler, Chandler, Chenowith, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Edmonston, Frisbie, Garvin, Gordon, Graham of Warrick, Hall, Harbolt, Hawkins, Helmer, Hitt, Hogin, Howe, Huff, Kelso, Kendall of White, Kilgore, Lockhart, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Sherrod, Sims, Smith of Ripley, Smith of Scott, Steele, Taylor, Trimby, Walpole, Wolfe, Work, Wunderlich, Yocum, and Mr. President—63.

So the instructions were not laid upon the table.

The PRESIDENT. The question now recurs upon the adoption of the instructions.

Mr. PETTIT. I move, Mr. President, a call of the Convention, as it cannot be possible that a proposition so absurd as this can pass this body.

Upon this motion, a division was called for, and by ayes 56, noes 54, it was decided in the affirmative.

The roll having been called through.

Mr. CRUMBACKER moved that further proceedings under the call be dispensed with.

The motion was agreed to.

The question then recurring upon the adoption of the instructions,

Mr. DUNN of Jefferson remarked that he thought it would be well for gentlemen who were pressing upon the Convention a proposition so odious to a large portion of the people of the State, to consider that although they might pass such a proposition and engraft it in the Constitution, yet the people would finally be called upon to decide upon it. He ventured to say that if they inserted this provision in the Constitution, giving to two men located in one part of the State the same vote and influence in the Legislature that was possessed by three or four men in another part of the State, that the people of Indiana would toss the Constitution higher than the cow with the crumpled horns tossed the dog. [A laugh.] Now all that we ask, who represent the populous counties of the State, is that population shall be made the basis of representation, and that no discrimination will be made in our favor, as we will submit to no discrimination made against us. He would

go as far as any gentleman would go to accommodate the smaller counties, and it was for that reason that he went in favor of the provision providing that the larger counties should be divided into representative districts; and he had himself proposed to diminish the Senate to thirty-five in number, and to increase the number in the House to one hundred and fifteen, thus giving the smaller counties separate Representatives in the House. But all these steps could be retraced, and he hoped that those who were pressing this proposition so earnestly would look a little ahead, and consider the effect of their proposed action upon the reception of the new Constitution by the people.

Mr. GRAHAM of Warrick said he had only a few words to offer in reply to the remarks of the gentleman from Jefferson (Mr. Dunn). He regretted much to hear the expressions of gentlemen that if this or that proposition was proposed to be engrafted in the Constitution they would hold the threat, in terrorem, over the final action of the Convention upon it, that the new Constitution would be rejected if it was adopted. Now this was South Carolina doctrine, which he trusted would not influence the action of the members of the Convention, or deter them from the conscientious and faithful discharge of their duties.

How were they to judge of the sentiments of the people of Indiana, if they did not suppose that every shadow of opinion in the State was reflected in this body of one hundred and fifty men, elected from among the people themselves. And if a majority of this body decide to engraft certain provisions in the Constitution, certainly that majority must be supposed to represent the will of the majority of the people of Indiana, or else this Convention did not represent the whole of the people of the State. There might be some propositions engrafted in the Constitution that would not meet with his approval, yet as a whole he expected to advocate its adoption. It could not be expected that every one of its provisions would meet with the hearty approval of every member, yet as in other legislative bodies and forms of government, the will of the majority should be acceded to. This should be the general rule for the guidance of gentlemen in framing organic laws for the government of the State of Indiana.

Mr. WALPOLE remarked that the gentleman from Wayne, (Mr. Newman,) the gentleman from Jefferson, (Mr. Dunn,) and the gentleman from Tippecanoe, (Mr. Pettit,) had stated in the course of the debate upon this proposition, that the small counties had been dealt by generously. Since this statement had been made, he would refer to the census of representation and see how the matter really stood.

Mr. W. here read from statistical tables to prove that a certain number of the smaller

counties were unjustly apportioned under the existing system of representation.

The representation was made at least twenty-five per centum in favor of certain larger counties; that is, that certain smaller counties—which he enumerated—were deprived, and that too on the basis of population, of a fourth portion of their representation, which was transferred to certain larger counties.

Mr. COLFAX called for the previous question.

The question was put upon seconding the call, and upon a division, by ayes 46, noes 44, the call was seconded.

The main question was ordered to be put, by consent.

The question was then put upon adopting the instructions offered by the gentleman from Perry, (Mr. Dunn,) and the yeas and nays upon the question having been demanded and ordered, they were taken, and the Secretary reported the following result:

YEAS.—Messrs. Anthony, Bascom, Beach, Bicknell, Biddle, Blythe, Borden, Brookbank, Bryant, Chandler, Chenoweth, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Edmonston, Frisbie, Garvin, Gordon, Graham of Warrick, Hamilton, Harbott, Hawkins, Helmer, Hogan, Howe, Huff, Kelso, Kendall of Wabash, Kendall of White, Kilgore, Lockhart, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Murray, Owen, Pepper of Ohio, Pepper of Crawford, Sherrard, Sims, Smiley, Smith of Scott, Steele, Taylor, Trimble, Walpole, Wolfe, Work, Wunderlich, Yocum, and Mr. President—63.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Beeson, Berry, Bourne, Bowers, Bracken, Bright, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Conduit, Cookerly, Crawford, Dunn of Jefferson, Elliott, Farrow, Fisher, Foley, Foster, Gregg, Haddon, Hardin, Hendricks, Hitt, Holman, Hovey, Johnson, Jones, Kinley, Logan, Maguire, McLean, Mooney, Morgan, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Shoup, Snook, Smith of Ripley, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, and Zenor—65.

So the instructions were not adopted.

Mr. FRISBIE moved the following instructions: Add at the end of the section, "Any county having three-fourths of a representative ratio, shall be entitled to one Representative."

Upon this motion the yeas and nays were demanded, and being ordered, the Secretary reported the following result:

YEAS.—Messrs. Anthony, Bascom, Beach, Bicknell, Biddle, Blythe, Borden, Brookbank, Bryant, Chandler, Chenoweth, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Debsen,

Dunni of Perry, Edmonston, Frisbie, Garvin, Gordon, Graham of Warrick, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hitt, Hogin, Howe, Huff, Kelso, Kendall of Wabash, Kendall of White, Kilgore, Lockhart, March, Mather, May, McClelland, Miller of Fulton, Milligan, Milroy, Moore, Murray, Owen, Pepper of Ohio, Pepper of Crawford, Sherrod, Sims, Smiley, Smith of Scott, Steele, Taylor, Trimby, Walpole, Wolfe, Work, Wunderlich, Yocum, and Mr. President—62.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Beeson, Berry, Bourne, Bowers, Bracken, Bright, Butler, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Conduit, Cookerly, Crawford, Dunn of Jefferson, Elliott, Farrow, Fisher, Foley, Foster, Gregg, Haddon, Hardin, Hendricks, Holman, Hovey, Johnson, Jones, Kinley, Logan, Maguire, McLean, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Pettit, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Shoup, Snook, Smith of Ripley, Spann, Stevenson, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, and Zenor—65.

So the instructions were not adopted.

ORDERS OF THE DAY.

The consideration of the section providing that the compensation of members of the Legislature shall be fixed by law, &c., was resumed.

Mr. HALL moved to amend by adding the following:

“Provided, That after the first fifty-six days from the commencement of the session, the compensation for their services shall not exceed the sum of one dollar and fifty cents per day, for the remainder of the session. This provision shall not apply to the first session of the General Assembly which shall commence after the adoption of this Constitution.”

Mr. HALL. I am of opinion that something of this kind should be adopted. It is expected that some curtailment of the expense attendant upon the meetings of our Legislatures should be made. We have done nothing as yet; have not even reduced the number of representatives, but have retained the number under the present system of one hundred and fifty. If we do not then adopt some rule fixing the duration of the sessions of the Legislature, we will have done nothing towards economy in that department of the government. It does seem to me that with the exception of the session immediately following the adoption of the Constitution, the future sessions of the Legislature should be limited to eight weeks. It is proposed to fix a certain time by this amendment, and if the Legislature sits beyond it, the compensation of the members shall be reduced.

Mr. GRAHAM of Warrick would inquire of the gentleman from Gibson (Mr. Hall) why the services of the session of the first Legislature under the new Constitution if that session extended over sixty days were worth more than the services of subsequent Legislatures that might possibly sit beyond that time?

Mr. HALL replied that it was fair to presume that the first Legislature that met after the adoption of the new Constitution would have a great deal of legislation to perform necessarily attendant upon a change of the Constitution of the State, so that it would probably have to sit some three months.

Mr. GRAHAM of Warrick could not but think then it was fairly to be presumed that the Legislature would at no session continue to sit any longer than they had business before them to transact. If the proposition of the gentleman was adopted, the inference was that the Convention considered that the Legislature sat here merely for their pay, and for one he had no desire to cast such an imputation upon that body.

Mr. MAGUIRE said that he should vote against this proposition, for the same reason that he had voted against others of a similar character, viz: that it interfered with the duties of the Legislature. He would submit to the gentleman from Gibson, whether after this Convention had continued in session some three or four months, they could with propriety say to the Legislature if they sat beyond a certain period of time their per diem should be reduced. He hoped that no restriction of that kind would be imposed upon them. They had shown a disposition to restrict themselves for several sessions past, and there is no reason to suppose they will abuse their discretion.

Mr. HALL would simply remark that this proposition if adopted would prevent the Legislature from following the bad example the Convention had set them.

Mr. DOBSON said he would vote for the proposition of the gentleman from Gibson if it was so modified as to read “that after the year 1870 the Legislature may extend the time.” He was willing to have a rule of the kind proposed in the Constitution, but he did not wish it fixed for all time to come. In the course of the future the growth of population and increase of wealth in the State, would render it necessary that they should hold longer sessions than at present.

Mr. HALL accepted the amendment.

Mr. SHERROD moved to lay the amendment to the section upon the table.

Upon this motion the yeas and nays were demanded, and being ordered they were taken, and the Secretary reported the following result—yeas 64, nays 61—as follows:

YEAS.—Messrs. Anthony, Ballingall, Barbour, Bascom, Beach, Beard, Berry, Bicknell, Biddle, Blythe, Bourne, Bright, Brookbank, Bry-

ant, Carr, Carter, Chapman, Clark of Tippecanoe, Colfax, Crawford, Crumbacker, Dunn of Jefferson, Edmonston, Elliott, Foley, Garvin, Graham of Warrick, Gregg, Haddon, Hawkins, Hitt, Hogin, Holman, Howe, Jones, Kelso, Kilgore, Kirley, Logan, Maguire, Mather, McLean, Miller of Fulton, Miller of Gibson, Milligan, Newman, Nofsinger, Owen, Pettit, Rariden, Read of Monroe, Sherrod, Snook, Smith of Scott, Steele, Tannehill, Taylor, Thornton, Todd, Wallace, Watts, Wiley, Yocum, and Mr. President—64.

YAYS.—Messrs. Badger, Beeson, Borden, Bowers, Bracken, Butler, Chenowith, Clark of Hamilton, Cole, Conduitt, Cookerly, Davis of Madison, Dick, Dobson, Dunn of Perry, Farrow, Fisher, Foster, Frisbie, Gordon, Hall, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Hovey, Huff, Johnson, Kendall of Wabash, Kendall of White, Lockhart, March, May, McClelland, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Murray, Nave, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Ritchey, Schoonover, Shannon, Shoup, Sims, Smiley, Smith of Ripley, Stevenson, Thomas, Trimble, Walpole, Wolfe, Work, Wunderlich, and Zenor—61.

So the amendment was laid upon the table.

THE PRESIDENT. The question is, shall the section be engrossed for a third reading.

MR. READ of Clark moved to amend by adding the words:

"Such compensation shall not exceed three dollars per day, for the period of sixty days from the commencement of the session, and shall not exceed the sum of one dollar and fifty cents per day, for the remainder of the session, and this provision shall not apply to the first Legislature that shall meet after the adoption of this Constitution."

MR. R. said that in regard to the motion that had just carried by a small majority, gentlemen had spoken of it as humbug, when every State which had of late years adopted new Constitutions west of the Allegheny mountains, with perhaps a single exception, had adopted similar restrictions. And as the gentleman had remarked the other day in regard to railroad facilities, that they enabled the farmer to take his produce to market, and that if that was monopoly, he was for giving him more of it; he (Mr. R.) would say if this restriction is humbug, give us more of it.

The Convention had already refused to reduce the number of senators and representatives, and now it was proposed to refuse to restrict the length of their sessions to some seven or eight weeks. If some plan for restricting the Legislature was not adopted the expenses of that body in future would be nearly doubled.

Allusion had been made to the fact that the Legislature, to a certain extent, had restricted itself; but where did that restriction originate? It had originated in a democratic caucus, and

such was its good effect, that scarcely any attempt had been made, from the time of its adoption to the present day, to repeal it; but, as they were about to change our Constitution, the six weeks law would in all probability be repealed.

Look at Illinois and Tennessee. In the first organization of their State Governments, their Legislatures were restricted to biennial sessions, but the duration of those sessions were not limited; and how did they act? They set three, four, and five months; and one of the main arguments that had induced the people of Illinois to call a Convention to revise their State Constitution was, to restrict the Legislature, who had abused their power, and passed, in three or four months, just about double the number of laws they would pass if they had had short sessions, and many of which were entirely unnecessary. Among the first acts the Constitutional Convention of that State adopted, was one to restrict the Legislature to six or seven weeks' sessions. All he wanted was, that there should be some limitation in this respect. So far as he was concerned, if he went home and told his people that they had not reduced the number of their senators and representatives, nor restricted the Legislature as to its expenses, they would tell him that the Convention had not done that which the people had sent them there to do.

Again: They had made provision for doing away with local legislation, and to have a uniform system of laws throughout the State; and of course, this being the case, there was no necessity for long sessions of the Legislature. He was in favor, therefore, of restricting the Legislature in the mode which he had suggested.

Experience had taught him that there was a great deal of time unprofitably spent in legislation. Our legislative acts had been too numerous, and too often changed. Before the people knew what the laws really were, they were often repealed or amended. True, they had adopted biennial sessions of the Legislature, but, as he had stated before, they had refused to reduce the number of members to the Legislature; and now, if they refused to restrict the length of the sessions, they had gained but little, indeed, by adopting biennial sessions. He feared that their sessions would be as long again, and double the number of acts would be passed; if so, what had they gained? Constitutional reform, economy, and retrenchment should be the order of the day. Let them, then, carry out those measures. For one, he would exert his humble powers to effect those ends.

Gentlemen said that this would be restricting the people themselves. That was what they came here for; all civil and religious governments had to be restricted, and unless this had been done, they would not have been blessed

with their present form of government, which was the boast and pride of every true American. The people of the State could not assemble here in mass to make a Constitution; but they had sent their delegates here with full power to make such restrictions as they might think expedient and necessary; and this, he thought, was one that would meet with their entire approbation.

Mr. FOLEY said he would move to amend the amendment by adding: "And the same compensation shall be the per diem allowance of the members of this Convention."

Mr. BORDEN. I rise to a question of order, Mr. President. I assert that the Convention has no right to fix its own compensation.

Mr. PETTIT. You cannot take my per diem away from me by any sort of amendment. [Laughter.]

The PRESIDENT. This may be a just proposition, but it is not just now in order. [Renewed laughter.]

Mr. DAVIS of Madison (in his seat). The President Judge ought to know what is right. [A laugh.]

Mr. BARBOUR remarked that he had not had much experience in a legislative point of view, but he supposed it was in accordance with the theory of our Government, that the members of the Legislature represented the will of their constituents, and if they did so, he could not see any difficulty that would arise from leaving this question to be settled by the Legislature. He knew this much in regard to the legislation which they had had for the last several years—he would not say it was because of short sessions—it was the poorest legislation Indiana ever had.

Mr. READ of Clark inquired how it was in 1836?

Mr. BARBOUR said he was not prepared to speak of the legislation of 1836, but of the general character of the legislation during the last several years, and it was the purest legislation Indiana ever had.

Mr. READ of Clark (in his seat). In your opinion.

Mr. BARBOUR said: Certainly; that was his opinion. He had never known a representative who came before the people that did not advocate what was popular with them. Now, if it was popular with the people that the sessions of the Legislature should be limited to a certain time—if that was public sentiment—the Convention could safely leave the settlement of the question with the people and their representatives. There were a great many things of this kind that could be safely left to the healthful action of public sentiment.

As to the examples adduced of other States, for one, he did not think it necessary to follow them. He believed the people of Indiana knew what they were about; and he thought they

would send representatives here to carry out their will and enact such laws as they wanted.

Pending the question,

On motion by Mr. SHOUP, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

The question being upon the amendment proposed by the gentleman from Decatur to the amendment offered by the gentleman from Clark,

Mr. RITCHEY hoped the Convention would adopt the amendment of the gentleman from Clark. They had been told that the State had suffered much from vicious legislation since the Legislature of 1842 had thought proper to limit their sessions to six weeks. Now, if they would compare the legislation under the six weeks rule to that which they had when the Legislature was in the habit of sitting from ten to twelve weeks, there was no question that the legislation under the six weeks rule was as good, and as much approved of by the people of the State, as under the twelve weeks rule. No winter had passed since the adoption of the six weeks rule without efforts having been made to abolish it—every effort having proved abortive—and this proved most conclusively to him that the people of the State had approved of the limitation; and he hoped that some restriction of the kind would be engrafted on the Constitution. If the Legislature, in six weeks, had been able to do all the business of legislation heretofore, he could not but think that sixty days were amply sufficient to transact all the business to be done in future, especially when it was remembered that special and local legislation were to be abolished. No evil could result from such a proposition. The great object of the people in calling the Convention together was, to effect a retrenchment in the expenditure of the State; but the mere adoption of biennial sessions, allowing the Legislature to sit twice as long as they now sit, would not effect the retrenchment desired.

Mr. BASCOM moved to lay the amendment of the gentleman from Decatur (Mr. Foley) on the table.

The question being taken, the motion was decided in the affirmative.

Mr. FOSTER. I propose to amend by striking out the present number, and inserting "42." I am in favor of the general principle introduced by my friend on the left (Mr. Read) My opinion is that we ought to make the time shorter. This subject was advocated in my section of the country; and when it was proposed that the term of the sittings of the Legislature should be reduced, it was urged that as biennial sessions would hereafter obtain, those sessions

would be as much longer in proportion. If the Convention should conclude to do away with all special and local legislation, "six weeks" would be amply sufficient. I believe it is well known that I am no demagogue. [Great laughter, and cries of "consent, consent."] I do not doubt, Mr. President, that gentlemen will "consent" to that, because I believe it is well understood to be true. But, inasmuch as my friend from Clark wishes to introduce a principle with which we have nothing to do, I want to carry it out, and when I say that, in doing so, I am satisfying the wishes of my constituents, that is enough to satisfy me. I, therefore, propose to strike out "60," and insert "42."

Mr. JOHNSON moved to lay the amendment of the gentleman from Monroe, (Mr. Foster) on the table,

Which was agreed to.

Mr. KILGORE. I move to lay the amendment of the gentleman from Clark, (Mr. Read,) on the table.

Mr. READ. I call for the yeas and nays.

The yeas and nays were ordered, and taken, with the following result:

YEAS.—Messrs. Anthony, Badger, Beach, Beard, Berry, Biddle, Blythe, Bourne, Butler, Chapman, Clark of Tippecanoe, Colfax, Crumbacker, Dunn of Jefferson, Edmonston, Elliott, Garvin, Graham of Warrick, Gregg, Hitt, Hogan, Kent, Kilgore, Maguire, McLean, Miller of Fulton, Miller of Gibson, Mooney, Newman, Niles, Nofsinger, Pettit, Rariden, Read of Monroe, Robinson, Sherrod, Shoup, Snook, Smith of Scott, Steele, Taylor, Thornton, Todd, Wallace, Watts, Wiley, and Mr. President—47.

NAYS.—Messrs. Ballingall, Bascom, Beeson, Bicknell, Borden, Bowers, Bracken, Carter, Chandler, Chenowith, Clark of Hamilton, Cole, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Dunn of Perry, Farrow, Fisher, Foster, Frisbie, Gordon, Haddon, Hall, Hamilton, Harbott, Hardin, Hawkins, Helmer, Hendricks, Holman, Hovey, Huff, Johnson, Kendall of Wabash, Kendall of White, Kinley, Logan, March, May, McClelland, Milligan, Milroy, Morgan, Morrison of Marion, Murray, Nave, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Ritchey, Schoonover, Shannon, Sims, Smiley, Smith of Ripley, Stevenson, Tannehill, Thomas, Trimble, Walpole, Wolfe, Work, Wunderlich, Yocum, and Zenor—68.

So the amendment was not laid upon the table.

Mr. HOLMAN proposed to amend the amendment, by adding the following words:

"Or to sessions at which a general revision of the laws may be made."

Mr. H. said he would not occupy the time of the Convention in discussing this amendment. It would be manifest to the Convention that, if the time were limited to "60" days, an exception ought to be made in respect to the sessions to which he had referred.

Mr. RITCHEY said, that at the passage of the present Revised Statutes, the length of the session was only ten weeks, and much time, out of that, was occupied in electing officers, and doing other legislative business; and if they could get through with so large a book as the present volume of Revised Statutes, besides doing the usual business, the same thing could be done again.

Mr. DOBSON said he thought the gentleman from Johnson (Mr. Ritchey) had forgotten the time that had elapsed since this volume was made. It should be remembered, too, that the revision of the statutes was made the duty of the Governor—that competent persons were employed by him to do the work, and that four-fifths of the statutes as revised, were passed upon by the Legislature, at once. He thought the amendment was a good one; and he should vote for it.

Mr. MILLER said it would be remembered that the Revised Statutes were read by the title only; and that not a single gentleman knew what revision had been made. He was present himself, and he knew no more of what was in the Revised Statutes, than "the man in the moon."

Mr. CHAPMAN. This is another blow at the legislative department. As I have said before, repeatedly, the weight of this Convention seems to be directed, almost exclusively, against the legislative body—weakening its authority at every point, and at the same time conferring additional power upon the executive department. Gentlemen seem to forget that we have adopted the system of biennial sessions. In addition to that, we have had propositions for the reduction of representation, which would have carried, doubtless, had not gentlemen discovered, during the discussion, that many of the medium sized, as well as the small counties, would lose their Representatives. Then followed a proposition, placing all special sessions exclusively under the control of the Governor. We shall confine the Legislature to the enactment of general laws, to pass which, we require the votes of a majority of all the members of both Houses. These last rules I subscribe to in full. They are more important, practically, in restraining bad legislation, than even the division of the legislative body into two Houses. With the biennial arrangement, and these stringent rules, we have gone far enough, without adopting the measure now suggested by the gentleman from Clark (Mr. Read).

We have been referred to the eastern States, by the author of this proposition. New York, alone, I believe, has adopted such a restriction; but then, New York, like all the rest of those States, maintain *annual*, and not *biennial sessions*, though they have not half the need of annual legislation that we have. I would vote for limited annual sessions. I have, all along, preferred such a system to the biennial; but for

one, I cannot consent to confine the power of the people, in the great matter of legislation, under any and all circumstances, to a six or eight week's session, for a period of two years.

It is admitted that public opinion shortened the sessions under the annual system. An enlightened public sentiment is still sufficient under the biennial arrangement. I would rather trust to such a sentiment, than to such a Constitutional interdiction of the kind proposed. We are running to extremes, and to extremes which are altogether anti-republican. I cannot sanction a course so thoughtless and extravagant, and, therefore, shall vote against this additional restriction.

Mr. SMITH of Ripley. I know that the Convention is not willing to hear anything like discussions, and I have been very unwilling to say anything upon this subject. I am one of those who thinks that it takes considerable time to legislate for a great State. I believe it requires a considerable amount of mind to legislate to advantage for any people, and the greater the amount of mind and care expended upon legislation, the better it will be. We have already agreed to have biennial sessions; and let me inquire of this, the most enlightened body that has ever assembled within the State, whether they believe that legislation for all future time can be done in six weeks out of every two years! Let us look over the ground, and try and turn the attention of gentlemen to what they will have to do. It will be the duty of the Legislature to overlook the fiscal action of the State of Indiana, to pass laws, to levy taxes, and to overlook the Auditor's and Treasurer's books; and I would ask gentlemen whether they can overlook these accurately, and understand them, in less than three weeks! That will take one-half of the time. The State is going to have a system of banking, and their reports will be made to the Legislature. They will also have a great system of railroads and internal improvements, and reports and returns will have to be made to the Legislature, which that body will have to overlook. We shall have a system of incorporations all over the State, because, if the State is improved at all, it will have to be done by incorporated bodies, and the Legislature will have to look over their proceedings; and with all this to do, what time will be left out of six weeks, to govern the affairs of Indiana?

Mr. President, in the process of time—in less than thirty years—the reports made to the Legislature, and the documents they will have to overlook and investigate, will be such that no sensible set of men can do it in six weeks.

Mr. President, I have indicated these things, for the purpose of calling the attention of gentlemen better calculated to talk and think on the subject than I am, so that they may give their opinions here. But, Mr. President, I am in favor of a reasonable limit to legisla-

tion, and if the Convention were to come out and say, by a positive clause in the Constitution, that the Legislature should not exceed a definite limit, in which they should hold their sessions, then we should be acting wisely. Suppose we say that the Legislature shall not exceed ninety days in their sessions, and that we give them that time to do their work in satisfactorily. There should be a limit for this reason: the State of Indiana is a great State now, and is going to be still greater, and hence the necessity for setting a limit to the Legislature. And why? Because we leave it to the Legislature to settle the compensation, and in the process of time, the people will make the office of Representative a very respectable one, in point of compensation. The people will regard a small item of that kind but little, and Legislators will come here and stay for months on months, with an increased compensation. Have we not evidence on this subject? Look at the Congress of the United States. The long sessions of Congress usually lasted five months, and from that they have extended into ten months, and very shortly we shall find them held all the year round.

Mr. President, I think we ought to have a limit fixed, beyond which they should not go. I am in favor of allowing them a reasonable time—not forty-two, nor sixty days; but I think they should not exceed ninety days. In that time, they would have ample opportunity to revise your laws, to investigate all the multifarious concerns of the State, and to act wisely upon all matters that may come before them.

Mr. WALPOLE. It seems to me that it is important we should adopt the principle offered in the amendment of the honorable gentleman from Clarke, (Mr. Read,) as to the term the Legislature shall hold their sessions. Without the adoption of some such provision, all the object to be obtained by biennial sessions, will be defeated. The object of that provision, I apprehend, was to reduce the expenses of the Government. If no restriction of that kind is adopted, it will be as the gentleman from Ripley says—the Legislature will continue for months in session, and the object of the amendment of the Constitution, will be defeated. But it is to the amendment of the gentleman from Dearborn, that I would more particularly address myself. He proposes that this restriction should not operate as to sessions at which a revision of the statutes is to take place. Sir, does not every gentleman see how easy it would be to avoid the effect of such a provision? All that would be necessary, would be for the General Assembly to resolve to go into a revision of the statutes, and this they might do every two years.

Mr. HARDIN moved the previous question, which was sustained.

The question was then taken on the amendment of Mr. Holman, and it was rejected.

The question then recurring on the amendment of Mr. Read, the yeas and nays were demanded and ordered, and were taken, with the following result:

YEAS.—Messrs. Bascom, Beeson, Bicknell, Borden, Bowers, Bracken, Bright, Carter, Chandler, Chenowith, Clark of Hamilton, Cole, Cookerly, Crawford, Crumbacker, Dick, Dobson, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Gordon, Hall, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Holman, Hovey, Huff, Johnson, Kendall of Wabash, Kendall of White, Kinley, Logan, March, May, McClelland, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Murray, Nave, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Ritchey, Schoonover, Shannon, Sims, Smiley, Stevenson, Thomas, Trimby, Walpole, Wolfe, Work, Wunderlich, Yocum, and Zenor—66.

NAYS.—Messrs. Anthony, Badger, Beach, Beard, Berry, Biddle, Blythe, Bourne, Brookbank, Bryant, Butler, Carr, Chapman, Clark of Tippecanoe, Colfax, Dunn of Jefferson, Dunn of Perry, Edmonston, Garvin, Graham of Warrick, Gregg, Haddon, Hawkins, Hitt, Hogin, Jones, Kent, Kilgore, Maguire, Mather, McLean, Miller of Fulton, Miller of Gibson, Mooney, Newman, Niles, Nofsinger, Pettit, Rariden, Read of Monroe, Robinson, Sherrod, Shoup, Snook, Smith of Ripley, Smith of Scott, Steele, Tannehill, Taylor, Thornton, Todd, Wallace, Watts, Wiley, and Mr. President—55.

Mr. HOLMAN. I merely rise to inquire whether the previous question applies to the section!

The PRESIDENT. The previous question is exhausted. It extends only to the main question.

Mr. HOLMAN. I offer the following amendment; Add "Or to sessions at which there shall be a general revision of the laws."

The PRESIDENT. The Chair would remark to the gentleman from Dearborn, that that amendment has just been voted down, and it is not therefore in order to offer it again.

Mr. HOLMAN. It is different in phraseology.

The PRESIDENT. It is the same in substance.

The question was then taken on ordering the section to be engrossed for a third reading, and a division being called for, there were ayes 46, noes 50.

So the section was not ordered to be engrossed.

EX POST FACTO LAWS.

The PRESIDENT. The Convention will now proceed to the next section.

The section was read by the Secretary, as follows:

"No *ex post facto* law, or law either impairing the obligation of or giving effect to contracts, otherwise void, shall ever be passed."

Mr. McCLELLAND proposed the following as a substitute for the section:

"Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust and oppressive, and inconsistent with the fundamental principles of free government; and laws impairing the obligations of contracts, shall never be passed."

Mr. MATHER moved to lay the amendment on the table.

Mr. McCLELLAND demanded the yeas and nays on the motion, and they were ordered and taken, with the following result:

YEAS.—Messrs. Anthony, Beach, Beard, Bicknell, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crawford, Crumbacker, Dick, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Helmer, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of White, Kilgore, Logan, Maguire, Mather, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Pettit, Prather, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Stevenson, Tannehill, Taylor, Thomas, Thornton, Todd, Trimby, Wallace, Watts, Wiley, Wolfe, Zenor, and Mr. President—89.

NAYS.—Messrs. Badger, Ballingall, Bascom, Beeson, Berry, Biddle, Blythe, Borden, Chandler, Chenowith, Dobson, Dunn of Perry, Garvin, Hardin, Hawkins, Hogin, Kinley, March, May, McClelland, McLean, Milligan, Morgan, Pepper of Ohio, Rariden, Read of Clark, Ritchey, Smith of Ripley, Smith of Scott, Steele, Walpole, Work, Wunderlich, and Yocum—34.

So the proposed substitute for the section was laid upon the table.

Mr. BIDDLE moved to amend the section by striking out the word "either" in the 128th line, and the words "or giving effect to," and "otherwise void," so as to make it read as follows:

"No *ex post facto* law or law impairing the obligations of contracts, shall ever be passed."

Mr. B. said that that was the form in which he thought the section ought to be passed. A contract was an agreement between individuals, and the Legislature never had the power with or without a constitutional restriction, to make a contract for any man whatever, and therefore a contract otherwise void, never could be put in force merely by legislative enactment. The words of the section, however, might have another meaning, and if they should have such meaning then he thought the section ought not

to pass in that shape. If it was meant that the Legislature should not pass any healing provision to imperfect records, or imperfect contracts, then it should not pass.

Now the words "*ex post facto*" simply applied to criminal proceedings, and never had any other application. A strict translation of the phrase might give it another and a somewhat different meaning, but that was the sense in which it had always been used, and so far as judicial proceedings were concerned, it only applied to criminal law. But if the power was carried so far as to deprive the Legislature of the right to make that perfect which is only imperfect in regard to some matter of form, they would deprive that body of one of its most useful attributes. For example, township proceedings and sometimes the proceedings of counties were informal, owing to the then existing state of the law, and it was found necessary to pass acts legalizing those proceedings, because they would be void without this healing application. There was a large class of contracts, too, in the nature of bonds of our public officers, which without legislative enactment would often be voidable. Statutes sometimes provide particular forms of contracts, which, however, are not always observed, and then it is found necessary to pass another general statute providing that if they do not have the exact literal form they shall nevertheless be good. Now if we cut off from the Legislature this power, we cut off from them a very essential one. I presume that the reporting of the section in this form, arose on the supposition that the words "*ex post facto*" applied to civil as well as to criminal proceedings, which they do not. Let us hold of course to the old rule that no *ex post facto* law shall be passed, but let us leave to the Legislature the right to heal up all these defects and make good that which was voidable at the time, because it is by consent and for the benefit of all the parties concerned, that these civil matters should be made good. It is in the experience of every man who has had to adjudicate law, that this kind of legislation is frequently necessary to perfect that which our courts could never cure. It strikes me therefore, that this provision as it stands in the section, is an alarming one — one that should not pass. I could present many other reasons than those I have already given, did time and opportunity offer. What I ask the Convention to do, is at least to pause for a moment if they do not see the full force of my remark. But if it is the deliberate intention of the Convention to pass it, of course I shall submit to the will of the majority.

Mr. BRIGHT. I propose to substitute the 18th section of the first article of the old Constitution, which is as follows:

"No *ex post facto* law nor any law impairing the validity of contracts shall ever be made, and no conviction shall work corruption of blood nor forfeiture of estate."

Mr. B. said he entertained great doubt as to the propriety of inserting the section as reported by the committee. There had been on instance in which a contract which was void was made valid by subsequent legislation—a case of usurious interest. It was no doubt with reference to that particular case, that the report was made by the committee. The more he reflected on this subject, the more he saw the impropriety of so restricting the Legislature that they should not have the power to cure that class of defects which have been so well pointed out by the gentleman from Cass (Mr. Biddle). An instance occurred a few years ago, in our State, in which the Legislature gave effect to a marriage which was otherwise void on the ground that the husband had another wife living in another State. After being married to his second wife some eighteen or twenty years, and in that time accumulated property, it was ascertained that he had another wife living in another State, to whom his property should have lawfully belonged, if the Legislature had not interposed. The Legislature did interpose and legalized the second marriage, which would otherwise have been void and his first wife would have been entitled to claim that which he had acquired while living with his second wife. The same defects in regard to township business and to business in your county and circuit court, which not unfrequently require application to the Legislature to legalize their proceedings, would prevent the adoption of this provision to the original section, or even if it were adopted it would not be competent for the Legislature to grant redress to that class of cases, and I believe in no instance has any wrong been done. The case in which effect was given to a usurious contract may be thought to be a hard one, but while the party was relieved from paying usury, he was required to pay what was right. For myself, I would much prefer to see the section of the old Constitution adopted. I think it is altogether better.

Mr. BIDDLE. The class of contracts to which the gentleman from Jefferson refers, I do not regard as contracts to be affected by the section under consideration. They stand in the light of contracts which have been discharged or to which there is a good legal defense. But I have not risen to detain the Convention. I will withdraw my amendment for the present to give the gentleman from Jefferson an opportunity of offering his.

The PRESIDENT. The question now is on the motion to strike out the section and insert what has been read.

Mr. HOVEY. I think, Mr. President, it should be the aim of the Convention to make the Constitution as concise and as brief as possible, and not to surcharge it with matter entirely unnecessary. If gentlemen will look at the Constitution of the United States, section

1st, article 10th, they will find that this ground is entirely covered. The Constitution of Indiana is above all other law of the State, and the Constitution of the United States is above all other law in the States. Believing, therefore, that both the section and amendment are unnecessary, I move to lay them both upon the table.

The question being taken on the motion, it was not agreed to.

Mr. NAVÉ. I propose to amend the amendment by inserting the following in its proper place: "or to affect the enforcement of remedies." [Cries of "No, no."] One word, Mr. President, before gentlemen cry "no." I admit that the proposition offered by myself, proposes to make a radical change in the organic law of the State, but I hope that gentlemen will not prejudice it until I have an opportunity of explaining the objects of it and its effect upon the country. This proposition is not only true in regard to what fell from the gentleman from Jefferson, but it seeks to secure to every man in the State for all time to come, that whenever a contract is made between two individuals in good faith, with an eye to the law which may be in force at the time, the Legislature should not make any law affecting the parties at the time of this remedy. Gentlemen may have learned this fact, that in consequence of legislation in Indiana, under the old Constitution, by which the Legislature affected the remedies, that legislation has entailed curses upon us instead of blessings. Then why not incorporate in the Constitution a provision, that the law in force at the time of making the contract, shall be the law in force until the contract is wound up? Why should we permit the Legislature to annihilate contracts by their action that are already made? I ask gentlemen if there is anything in the proposition that is contrary to justice; anything that violates the first principles of honesty? If there is, I should suppose it ought to be voted down. But if it is full of justice, and honesty, and equity, it should not be voted down, but incorporated in the Constitution.

Mr. DOBSON. If gentlemen will reflect for a moment, they will see that there is no necessity for this provision. It is quite true that laws have been passed, violative of contracts, but if gentlemen will remember, it was the Constitution of the State that was looked to, and not the Constitution of the United States. There was a variance between the Constitution of the United States and that of the State of Indiana. The Constitution of the United States says that no *ex post facto* law shall be passed, nor any law impairing the "obligation" of contracts. Now, what says the old Constitution of the State? It says "no *ex post facto* law shall be passed impairing the 'validity' of contracts." In the one case it is "obligation," and in the other "validity," and we did not impair the validity of the contracts referred to but the

obligation. If we would use the words used in the Constitution of the United States, then the provision would be broad enough, and every individual would have his rights.

Mr. RARIDEN. I do hope that the Convention will not adopt the amendment of the gentleman from Hendricks. The effect of it will be to perpetuate vicious legislation. Now, if I understand the philosophy of government, it is something like this: When we enter into the compact of government, we surrender a very important right—that of redressing our own wrongs. The Government stipulates the remedies for the evils inflicted upon us, and if the gentleman's amendment is adopted, the effect of it will be that if we have vicious legislation with regard to remedies, so far as contracts are affected under that legislation, they would be perpetuated forever. I trust, therefore, that the amendment will not be adopted.

Mr. PETTIT. I concur most heartily with what has fallen from the gentleman from Posey—that there is no earthly use in putting this proposed clause into the Constitution. It is effectively, and in better language in the Constitution of the United States, which is the paramount law of the land. Any enactment contravening the Constitution of the United States, would be void entirely. The clause upon this subject expressly applies to the States. I shall not go into a dissertation or detail of the different powers, or grants, or restrictions in the Constitution of the United States, many of them apply to the United States delegating authority to the United States as a Government, and others again, restrict the United States as a Government, in the exercise of their power. And then, again, there is another clause that restricts all the States, by which the States themselves, in their own Government, stipulated to be bound. There is a good reason why this clause has been put there. In the Constitution of the United States the provision is that no State shall pass any *ex post facto* law, nor any law impairing the obligations of contracts. If this restriction had not been made a contract, might be made in New York by a party, who, coming to reside in Indiana, might be set at liberty from his obligation. Hence all the States are thus bound together, to give effect and force to contracts in the several States. Sir, we would have precisely a re-enactment of the policy of Texas without such a provision in the Constitution of the United States. It is well known that with the avowed policy of inducing emigrants to go to that State, she passed laws tantamount to relieving all persons from contracts made in other States, providing that after a residence in Texas for so many years the doors of her courts should be closed against claims made upon any citizen who had fled from the United States. It was for that purpose that the clause was put in; and by reading it, it will be found to apply strictly and literally to

the States. "No State shall enter into a treaty," &c., "grant letters of marque," &c., "bill of attainder," &c., *ex post facto* law," &c.;—the States are all restricted from doing any of these things. That law is paramount to anything we can enact. There is, therefore, no necessity for this provision at all. But if the Convention is desirous of re-enacting this—and we do, and have re-enacted many of the provisions of the Constitution of the United States, in the various Constitutions in the States, and in anticipation of one thing that is clamored about some little here, and a great deal more elsewhere, I say in anticipation of Vermont and South Carolina getting by the horns and dissolving this Union, and it, like Sampson, they should be enabled to tumble this fabric to the ground, it may be well enough to provide for a form of Government to enable us to exist as a sovereign power of the earth; and for that purpose, and with reference to that calamity, it may be necessary to put in this clause. But, supposing we take this precaution—for a great many men carry their umbrellas in sunny weather—we, like prudent men, in laying the foundations of our Government, will lay them broad enough to provide for all contingencies. I believe it is now in order to perfect the section. The motion now is to strike out the section and insert the provision of the old Constitution. I will move to amend the section by striking out the word "either" and inserting the word "contracts" after the word "of;" then it will read:

"No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed."

The question being taken on the amendment it was adopted.

The PRESIDENT. The question now is on the amendment of the gentleman from Hendricks (Mr. Nave) to that of the gentleman from Jefferson (Mr. Bright).

The question being taken, the amendment was rejected.

The PRESIDENT. The question now is on the motion of the gentleman from Jefferson to strike out the section and insert the section of the old Constitution on the subject.

Mr. PETTIT. I hope that will not be stricken out. In the section of the old constitution, there are some words which there can be no necessity for, and no propriety in. Such for instance as "no conviction shall work corruption of blood," &c., Is there any probability, or any possibility that any member would ever come to the Legislature, with that idea in his head. That can have no reference to contracts.

Mr. NEWMAN. I would just appeal to the gentleman's own argument in reference to the States falling to loggerheads. Although there is no prospect of anything of the kind at present, we do not know what may occur in time to come, or what emergencies may arise. If there should be a great political commotion,

we do not know what may be done. It seems to me well enough even at this period of time, to guard against that contingency.

The question was then taken on the amendment of Mr. Bright, to strike out the section, and insert the provision in the old Constitution, and it was not stricken out.

The section was then ordered to be engrossed for a third reading.

UNCONSTITUTIONAL LEGISLATION.

Mr. READ of Monroe, offered the following as an additional section:

"No law shall be passed the taking of effect of which, shall be made to depend upon any authority, except as provided in this Constitution."

It is a late hour said Mr. R., and I fear, not a propitious time for introducing a principle requiring grave consideration.

The design of the section which I have proposed, is to cut off a species of Legislation, not recognized by any American Constitution; and which, until within a few years past, was never heard of in any State. A law is passed not complete and effective, when it goes through the forms required by the Constitution to give it the validity of a law, but is made to take effect upon a vote of the people approving it. It is a species of legislation which has never been demanded by the people, and in the only State, where the Constitutionality of such legislation has been tested by the highest courts, has been declared unconstitutional. I have no doubt but a similar decision would be made by our own Supreme Court, in regard to all such law making. It has been resorted to for the mere purpose of evading responsibility, and is I think generally condemned.

In the case of the school law, the mode of submitting it to a vote of the people however intended, amounted to little else than a fraud. The question propounded to the voters was, "are you in favor of free schools," if "yes" was the answer, he was thereupon to be set down as voting in favor of the long school law, which in nineteen cases out of twenty, if not in a larger proportion, the voters had not even read.

One would think that the provision of this section is implied in every Constitution directing the manner in which laws are to be enacted; and therefore not necessary to be expressed in direct terms upon the face of the Constitution. But the strange practice which has crept in, originating from whatever motives, requires to be met by a direct Constitutional provision.

It would seem to be an axiom, that there shall be no legislation except as prescribed in the Constitution, and that no law shall depend upon any authority except as provided by the Constitution.

If the people are to be called upon to act as a kind of lower House in the passage of laws; let

us adopt the plan in the Constitution itself; and in that case, it will be hardly necessary to have two Houses at Indianapolis, in order to propound bills for the people to adopt or reject. I do not however think, that such a mode of making laws, in the march of progress, is yet required by the people of Indiana.

Mr. RARIDEN thought this was a very important section, and ought to receive the careful deliberation of the Convention.

Mr. FOLEY moved the previous question, which was sustained.

The main question was then ordered to be put, and the question being on the adoption of the section, it was adopted, and ordered to be engrossed for a third reading.

Mr. MAGUIRE offered an additional section to the following effect:

"That the members of the General Assembly shall receive for their services, a compensation, not exceeding three dollars per day, but that no increase of compensation should take place at the session at which such increase might be made."

Pending the question on the adoption of the section, the Convention adjourned.

SATURDAY, DEC. 21, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

The Journal of yesterday was read and approved.

The PRESIDENT laid before the Convention a communication from the Auditor of State, containing an abstract of the expenses of Circuit and Probate Courts, chargeable upon the respective county treasuries, for the year 1849. The abstract embraces all the counties in the State, except Blackford, Crawford, Elkhart, and Posey, from which there have been no returns.

In the 86 counties reported, the footings of the table are as follows:

Amount paid	Probate Judges, - -	\$717 00
"	" Associate Judges, -	7,397 25
"	" Grand Jurors, - -	14,323 15
"	" Petit Jurors, - -	21,039 95
"	" Sheriffs, - -	7,864 40
"	" Bailiffs, Clerks, &c., -	14,388 85
		\$65,730 60

In several of the counties, the accounts of the Grand and Petit juries are not separated. Dividing the sum equally, the expense of the Grand Jury would be \$15,372 98, and of the Petit Jury, \$19,990 21.

The communication having been read, it was ordered

"That it lie upon the table, and that it be printed."

This being the day set apart for resolutions, The Convention proceeded to the consideration of those heretofore offered.

The resolution offered on a former day by Mr. Read of Monroe, in relation to the continuance in office of the State officers after the adoption of the new Constitution, was taken up.

The resolution having been read,

Mr. READ of Monroe. My general impression had been, that with the new Constitution, we should have a new set of officers.—That in this respect, we should have a new dispensation.—That we should make a *tabula rasa*, a clean sweep. I have not had, nor do I now have, any feeling upon the subject. The decision which has been made by the Convention in regard to county officers, may be best. I voted for it. But it seems to me right, that we should adopt the same rule in regard to State and county officers. If we *constitutionize* one set of officers out, we should *constitutionize* all out. If we retain one class of officers, that we should retain all. I want a uniform rule.

It has been said that county officers were elected by the people, but not the State officers. But it must be remembered that all equally received their offices, under the Constitution. State officers as well as county, received their offices in the just expectation, that they would be permitted to serve out their terms. State officers, not less than county, have made their arrangements in accordance with this just expectation. If removal, by the terms of the new Constitution is a hardship in the one case, it is not the less so in the other.

There are President Judges in the different parts of the State, who have given up a practice in the law for their place on the bench. There may be State officers at the seat of government, whose terms of office will not have expired upon the adoption of the new Constitution. In these cases, the officers would have some claims, if we admit such claims in any case. I know not how the proposed provision will affect any single State officer. I have not made the inquiry. No one of these officers has spoken to me. But it seems to me right, that the rule which we adopt, should be the same for all officers.

County officers are numerous. State officers are few. I will not for a moment suppose that the influence coming from every county in the State, will induce the Convention to have great respect and consideration for many officers; while the few, from the less general influence which they can exert, will be overlooked, and their interests and feelings disregarded.

The simple rule of equality, without regard to numbers, is all that I want, and for this reason, I hope the resolution will prevail.

Mr. BASCOM moved that the resolution be laid upon the table.

The motion was agreed to.

The resolution heretofore offered by Mr. Read of Clarke, in relation to future amendments of the Constitution, to be separately submitted to the people, was taken up for consideration.

Mr. GRAHAM of Warrick said, he was of the opinion that if power were given to the Legislature to take action in reference to amending the Constitution from time to time, the result would be that half of the time of each session would be spent in that way. Men would come up to the Legislature from different portions of the State, and bring a favorite proposition for amending the Constitution, and long discussions would ensue, and finally it would cost the State more to amend and improve the Constitution in that way, than the calling of a Convention once in ten or fifteen years would cost. He thought the proposition ought to be rejected, and he would move that it be laid upon the table, were it not that he did not wish to prevent gentlemen from expressing their views in relation to the subject.

Mr. STEVENSON moved to amend the resolution by striking out "a majority of the qualified voters," and inserting "a majority of all the votes cast for and against the same."

Mr. READ of Clark. I accept the amendment as a modification of my resolution.

Mr. STEVENSON. I look upon it as one of the most important questions that have been or have to be acted upon by this Convention. Gentlemen must be very well satisfied, I think, by this time, that it will be no easy or brief task for the Convention to remodel the whole Constitution. It will take this Convention at least four months to do it; whereas, if there had been a provision of this kind in the old Constitution, the necessary amendments might have been made with a very trifling expense. I say it is one of the most important provisions that will come before the Convention; and it is not a new proposition; it is one that has been adopted by a number of the States. There is a similar provision in the Constitution of the United States, that amendments may be proposed by Congress, and if agreed to by three-fourths of the States, such amendments shall become a part of the Constitution. I believe that Pennsylvania was the first State that adopted a provision of this kind in her Constitution. New York has adopted a similar provision, and so has Wisconsin and some other States. I hope that gentlemen will not insist upon laying the proposition upon the table, because it is a meritorious provision, and one which I feel satisfied ought to meet with the approbation of the Convention.

Mr. WOLFE. I am in hopes that this resolution will be adopted. It is a matter that has been discussed to some extent before the people, and they expect that a provision of this kind will be incorporated in the Constitution. As has been remarked by the gentleman from

Putnam, if there had been a provision like this in the present Constitution, there would have been no necessity for calling this Convention. I hope that the necessity for calling another may be avoided by the introduction of this clause into the amended Constitution. I would suggest the propriety of referring this resolution to a committee of thirteen, one from each congressional district, inasmuch as the whole State is interested in the matter.

Mr. COOKERLY. I move to amend the resolution, by making it a resolution of inquiry.

The PRESIDENT. There is an amendment already pending.

Mr. RITCHEY. As the chairman of the committee on future amendments of the Constitution, it is perhaps due to the Convention that I should state that the committee met, and proposed to take the subject under advisement, but in consideration of the immense amount of business before us we have not thought it important, as yet, to act upon it. Most of the reports now before the Convention have, perhaps, never been read; and unless the Convention intend to tie our hands, I think it is quite unnecessary to adopt a provision of this kind. The committee do not like to be trammelled by positive instructions until they had made their report. The committee were waiting for the Convention to make some progress with other matters. If we make a good Constitution, there will be little necessity for inserting a provision for its alteration.

Mr. READ of Clark. The gentleman who has just taken his seat, intimates that this resolution is prematurely introduced; that we should wait a few weeks longer. Sir, I have been in expectation that some proposition in relation to this subject would be introduced. I regard it, and I have no doubt the whole Convention regard it, as an important matter. Why should we not settle it at this time as well as at any other? I accept the amendment of the gentleman on my right, as a modification of my resolution. It is precisely what I intended. I do not claim this proposition as being original. I copied it, with some little alteration, from the Constitutions of some of the other States; and, as has been observed, I do not believe there has been a Constitution formed within a few years past, that does not contain a provision relative to its amendment.

Let us examine the case for a moment. As my friend on my right says, suppose such a provision had been contained in the present Constitution, the State would not have been under the necessity of expending some eighty thousand dollars in the calling of this Convention. There were but few of its provisions that required amendment, and those amendments could have been easily made by the Legislature with the approbation of the people, they having the opportunity to accept or reject the proposed amendments. The gentleman from

Putnam says that it will create continued legislation. Sir, there is another point of the section which will prevent that. There is a provision which directs that amendments to the Constitution shall be laid before the people only once in ten years. If then any provision that we may adopt in the amended Constitution, should prove to be oppressive or injurious in its effects an amendment may be adopted by the Legislature, and submitted to the people for their ratification. If there should be a change of popular sentiment in relation to the establishment of a State bank, or in relation to the negro question, or in relation to the rights of married women, and a change should be desired in any provision that we shall make in reference to any of those subjects, instead of calling a Convention at the expense of some eighty thousand dollars, the amendments could be made without burthening the people with any expense whatever. I think our present condition admonishes us that such a provision ought to be adopted. We have been in session eleven weeks, and we are not yet able to say when our work will be completed. Indeed the end seems to be as far off now as it was at the commencement of our session. Forty or fifty members are now absent, although perhaps if they stay away altogether we shall get along just as well. I apprehend the country will not suffer much by their absence; but, sir, they come back here and move to re-consider what has been done in their absence, and we have to go over the whole ground again. This has been the case ever since the commencement. I have never known an instance where there were so many absentees in the case of any deliberative body.

Sir, I will not detain the Convention. I trust that a proposition of this kind will be adopted. I am not particular as to the precise mode, but let us have some provision of this kind—let it be left to the people to say whether they will approve of this or that amendment, and permit the Legislature once in ten years to submit to the people such amendments as may be deemed necessary, and you will avoid all the trouble and expense of calling a Convention.

MR. COOKERLY. I now renew my motion to make the resolution a resolution of inquiry.

THE PRESIDENT. The question is upon the amendment of the gentleman from Putnam.

MR. COOKERLY. That amendment has been accepted by the gentleman from Clark.

THE PRESIDENT. The Chair would remark that it is not in the power of the gentleman to accept the amendment. The Convention has already acted upon the resolution by ordering that it lie over for a week from the time of its introduction; the resolution, therefore, is not now in the power of the gentleman.

MR. OWEN. I agree with my friend from Putnam, that this is one of the most important matters that will come before us; and I further agree with him that some such provision as this ought to be incorporated in the Constitution, for the reason suggested by the gentleman from Clark, and for other reasons. I do not agree, however, with the details of this resolution. In the first place, I think that the latter clause ought to be stricken out. We ought not to say that the people shall not move an amendment to the Constitution, except once in ten years; and in the next place, I think that any amendment proposed to be made, ought to be submitted to two successive Legislatures, and to be voted for by a majority, at least, of the Legislature, before being submitted to the vote of the people.

We adopted a section yesterday, which I think a very good one, on the motion of the gentleman from Monroe, on my right, (Mr. Read,) which provides that a law shall not be submitted to the people, but that the Legislature shall take the responsibility of their own acts. But in the organic law, it is a very different matter. We do not propose that the organic law shall be in the power of the Legislature.

Now, I think, if it be made imperative that an amendment proposed to be made in the Constitution, shall be voted for by two successive Legislatures, to be elected with reference to that particular subject, the question will be debated before the people, and they will send Senators and Representatives here with a special reference to that question. This, it appears to me, will be a sufficient guard against improper and ill-advised amendments, without restricting the action of the Legislature to periods of ten years.

MR. BORDEN. I entirely disagree with the gentleman from Posey, in regard to the propriety of conferring upon the Legislature the power to submit propositions to the people to amend the Constitution. I think it would be better to retain a provision similar to that in the old Constitution, that a vote shall be taken on the question of calling a Convention once in ten or twelve years, and that if a vote on the question of calling a Convention at any other time than at the regular period, should be taken, a provision should be inserted similar to that in the old Constitution of Kentucky, that the Legislature should pass a law submitting the question to the electors, and they should twice vote in its favor, before a Convention should be held, other than at the regular period. I think that if we leave it in the power of the Legislature, or by a simple majority to propose amendments, this evil will result: there will be frequent changes made in the organic law, and a necessity will be created for the calling of a Convention in order to modify the provisions thus made in a hasty manner by the Legislature. I think this Conventions should be called sometimes; but if

we give to the Legislature the power to act whenever they think proper upon this subject, having taken away from them local and special legislation, in order to have something to do they will go to work upon the Constitution, and amendment after amendment will be made, and in a few years you will not be able to tell what the Constitution is. Sir, I am for having the question of calling a convention to amend the Constitution submitted once in ten years. I oppose giving the Legislature the power to change the Constitution whenever they think proper. And I am in favor of placing in the Constitution this guard, that before the question of calling a Convention shall be submitted to the people it shall receive the sanction of two successive Legislatures; but I am decidedly opposed to giving the Legislature the power to amend the Constitution, or to propose amendments whenever they think proper.

Mr. DOBSON. The question is, I believe, on referring the matter to a committee.

The PRESIDENT. The question is upon the amendment of the gentleman from Putnam.

Mr. DOBSON. I shall not argue this question, sir, as to the propriety of inserting a provision of this kind in the Constitution; but I think myself that we should refer the matter to a committee; and I apprehend that that course will meet the approbation of the Convention. A provision of this kind ought to be very carefully guarded. Amendments should not be frequently made to the Constitution. The organic law should be stable, and not subject to frequent changes. I am for having the matter deliberated upon by a committee before we adopt it. I move that the subject be referred to a committee as a matter of inquiry.

The PRESIDENT. The Chair would remark that the resolution proposes a reference to a committee.

The question was taken on the amendment of the gentleman from Putnam, and it was decided in the affirmative.

So the amendment was adopted.

Mr. COOKERLY. I now move to amend by inserting the words "inquire into the expediency of."

The amendment was agreed to, and

The resolution, as amended, was adopted.

THE TIPPECANOE BATTLE GROUND.

Mr. PETTIT offered a resolution directing the committee on the public institutions of the State to inquire into the expediency of incorporating a provision in the Constitution providing for the permanent inclosure of the Tippecanoe battle ground, donated to the State by the late General John Tipton.

I take it, said Mr. P., that this is a duty incumbent upon the State, and inasmuch as the Legislature does not perform it, it is proper, I

think, that a Constitutional provision be made in relation to it.

It will be recollected—or it will be seen by reference to the history of this matter—not to go back to a very early period, that the Legislature, by a joint resolution, passed, I believe, in the year 1834, directed Governor Noble to open a correspondence with Gen. Tipton, the owner of the ground, to know upon what terms he would transfer it to the State. Gen. Tipton returned an answer, generously refusing to take any compensation for the ground, but offering to deed it in *fee simple* to the State, provided the Legislature would keep it inclosed, in order, as he said, that the bones of his companions in arms should be kept from being disturbed—that the ground where they reposed should be protected from the walks of men. Upon the receipt of that communication the Governor laid it before the Legislature, and the Legislature, on the 7th of January, 1835, passed a resolution authorizing the Governor to accept the donation upon the conditions specified, and to take possession of the ground by himself, or by a special agent, and enclose the same. I have not the letter of Gen. Tipton before me, but I have the joint resolution that was passed by the Legislature.

In a conversation that I had with the gentleman from Ohio, (Mr. Pepper,) last evening, he informed me that he was the bearer of the letter from the Governor to Gen. Tipton, and that he also brought back Gen. Tipton's answer. He was the Indian Agent, and resided at Logansport. In the letter of Gen. Tipton, he says, there was the express condition that I have mentioned, namely: that he would convey the ground to the State, provided the State would keep it inclosed thereafter. I will remark further, while I am up, that this resolution is not peremptory, but simply a resolution of inquiry. I hope the Convention will allow the matter to go to the committee, and that they will take the trouble to procure the correspondence, if it can be found, and the deed by which the ground was transferred to the State; and if it be found to contain the stipulation that I have mentioned, I think there can certainly be no objection to adopting the provision which I have suggested, and placing it in the Constitution.

The resolution was adopted by unanimous consent.

PLURALITY OF OFFICES.

Mr. HOLMAN offered a resolution directing the committee on miscellaneous provisions to inquire into the propriety of ingrafting into the Constitution the following section:

"SEC. —, No person who shall have been elected to and accepted any civil office of profit under this State, shall be eligible to any other office of profit during the continuance of the term for which he may have been elected:

Provided, That this section shall not be construed to extend to persons elected or appointed to any township, town, or municipal office."

[Cries of "No! no!" and "Consent!"]

I hope, said Mr. H., gentlemen will not object to the adoption of this resolution, as it is merely one of inquiry.

The resolution was adopted.

Mr. OWEN offered a resolution to the effect that the sections of the new Constitution that are already passed be printed for the use of the Convention, and that the sections hereafter passed be printed weekly.

I will state to the Convention, said Mr. O., that I believe I am the only member of this body who has an opportunity of examining all the sections as they are passed. They come into my possession as chairman of the committee on revision. Members are frequently desirous of looking over what they have already done; and I think it will be a great convenience to have them printed.

Mr. KELSO. I do not rise to oppose the resolution, but merely to inquire whether a resolution heretofore passed does not cover the ground—whether it does not authorize the committee of which the gentleman is chairman, to print the resolutions as they are passed by the Convention, and also the sections as amended by the committee on revision, in order that they may be laid side by side before the Convention, one day at least before we are finally required to vote upon them? It seems to me that there is nothing to prevent the committee from having them printed, if they think proper, and furnishing a copy to each member.

Mr. OWEN. The committee on revision met the other day, and examined with care the resolution alluded to by the gentleman from Switzerland, and we found that it provides, that when we have closed our labors, we shall print, in the first place, the sections as they were sent to us, and then the sections with any changes or alterations that we may make. But this cannot be done until nearly the close of the Convention. There is not yet an article completed, nor nearly completed, and there are many members who desire to have the sections that are passed, before them. It will involve a very trifling expense, and be a great accommodation to the committee, as well as to the members of the Convention generally.

The resolution was adopted.

ADJOURNMENT.

Mr. BORDEN. I have a resolution to offer, and I wish to say this in relation to it: It proposes that the Convention shall adjourn *sine die* on the 25th of January.

SEVERAL VOICES. "Buncombe!" "Buncombe!"

Mr. BORDEN. If it be thought too early a day, strike out the 25th, and insert a day more remote. But it seems to me that the Convention

should at no distant day determine when it will adjourn. I believe that we have but two or three subjects remaining, that will excite much discussion. I suppose there will be some discussion upon the organization of the Courts of Justice, upon the Bank question, and upon law reform. I hope the Convention will fix upon some day for its adjournment.

Mr. TAYLOR. I thought that the renewal of a proposition of this kind had been precluded entirely by indefinite postponement.

The PRESIDENT. The resolution is not in order, a similar proposition having been indefinitely postponed.

Mr. BORDEN. I was not present when the vote was taken upon the indefinite postponement of that proposition. Will it be in order to move a re-consideration of that vote?

The PRESIDENT. No, sir. The Chair would remark, that this day a week ago, a resolution proposing to adjourn on the 15th of January, was indefinitely postponed; and the parliamentary rule is, that the subject shall not be again acted upon until the time specified in the resolution shall have elapsed.

REMOVAL.

Mr. BASCOM offered a resolution, that a select committee of three be appointed to wait upon the Governor, Treasurer, and Auditor, and ascertain what arrangements have been made for the accommodation of the Convention, and that said committee proceed forthwith to the execution of that duty.

My reason for offering the resolution, said Mr. BASCOM, is this: It is well known that a day or two ago, we adopted a resolution requiring the State officers to procure for us the Masonic Hall. Rumor says—I do not know whether it be true or not—that no steps have been taken to fit up the Hall for us, because the officers think they have no power to do so; and the Convention well know that it is necessary to take some steps in regard to this matter, without delay, as the time is approaching when the Legislature is to meet. If we stay here until the time of their meeting, we shall be all confusion, and the probability is, that we shall break up in a row.

Mr. MAGUIRE. I have no objection to the adoption of the resolution, but I will state to the Convention, that I have had a conversation with the Auditor of State, who informed me that they were fitting up the Masonic Hall, and that it would be ready for us on the 26th instant.

Mr. PETTIT. In a conversation that I had with the Governor yesterday, he said that the adoption of the resolution that was passed by the Convention the other day, was regarded as an acceptance of the proposition that has been made to us to give us the use of the Masonic Hall for twelve dollars a day, and that it will be accordingly prepared for us.

Mr. KELSO. If that is the case, there can be no necessity for adopting this resolution.

Mr. PETTIT. I do not object to its adoption. I merely state the fact, that the Hall is being prepared.

Mr. BASCOM. I will withdraw the resolution.

MARTYRS.

Mr. GREGG offered the following preamble and resolution:

"WHEREAS, It is desirable to curtail the expenses of this Convention, so far as it can be done without detriment to the public service.

"And whereas, We have a corps of Stenographers at an expense of some sixty dollars per day, to report the debates of this Convention, which duty can be better performed by the members themselves, and without any additional expense to the State.

"And whereas, We have now employed nine door-keepers at an expense of twenty-seven dollars per day, and it being understood that the Superintendent of the Masonic Hall in this city will hereafter undertake to furnish said building for our accommodation, providing temporary desks for each member, perform all the labor and duties now performed by our door-keepers, furnish all the fuel and lights necessary, &c., and receive in full compensation therefor the amount paid to seven of said door-keepers: Therefore,

"Resolved, That on and after the twenty-fifth instant we will dispense with the further services of a stenographer and all of the door-keepers except the one elected by this body, and that arrangements be made with William Sheets to carry out the foregoing suggestions, as to the cost of the Masonic Hall."

The resolution having been read —

Mr. KELSO. I am decidedly opposed to the passage of these resolutions. The act authorizing the call of this Convention authorized the Governor to appoint a stenographer, and his duties were there prescribed. The Governor, in obedience to that provision of the act, appointed that officer, and we, by resolution, have accepted his services. He, with some half dozen assistants, has been laboring for us from the commencement of our session until now, and this resolution proposes that we shall break up his contract and dismiss him, without regard to the liabilities to which he may have subjected himself with those whom he has employed. I do not know whether we have the power to do so; if we have, it would be a very improper thing to do.

Now as to the door-keepers there may be nine of them, though my opinion is that this is a mistake; but I remember when it used to be customary here to employ an enrolling clerk, and I remember that Mr. Sheets came in with a proposition that he would undertake to do the enrolling for two hundred dollars, a less sum

than that paid to the clerk. The arrangement was made, and there have since been great complaints in regard to the loss of bills between the different branches of the Legislature. Some bills, of no ordinary importance, have been lost.

At the commencement of our session gentlemen came from different parts of the State and tendered their services to the Convention; we elected a door-keeper, and he employed assistants; they have learned their duties, and are discharging them faithfully; and now, for the sake of saving five or six dollars a day, it is proposed that we shall turn these men out of employment. It is sufficient that we pay twelve dollars a day for the use of the Hall. I am opposed to dismissing these officers, who have been discharging their duties faithfully. I hope that some gentleman will move to lay the resolution upon the table.

Mr. MORRISON of Marion moved to amend, by adding the following:

"And that Mr. Sheets be authorized to employ a proper person to make a Constitution for the people, without the assistance of the members of this Convention, merely as a matter of economy, for buncombe, and other innumerable reasons."

This proposition of the gentleman from Jefferson, said Mr. M., is an old "Monsieur Tonsion." There has been an attempt on the part of those having the control of the Masonic Hall to make the Convention occupy it, almost *volens volens*. Mr. Sheets made an offer to the officers of State that he would do all the outdoor work of the Convention by contract; they declined the proposition. They were of the opinion, and I believe the people will come to the same conclusion, that the representatives of the people of the State of Indiana know how their affairs should be arranged about as well as Mr. Sheets does. I believe they are not disposed to put the patronage of the Convention into the hands of Mr. Sheets. They like to be their own masters, and have the privilege of managing and regulating their comforts and accommodations to suit themselves, without having an overseer placed over them. I hold to the opinion that we are as capable, at least, of managing the business of the Convention as Mr. Sheets is, and if there are any gentlemen who do not think they are capable of doing their share of the management, they had better resign their seats and go home. There are some gentlemen who seem particularly anxious to spread their fault-finding upon the permanent record. I am not ashamed to record the amendment I have offered in connection with these resolutions, because I think it expresses a feeling which pervades the breasts of some members and which induces them to thrust their propositions continually before the Convention. If we have too many door-keepers let the gentlemen come up manfully and pro-

pose to dismiss some of them, but do not let us farm out the work to the lowest bidder. Mr. Sheets may be a very patriotic man, but he has, first and last, under the pretence of economy, cost the public more money than any other man in the State.

Mr. KILGORE. I regret exceedingly that upon every occasion, when this matter has been presented to the Convention, the same attacks have been made upon the Superintendent of of the Masonic Hall. He has had an application made to him for the renting of the Hall, and it was a fair business transaction between the Committee of this Convention, on the one side, and Mr. Sheets on the other. He has a right, as the agent of the stockholders, to submit propositions, and if the Convention are not willing to accept the terms he proposes, there certainly is no harm done. He has a right to make proposals, and the Convention may accept or refuse them, as they may see fit, but this certainly should not be made an apology for attacks upon him by the Convention. Mr. Sheets does nothing more than to say that he will furnish the Hall for the use of the Convention, and supply the necessary attendance, for a certain sum. If gentlemen are not willing to accede to the proposition, let them say so in courteous terms, inasmuch as he has not the privilege of defending himself on this floor.

One word, sir, in regard to the Stenographer: I voted, in the early part of the session, for dispensing with the services of the Stenographer, but I think it would now be doing that officer and his associates great injustice,—now that their places are filled in Congress—it would be doing them great injustice, I say, to dismiss them, even if it were not a violation of contract. That part of the resolution, I oppose. I hope the amendment proposed by the gentleman from Marion will be withdrawn, and that it will not appear on the journal.

Mr. PETTIT. Well, sir, this is resolution day, and we have resolutions, with a vengeance! These resolutions seem to have been introduced with two objects. In the first place, to remove an officer, other than our own. I acknowledge the power of the Convention to remove our own officers, but a proposition is here made to remove, or dispense with the services of the Stenographer, an officer created by law, commissioned by the Governor, and over whom, I repeat, as I stated in the early part of the session, we have no authority. I shall not, therefore, vote for the resolutions, on that account, if for no other.

But a few words to the Convention, in reference to the other branch of the resolutions. What is it? Is it anything more or less than a proposition to elect Mr. Sheets doorkeeper of this Convention? It is that, and that alone. It cannot, by any legerdemain or delusion, be turned into any other than a proposition to elect Mr. Sheets doorkeeper to this Convention.

At the commencement of the session, we elected Mr. Johnson. I believe that Mr. Sheets is the only man in the State who has had the impudence to ask us to remove our doorkeeper.

A MEMBER. "He does not ask that; he only asks that the deputies be removed."

Mr. PETTIT. Well, that is the same thing. He does not want to be principal doorkeeper, but he wants to be deputy doorkeeper. [A laugh.] Now that is the idea. Did any man ever before hear of such a thing as a Convention hiring themselves to be kept by any man? It appears that we are really becoming a menagerie, and are to have Mr. Sheets for our keeper.

Mr. GREGG. The proposition did not come from Mr. Sheets.

Mr. PETTIT. I am glad to hear that it did not. I have always entertained a good opinion of him. I am glad to hear that it proceeds from the mere motion of the gentleman from Jefferson himself, out of his excessive love of economy. I ask any gentleman, did you ever hear of a deliberative body getting officered, or getting themselves taken care of, by any other than the men of their deliberate choice—men who, if they do not serve us well, we can remove, and replace with others? I am for going to Masonic Hall, because it is now certain that we cannot get through with our labors before the meeting of the Legislature. But I am opposed to taking Mr. Sheets in place of our doorkeeper. I would move, only it is a motion that I dislike to make, that the resolution be laid on the table.

Mr. KENT. I have been waiting for an opportunity to make that motion, but I see the gentleman from Jefferson rising; if he wishes to reply, I will withdraw it.

Mr. GREGG. I do not know, sir, that there has been anything said that calls for a reply from me. Much that has been said with regard to Mr. Sheets, appears to me to have been wholly out of place and uncalled for. That gentleman has made no proposition here that would interfere with the rights of any officer of this body. Knowing that the agent of the Masonic Hall was willing to furnish that building and pay all the expenses of keeping it in order, and waiting on this Convention, for a sum equal to what we are now paying seven of our door-keepers, I took the responsibility, with his consent, to lay the proposition before this body. And I did so mainly to meet the objections of certain gentlemen here, who seemed disposed to make a great ado about the exorbitant rent of the Hall. But finding that economy and retrenchment is not really the paramount object with them, I have modified the resolution so as to strike out all that part relating to door-keepers.

In regard to the Stenographer I desire to say but little—and in saying that little, I have no desire other than to promote the public inter-

ost, and the credit of this body, which I fear is becoming a discount among our constituents. I came up to this Convention, sir, fully satisfied of the impolicy of employing a Stenographer, and of reporting and publishing our debates. And I am now more than ever convinced of the correctness of my position in regard to this matter, and I have no doubt but that a large majority of this Convention will now agree with me in opinion, however they may vote on the question now before us, I verily believe, sir, that if the resolution offered by myself on the third day of the session, to decline the services of a Stenographer, had been adopted, it would have saved to the State some \$25,000 to \$30,000 dollars; and we should have completed our labors ere this to the credit of ourselves and to the satisfaction of the people.

Doubtless the estimate I then made of the probable extent of our debates, was considered wild and extravagant, or the proposition would have met with more favor. You will remember, sir, I then stated that if we availed ourselves of the services of a Stenographer, our debates would not be less than 2400 pages, making three volumes of 800 pages each, and that our daily journal of proceedings would make another volume of about the same magnitude. This estimate was regarded as a mere fancy sketch of mine—and the idea was rather ridiculed by some of the leading members of this body whose influence was then almost omnipotent. My resolution soon found its way to the table without even affording me the poor privilege of recording my vote in favor of it. A committee was subsequently raised to inquire into the probable extent and expense of these debates, of which the gentleman from Warrick (Mr. Graham) was the chairman, who, after reviewing the whole ground, reported that the volume of debates would probably make some 800 pages, and that it would cost about 80 cents per copy for 750 copies, exclusive of the binding—whereupon the Convention then ordered the printing of 750 copies of the debates in book form.

And now, sir, what are the facts of the case in regard to this matter? Why, sir, we have already printed in book form over 1000 pages of the debates, and there is enough matter in type and in the hands of the reporters to make some 300 pages more. And if we should continue in session for sixty days longer, as we probably shall, our debates will reach to full 2400 pages, the mark made by me at the beginning. And what will be the cost of this volume of debates? I have taken the trouble to make a little estimate of the matter, for the correctness of which, in the main, I pledge my veracity. And here it is, being estimated up to the present time:

3,550,000 ems composition @ 60c., \$2,130 00
508 tokens press-work @ 45c., 228 00

Stenographer's compensation for reporting 1,643,500 words @ 20c per 100,
Binding 750 volumes @ 50c,

3,287 00

375 00

Total for 1300 pages, \$6,020 00

Being eight dollars per volume for the 750 copies ordered to be printed.

Now, Mr. President, if we must of necessity have our debates published, why the necessity of paying so much to the Stenographer for doing that which we could better do ourselves, and which many of us have to do for ourselves? I do not know how it is with others, but for myself I can say that with one exception, he has been of no earthly advantage to me. For I have found that the easiest way to correct his reports is to write them all out from beginning to end. In one speech that I made here, occupying between one and two hours, I fearlessly assert that there was not one single sentence reported correctly—and yet, for reporting that speech, he received some \$25. And so it is with other members. They write out their own speeches, and the reporter gets paid for it. Why, sir, in yesterday's Journal I see there is a speech published which no man can deliver on this floor in an hour; and yet it was made under the fifteen minutes rule. Will any man pretend that that speech was reported by the Stenographer? No, sir; nothing of the kind.

[Cries of "name him," "name him." "Whose speech is it?"]

Mr. GREGG. I allude to the speech of the gentleman from Allen (Mr. Borden).

Mr. BORDEN. That is the report of remarks made by me on several occasions. I took the reports of the Stenographer and embodied them all in one speech.

Mr. GREGG. I understand something about that. And I assure the gentleman from Allen that I do not object to his writing out speeches for the press, and to his having them copied, too, by the reporter, if he likes. But I do protest against our paying the Stenographer some twenty dollars for reporting a speech that was never made in this Hall.

Mr. PARIDEN. I do not rise to debate the subject. I cannot perceive why there should be any cause for warmth or irritation upon a question of this kind. In regard to the reporters I have no cause of complaint. Sometimes the bad English that I make use of here is reported, and sometimes it is translated into good sense and good grammar. I cannot say whether it is in the power of the Convention to dismiss them or not. I entertain some doubts about that. They are here by law, and they are here as a protection to the public, being here to report whatever is said or done. It is a guard that the Legislature has placed over us, in order to protect the public interest; and I doubt very much whether the Convention has any power over

them. It is a matter of contract between them and the State.

But in regard to what is said about this proposition, coming from Mr. Sheets, I do not know that there would be any harm in Mr. Sheets making any proposition that he might choose to make. I understand that he proposed, at the commencement of our session, to furnish the Hall and all necessary attendance for the sum of twenty dollars a day. Well, if we had accepted that proposition, it would have been a saving of twenty-five dollars a day to the State. Would that have been allowing him to participate in the doings of this body? Why, the whole community have a right to be here and listen to what is said, and witness what is done. Does any gentleman think that there is anything arrogant or presumptuous on the part of Mr. Sheets, when he proposes to furnish us the Hall and men to take care of it and keep it clean. There is this reason for it, and I can perceive it very readily: the owners of the Hall have left it in the charge of Mr. Sheets; he would be inexcusable if he were to neglect his charge. He must have men to watch the building and keep it secure. I cannot blame him for accompanying his proposition to lease or rent the Hall, with a proposition to furnish the necessary attendance. It is but a fair business transaction. I cannot see that there is anything in it that is deserving of censure. If there are nine door-keepers here, I would like to know what they all have to do. I do not know that there is a man too many—I do not say there is; but it strikes me there are more than is necessary, and if Mr. Sheets can perform the service for a less sum than we are paying, I should so far, be in favor of his proposition.

As to the Stenographer, it is another matter. I doubt the power of the Convention to dispense with his services, and if we could, I would not be disposed to do it at this period. Whether the Legislature acted right or not, in putting that guard over us—in throwing that security around the public interest, is not a matter that is left for our determination. The Legislature thought proper to do it—they have done it, and we have acquiesced in it.

Mr. EDMONSTON. I merely wish to say one word upon this subject, as an introduction to the vote that I shall give. It must be evident to every gentleman, that we are here under a law of the Legislature. Well, sir, if we are governed by one section of that law, we must be by another. If one part of the law is obligatory upon us, the whole is. Then it is no fault of the Convention that the Stenographer is here. I admit that it was, in my judgment, an error on the part of the Legislature, to entail upon the State the expense of employing a Stenographer. It is an expense that the people did not ask for; but if we can repeal one section of that act, we can repeal the whole code of our Revised Statutes. Then, as the Stenographer

is here by law, I admit that the Convention have no right to dispense with his services. And even if we pass a resolution declaring that we will dispense with his services, the Stenographer has a right to stay and exact pay for all the labor that he performs.

Mr. PETTIT. There's not a doubt of it.

Mr. READ of Monroe. I wish to make one statement in regard to the Stenographer. I am told that, at the opening of the session of Congress, he was telegraphed to know whether he would go on to Washington, it being difficult to obtain a sufficient number of reporters, in consequence of the fact that Conventions are being held in several of the States; there being a Convention in New Hampshire, one in Maryland, one in Virginia, and one in Ohio; besides our own; all at the same time. Well, this gentleman, after consulting with members of the Convention, and, perhaps, feeling himself under an obligation to respect his appointment, declined going.

Would it now be doing justice to him, that the Convention should dispense with his services under circumstances of this kind? I think not.

Mr. GREGG. In order to disincumber this matter, I will move to strike out all that relates to the door-keeper.

Mr. RITCHEY. I regret the introduction of this proposition. We are spending as much money by wasting time with it, as the Stenographer and door-keepers will cost us. I move that the resolutions be laid upon the table.

Mr. MORRISON of Marion. Will the gentleman withdraw his motion for two minutes only?

Mr. FOSTER. Then other gentlemen will want to speak; and the gentleman from Marion has already spoken once.

Mr. MORRISON. I merely desired to withdraw my amendment. But it is of no consequence.

The question being on the motion to lay the resolution on the table, the yeas and nays were demanded, and they were ordered, and being taken, were—yeas 65, nays 47—as follows:

YEAS.—Messrs. Anthony, Bascom, Beach, Bicknell, Biddle, Blythe, Brookbank, Butler, Carter, Chapman, Chenoweth, Clark of Tippecanoe, Colfax, Crumbacker, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Foley, Garvin, Gordon, Graham of Warrick, Hawkins, Hendricks, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Maguire, Mather, May, McClelland, McLean, Miller of Gibson, Milligan, Milroy, Morrison of Marion, Murray, Nave, Newman, Niles, Pettit, Read of Monroe, Ritchey, Robinson, Shannon, Sherrod, Sims, Sneok, Smith of Ripley, Smith of Scott, Steele, Taylor, Thornton, Watts, Wiley, Work, and Yocum—65.

NAYS.—Messrs. Badger, Ballingall, Beard, Beeson, Befry, Borden, Bourne, Bowers, Bryant, Carr, Chandler, Clark of Hamilton, Cole, Cookerly, Crawford, Davis of Madison, Farrow, Fisher, Foster, Frisbie, Gregg, Hall, Hamilton, Harbott, Hardin, Helmer, Hitt, Hogin, Jones, Kendall of White, Maich, Miller of Fulton, Moore, Morgan, Prather, Rariden, Read of Clark, Schoonover, Smiley, Tannehill, Thomas, Trimble, Walpole, Wolfe, Wunderlich, Zenor, and Mr. President—47.

So the amendments were laid on the table.

A MEMBER, whose name the reporter failed to obtain, moved a resolution to the effect that the Convention will hereafter proceed with the business legitimately before it, and refrain from discussing irrelevant matters.

Mr. SHERROD moved to amend, by striking out all after the word "resolved," and inserting the following:

"That the business of this Convention is to organize the fundamental law of the State of Indiana, and not to act upon measures of a purely legislative character; and, in order to hasten our deliberations to a speedy and happy close, we will fearlessly reject such Buncombe measures as have retarded the action of this Convention, especially for the past week."

Mr. S. said: It is well known, Mr. President, that I have not trespassed upon the time of this Convention, either in resolutions, motions, or speeches; and, sir, I have not offered this resolution with a view of dictating to this body, but because it is well known that our proceedings have been retarded by propositions that have no place and should never have been introduced here, in any shape or form—propositions, too, of a purely legislative character, and matters too, I regret to say, that every member of this Convention must be convinced were purely for buncombe. Who is it, sir, that have got up in this body and denounced gentlemen for making speeches? Why the very men who have introduced propositions of the character I have alluded to—that they knew would not succeed; and then, too, after the decision of the Convention has been passed upon them, they have introduced amendment after amendment to effect their purpose. These are the men, sir, that the people will hold responsible for retarding the action of this Convention. I trust that the Convention will put down all such action. These are my sentiments, and these the reasons that caused me introduce this resolution.

Mr. BASCOM. I would be glad if the gentleman from Orange, (Mr. Sherrod,) after all the wisdom and logic with which he has lectured this Convention, would be so polite as to inform us whether the amendment he has introduced here, belongs to a legislative or a constitutional body. If the gentleman, instead of lecturing this body in regard to its business, would attend to his own legitimate portion of

it, I think he would be much more profitably employed. For him to introduce such a nonsensical proposition as the present one and then undertake to lecture members for their action, it appears to me, places him in rather an inconsistent and ungraceful position. But very few members have offered anything irrelevant, in my opinion, except the gentleman from Orange himself. I trust, sir, that the business of the Convention will go forward, henceforth, with despatch, and that each member will perform the legitimate duties which devolve upon him.

Mr. KENT moved to amend the amendment, by adding the words "That the gentleman from Orange be appointed a committee to determine what questions are constitutional and legitimate."

The amendment was not concurred in.

The question was then taken upon the amendment of the gentleman from Orange, (Mr. Sherrod,) and it was concurred in.

The question recurring upon the adoption of the resolution as amended, it was rejected.

ADJOURNING OVER.

Mr. HOVEY. It will be remembered, Mr. President, by the Convention, that on last Saturday a resolution submitted by the gentleman from Gibson (Mr. Hall) proposing to dispense with the rule setting apart Saturday as resolution day, was then laid upon the table. I now move that that resolution and pending amendments be taken up from the table.

Mr. SIMS. I would ask the gentleman from Posey to withdraw his motion for a few moments, until I have offered a resolution.

Mr. HOVEY. Certainly. With pleasure.

Mr. SIMS then offered the following resolution:

"Resolved, That this Convention will not adjourn over the holidays, but remain in session and attend to the business the people have sent us here to perform."

Mr. PETTIT. I hope, sir, that this resolution will not be adopted. I am perfectly willing that we should not adjourn over the week including the holidays, but any gentleman who has had anything to do with deliberative bodies knows very well that they will not sit either on Christmas or New Year's day. If you were to pile up resolutions as high as heaven, you could not get this Convention together either upon Christmas or New Year's day. I move, sir, to amend the resolution so as to except Christmas and New Year's day.

Mr. COOKERLY. I hope, sir, that the amendment of the gentleman from Tippecanoe (Mr. Pettit) will not be adopted. We have been here already, sir, eleven weeks, and I do not see any necessity for wasting our time by adjourning over Christmas and New Years, and putting the State to a great expense by such action. [Here a cry of "Buncombe!" was

heard in the Hall.] You may call what I say "buncombe" or not; I do not care. It is so with every proposition introduced here that has for its object economy; the cry of "buncombe" is raised against the mover, and the proposition itself. Sir, I desire to get through with the business of the Convention, and go home to my own business and to my family. I do not wish to remain here upon Christmas and New Year's day and loaf around the streets on these days, but desire to come here and attend to our regular business. I trust the amendment will not be adopted.

Mr. GRAHAM of Warrick. I think, sir, that we had better adjourn over Christmas and over New Year's day, for if we come here on those days there will be no regular business done. Resolutions will be offered and speeches made not at all pertaining to the subject under consideration, and it will be viewed by some, probably, as occasions for frolic and amusement; and such proceedings will all have to be recorded, at the expense of the State. It will be a saving then, sir, I think, if we do not meet at all on Christmas and New Year's day.

Mr. BORDEN. I think, Mr. President, that the Convention ought to adjourn over Christmas, as it is a day of religious observance among Christians, and has been regarded as a holiday from time immemorial. Besides, we are to meet on the day following the 26th, in our new room. We want one day to get fixed, and get our papers arranged in order for business. I trust the proposition of the gentleman from Tippecanoe (Mr. Pettit) will be adopted.

Mr. READ of Monroe. There is no member, sir, who desires to get through with the business before the Convention, more than I do. I supposed, when this Convention was first called, that it would not require more than six or eight weeks to transact our business—especially when I took into consideration the fact that, in 1816, it required only nineteen or twenty days, for a body of thirty men to frame our original Constitution. I remarked once, to one of my friends, perhaps jestingly, that it could be determined by arithmetic, how long the Convention would be in session, and said, that if it took thirty men to make a Constitution in twenty days, in what time would it take one hundred and fifty men to make a Constitution? But when I came here, I found we represented different districts of the State, having different views upon various subjects. Some men from one portion of the State were in favor of the principle of the homestead exemption, and others opposed to it from other portions of the State; and so with regard to other great questions—and therefore it could not be expected that questions of that kind could be settled in a few days, by one hundred and fifty men. There has been a great deal of difference of opinion, also, in regard to what is proper to be introduced into the Constitution—which instru-

ment, of course, should define the forms and power of government. [Here there were cries of "question! question!"] I had intended, Mr. President, to make a few remarks in vindication of the Convention, in regard to the time it has occupied; but if gentlemen are not disposed to listen to me, I have no desire to trespass upon their attention. [Loud cries of "go on," "go on," amidst which Mr. R. took his seat.]

Mr. KELSO. I would have no objection, sir, to the resolution, if I thought it was necessary; but I think its adoption would have a different effect from what it is intended to have. There is no difficulty about our sitting upon Christmas or New Year's day, if there is no impediment in the way, making it indispensably necessary to adjourn over. But, sir, to pass a resolution, a week in advance of those holidays, saying that we will bind ourselves to do so and so on those days, it appears to me is saying to the people that we are disposed to neglect our business, and that it is absolutely necessary to whip us, in advance, into the performance of duty. If gentlemen are told they must meet here on those days, I fear that a great many will be disposed to show their independence by appropriating those days to themselves, as holidays are generally. I believe we had better wait until those holidays arrive, and then we can settle the matter.

Mr. TAYLOR moved to lay the resolution and pending amendment, upon the table.

The motion was agreed to.

RESOLUTION DAY.

Mr. HOVEY. I now renew my motion to take the resolution offered by the gentleman from Gibson, (Mr. Hall,) and the pending amendments, from the table.

The motion, upon a division, was not agreed to.

BINDING OF DEBATES.

Mr. GREGG offered the following resolution: "That the Committee on Accounts contract for the binding of seven hundred and fifty copies of the first volume of the debates of this Convention, at a cost not exceeding fifty cents per copy."

Mr. KILGORE. I would inquire of the gentleman from Jefferson, if he can give us any information as to the size of this volume, and whether it is to embrace everything that has been said and done up to this time?

Mr. GREGG. It will make a quarto volume of about eight hundred pages; but of course it will not embrace the debates up to the present day, as they have not all been published.

Mr. PEPPER of Ohio. Can we get them bound for fifty cents the volume?

Mr. GREGG. Yes, sir.

Mr. KELSO. I wish to make an inquiry. Why ask to bind only seven hundred and fifty copies, if they are to be sold for the benefit of

the State? Why not bind a thousand copies? and the larger the number, the cheaper they can be bound.

Mr. GREGG. Seven hundred and fifty copies was the number ordered by this Convention.

Mr. PETTIT. I shall not vote for this resolution, sir. I hold that this Convention has no authority to authorize or direct the printing of our proceedings in book form, or the printing of the Constitution we shall frame. We sit here under a law, sir, providing that when we have finished our labors, we shall deposit the draft of the Constitution, together with our proceedings, in the office of the Secretary of State, there to be acted upon as the Legislature which is coming, shall see fit. To that body should be entrusted the charge of printing and binding any extra number of our proceedings that may be necessary.

Mr. GREGG. I hope the resolution will be adopted, sir. We have gone to the expense of some six thousand dollars, to prepare this work; and to make it valuable, and to preserve it, it must be bound. The binding will cost three hundred and seventy-five dollars, a very small sum, in comparison to the expense of the unbound volume. It will be very convenient for us to have the volume before us for reference.

Mr. BORDEN. It will be recollected, sir, that at the commencement of our sessions, I stated that I considered we had nothing to do with the publication of our proceedings in this form, and I voted against the proposition then presented upon the subject. I never have believed that we had the power to draw a dollar out of the treasury for any such purpose. For the same reason, sir, I believe that we can have nothing to do with the binding of this book. The Legislature provided, in the law authorizing this Convention, for a Stenographer, to sit in this body, and report our proceedings; but they never authorized us, in that law, to pay for the publication of these debates. I think, sir, if the question was legally investigated, it would be found that we have violated that law. I desire to act consistent upon this subject, and therefore I shall vote against this resolution.

Mr. CRUMBACKER. Certain gentlemen are making constant complaints about expenditure of time and money, while at the same time they are occupying more of the time of the Convention, than any other gentlemen here. I wish to see the business of this Convention progress, for there is no man more desirous of being at home, than myself. I wish to see economy practiced also; but at the same time I do not wish, while I am crying out against the waste of time, to occupy more of the time than other gentlemen, thus increasing our expenses. In view of this fact, I move to lay the resolution on the table.

The resolution was laid on the table.

TAXATION.

Mr. DICK offered a resolution providing that a select committee of one from each Congressional District, be instructed to inquire into the expediency of adopting a clause in the new Constitution, providing that each tax-payer shall furnish the County Assessor, annually, with a schedule of all his rights, credits, monies, and effects—deducting therefrom the amount of his own debts—to the truth of which statement he shall make oath, and subscribe his name.

Mr. DICK said—

Mr. President, as I hear some manifestations of dissent, I shall offer a few remarks in support of this resolution. I believe there is not a man in this Convention, who will pretend to be ignorant of the great inequality and injustice practiced in the simple process of assessment. The plain farmer cannot conceal his rude improvements, his bulky implements, or thrifty stock. A few acres of land, cleared and fenced by a few thousand of new rails, stares the assessor full in the face. The raw material of the manufacturer or mechanic, is too ponderous for concealment. All they own, and often much that they have not yet paid for, is duly assessed to them. But even of this we do not complain. Sir, there is not a member in this house, but can point to numerous instances of gross frauds, committed annually by his neighbors, on the revenue of the country, by rendering false accounts of their taxables to the assessor—and it may be that some members of this house have an interest in sustaining the system as it is. It is next to impossible to find an assessor with the capacity and vigilance to assess correctly the mixed property of the merchant, who is actuated by the fraudulent design of avoiding the payment of his proportion of taxes. The real value of the property, credits, moneys, and effects, of a dishonest merchant, are easily misrepresented, under our present defective system. The value of the multifarious articles in which they deal—the amount of stock on hand, on their shelves and in their cellars, cannot be estimated with any degree of certainty; besides, it requires an uncommon degree of moral courage, in an humble assessor, to doubt the word of a mighty merchant. Hence, through these combined circumstances and defects, frauds are committed and perpetrated to an enormous extent. All we ask, is an equal and uniform mode of assessment—one that will neither excuse the rich, nor screen the poor—one that will reach the pittance of the humblest, and the thousands of the wealthiest, alike—one that will impose upon all a moral and pecuniary responsibility, which is filed against them living, and a record against them when dead. There is no greater hardship in swearing a man as to the value of his property, than there is in requiring him to bear testimony to the value of that of his neighbors, in a wit-

ness box in a court of justice. Besides the common frauds on the revenue, which are known to all, and practiced by too many of those who have been most fortunate in acquiring property, and in concealing its value, there are extraordinary frauds, that gentlemen must acknowledge to exist, in the almost total exemption from taxation of incorporation stocks. It will be seen, by a glance at the statistics of internal improvements, that at least six millions are invested in rail roads, plank roads, navigation companies, canal and banking companies, which almost entirely escape taxation. By reference to the Auditor's report to the General Assembly, of last year, it will be seen that the whole corporation stock of the State is set down at \$116,364, on which taxes are paid. At the lowest estimate, the aggregate amount of property in the State, which evades our present assessment law, is set down at thirty millions of dollars; and this circumstance is much aggravated by the fact, that this large amount of property is the most profitable, productive, and active capital in the State—quick, and not sluggish in its returns—managed at small expense, and yielding from 10 to 25 per cent. per annum. It is owned exclusively by the wealthy, who are best able to pay. If this evil, sir, this monstrous evil, was fairly understood by our hardy sons of labor, who have often to solicit their fellow men for the poor privilege of toil, for the dollar with which they pay their poll-tax, it would, in my opinion, revolutionize the State. Under a just, rigid, and uniform system of assessment, our public debt could be discharged in a few years, and then our taxes would be reduced at least one-half, or perhaps one-fourth.

The resolution was not adopted.

On motion, by Mr. PETTIT, the Convention adjourned.

AFTERNOON SESSION.

Mr. R. A. CLEMENTS, a Delegate from the county of Daviess, elected to fill the vacancy occasioned by the resignation of Mr. Terry, appeared, produced his credentials, was sworn into office by Judge Borden, and took his seat.

ORDERS OF THE DAY.

The Convention then resumed the consideration of the orders of the day, the pending question being on the final passage of section thirty-one, which is the same as existed in the old Constitution.

Mr. MARCH moved to re-commit the section, with instructions to strike out the words, "ex post facto," and insert in the proper place, words in English equivalent to their meaning.

Mr. RARIDEN. If the gentleman will furnish those words to us we will insert them.

The question being taken on the motion to re-commit, it was rejected.

On motion, it was ordered that the rule requiring the yeas and nays on the final passage of a section be dispensed with.

The section was then passed.

The question then was on the final passage of the thirty-ninth section.

Mr. COLFAX hoped the yeas and nays might be ordered on that, for he wished to record his vote against it.

Mr. PETTIT. I hope the gentleman may be accommodated, for I wish to record mine for it.

Mr. COLFAX. The gentleman from Tippecanoe is a little larger than I am, but luckily my vote will count as much as his. It seems to me that there might be cases of emergency in which the Legislature might desire to submit their laws to the people. Besides it was a democratic principle, and would be followed out in regard to the adoption of this Constitution.

Mr. BASCOM moved to re-commit the section with the following instructions: "To except the question of banking."

The question being taken on the motion to re-commit,

The section was not re-committed.

Mr. BORDEN thought it was quite possible that in the Constitution itself the Convention might provide, that any question of banking should be submitted, and he doubted whether it would be right to tie up the hands of the Legislature and the people in this respect. He thought they had better leave the matter as it was. If the people did not want these questions submitted to them, the Legislature would not submit them.

Mr. TAYLOR believed it would be wise on the part of the Convention, not to pass this section. There were always, in the course of Legislation, times—and time proved sometimes the folly as well as the wisdom of men—when it was desirable that the people should express their opinions. He did not wish to discuss the merits of the section, but he thought it ought not to pass. At all events, he should vote against it.

Mr. OWEN. In regard to this matter I wish only to say, that just in proportion as the Legislature shifts the proper responsibility from their shoulders, just in that proportion they will become time servers. So far as I know anything about the people, they have no desire for any such submission. They desire that we should take the responsibility and make as good laws as we can, and if they do not suit them, they can repeat them the next session.

The yeas and nays being demanded, and ordered on the final passage of the section, were taken, with the following result—yeas 68, nays 38:

YEAS.—Messrs. Anthony, Berry, Blythe, Bourne, Bracken, Bryant, Butler, Carr, Carter, Chapman, Clark of Tippecanoe, Clements,

Cookerly, Crawford, Crumbacker, Dick, Dunn of Perry, Elliott, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Helmer, Hendricks, Holman, Howe, Johnson, Jones, Kent, Kendall of White, May, McLean, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morgan, Nave, Nofsinger, Owen, Pettit, Prather, Rariden, Read of Monroe, Ritchey, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Tannehill, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wiley, Wunderlich, and Mr. President—68.

YAYS.—Messrs. Badger, Balingall, Bascom, Beach, Borden, Brookbank, Chenowith, Clark of Hamilton, Cole, Colfax, Dobson, Edmonston, Farrow, Fisher, Haddon, Hardin, Hawkins, Hitt, Hogin, Huff, Kendall of Wabash, Kilgore, Kinley, March, McClelland, Milligan, Pepper of Crawford, Read of Clark, Schoonover, Smith of Scott, Steele, Stevenson, Taylor, Walpole, Wolfe, Work, Yocum, and Zenor—38.

So the section was passed.

COMPENSATION OF MEMBERS.

The **PRESIDENT**. The next thing in the order of the day is the following additional section:

"The members of the General Assembly shall receive a compensation not exceeding three dollars per day, but no increase of compensation shall take effect during the session of the Legislature at which such increase is made."

Mr. **READ** of Clark inquired, whether it was in order to introduce a matter which had been voted down the previous day.

The **PRESIDENT**. On examination of the question, the Chair finds that it contains different matter.

Mr. **RARIDEN** moved to re-consider the vote on the section which was rejected yesterday on the same subject.

Mr. **WALPOLE** demanded the yeas and nays.

The yeas and nays were ordered, and taken, and resulted as follows—yeas 60, nays 51:

YAYS.—Messrs. Bascom, Beeson, Borden, Bowers, Bracken, Carter, Chenowith, Clark of Hamilton, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Elliott, Farrow, Fisher, Foster, Frisbie, Gordon, Gregg, Hall, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kendall of Wabash, Kendall of White, Kinley, March, May, McClelland, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Nave, Nofsinger, Prather, Rariden, Read of Clark, Ritchey, Schoonover, Sims, Smiley, Stevenson, Thomas, Trimble, Walpole, Wolfe, Work, Wunderlich, Yocum, and Zenor—60.

NAYS.—Messrs. Anthony, Badger, Balingall, Beach, Berry, Blythe, Bourne, Brookbank, Bryant, Butler, Carr, Chapman, Clark of Tippe-

canoe, Cole, Colfax, Clements, Crumbacker, Dunn of Perry, Edmonston, Foley, Garvin, Graham of Warrick, Haddon, Hawkins, Hitt, Hogin, Howe, Kelso, Kilgore, Maguire, McLean, Miller of Fulton, Miller of Gibson, Newman, Owen, Pepper of Crawford, Pettit, Read of Monroe, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Steele, Tannehill, Taylor, Thornton, Todd, Wallace, Watts, Wiley, and Mr. President—51.

So the motion to re-consider was agreed to.

Mr. **NAVE**. Will it be in order to move to strike out the section, and insert a substitute?

The **PRESIDENT**. Certainly.

Mr. **NAVE**. Then I move to strike out the section and insert the following:

"The members of the General Assembly shall receive a compensation not to exceed three dollars per day, during their personal attendance on the same; but shall not continue in session more than eight weeks, except at the first session under this Constitution; and that they shall receive also the sum of three dollars for every twenty-five miles travel performed in coming by the most direct route to and returning from the Capital."

He desired to submit a few remarks to the Convention in support of the amendment. If there had been any one thing that the people of the State had approved of and endorsed, it was that the Legislature should be limited as to the time of their holding their sessions. He would venture to say that there would not three men be found in the State unfavorable to such limitation. They had a good precedent for this in the present law limiting the sessions to six weeks. And where was the man who had been found to lift up his voice against that law? No such voice had been heard in that Hall, or in the south end of the Capitol. It was important that the Legislature should be limited in their action. If the Convention had been limited in their action, there would have been much more expedition and promptness in their action. Why was it important that there should be such a limitation? One good reason was, that men would come here from day to day and make speeches, not for the purpose of exhibiting themselves before the country, but because they get excited on political questions—questions which they were not sent to legislate upon, but mere party questions, which had consumed more time than all the legislation that had been done for the State. If the sessions were limited to eight weeks, be believed no man would be sent here who would desire more time. Wherever biennial sessions had been adopted by the States, this principle of limitation had also prevailed; and where had there been any complaint against it? This was an important principle—one calculated to secure to the people of the State all the legislation required to promote their interests. [A voice—"Buncombe."]

When he made these remarks, he made them not for Buncombe. He did not believe that any gentleman on that floor would say that he made any such suggestion for that purpose. He was there for the purpose of aiding in making an organic law, and not to incorporate any sentiments of his own in that instrument. He was there on principles of conservatism, and in favor of such principles his votes had always been recorded. Too much legislation proved a curse to any country. The legislation that had been had heretofore had proved a curse to the country, and for that reason he wished to limit the time of the Legislature in their sessions.

Mr. PETTIT. This is a question which legitimately belongs to another committee, and I believe they are ready to report upon it—the committee on compensation, salaries, and the tenure of office. I was a member of that committee, and we had settled the pay of the members of the Legislature, and directed a report to be made. Whether that report has been made or not, I do not know. This is a question purely appertaining to that committee, and not to the committee on the legislative department. I therefore move to lay the section and pending amendment on the table.

Mr. DOBSON, as chairman of the committee on compensation, &c., explained that a report had been drafted as to the compensation of officers, Judges of the Supreme and Circuit Courts, State Auditors, members of the Legislature, &c.; but before he had left the committee room he was requested to withhold it until the committee had another meeting. He informed the gentleman from Tippecanoe of this request. It was thought unimportant for the present, because they did not know how many officers to fix salaries for. For that reason the report was not made; but it would be made in due time.

Mr. NAVE demanded the yeas and nays on the motion to lay the section and amendment on the table.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Anthony, Badger, Beach, Berry, Blythe, Bourne, Bracken, Brookbank, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Tippecanoe, Clements, Cole, Colfax, Crumbacker, Dunn of Perry, Edmonston, Elliott, Foley, Garvin, Graham of Warrick, Gregg, Haddon, Hawkins, Hitt, Hugin, Howe, Kelso, Kent, Kilgore, Maguire, McLean, Miller of Fulton, Miller of Gibson, Newman, Nofsinger, Owen, Pettit, Read of Monroe, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Steele, Taylor, Thornton, Todd, Wallace, Watts, Wiley, Work, and Mr. President—56.

NAYS.—Messrs. Balingall, Bascom, Beeson, Borden, Bowers, Carter, Clark of Hamilton, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Farrow, Fisher, Frisbie, Gordon, Hall,

Hamilton, Harbolt, Hardin, Helmer, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kendall of Wabash, Kendall of White, Kinley, Lockhart, March, May, McClelland, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Nave, Pepper of Crawford, Prather, Rarider, Read of Clark, Ritchey, Schoonover, Sims, Smiley, Stevenson, Tannehill, Thomas, Trimble, Walpole, Wolfe, Wunderlich, Yocum, and Zenor—58.

So the section and amendment were not laid upon the table.

Mr. SHERROD moved to amend the amendment so as to provide that, from the first day after the expiration of eight weeks, the members of the Convention should not receive more than one dollar and fifty cents per day.

Mr. BORDEN. The motion of the gentleman from Orange appears to me to be entirely out of order. Suppose the gentleman should propose that the pay of the members of the British Parliament should be eight dollars a day, would that be in order?

The PRESIDENT. The motion would be in order, but it would not be very relevant.

Mr. SHERROD. I wish to test the sincerity of the House on the proposition before us. If we have a right, and if it is the duty and the province of the Convention to say how long the Legislature shall be in session, and what their compensation shall be, I contend that we ought to look to ourselves; and I will say that it comes with a bad grace from the members of this Convention. The law limiting the pay of the members of the Legislature has to this time been a purely legislative enactment. The gentleman from Clark says that this proposition was brought about for the purpose of making political capital. Well, sir, if this be true, I suppose the same spirit will bring about the same effect; and as I have defined my position, and intend to oppose every measure brought into this body of a legislative character, I shall oppose this measure, unless the amendment I have offered is adopted.

Mr. READ of Clarke. I excuse my friend from Orange for his very pithy address, when I look round and see that there is present a number of the fair sex. [Great laughter and applause.] I am satisfied he would not have made that speech unless the ladies had been in the lobby. He knew, however, that he was pulling against the wind, and rowing against the current. If I am wrong in my proposition, all the other States are wrong; and I speak and vote on this occasion conscientiously. I honestly believe that, if we adopt a provision of that kind, we shall save to the State some fifteen thousand dollars annually for all time to come. I again repeat that, if we do not adopt this rule, it would be far better not to adopt the system of biennial sessions. I am perfectly satisfied that the section ought to pass, and if

every member is of the same opinion, it certainly will pass.

Mr. SHERROD. I excuse the gentleman from Clark for his very patriotic speech for the same reason that he excused me. [Laughter.]

Mr. COOKERLY. This measure, like many others, has received great opposition. The gentleman from Orange has attempted to bring the measure into ridicule by saying we have no right to pass it. Why, then, have all other Conventions done the same thing? I consider that this is an important measure, and I believe that the people wish it to be adopted.

Mr. SHERROD. I do not doubt the right of the Convention to pass it, but I doubt the propriety.

Mr. COOKERLY. I do not doubt the propriety. I believe it is right that we should adopt it. Since the year '42, the Legislature has never sat longer than six weeks but once, and then only one week longer. It is a good principle, and instead of meeting with the ridicule of the Convention, it ought to meet with their hearty sanction. Let gentlemen ridicule this measure as much as they please, I can tell them that they will meet with that hearty contempt from the people which they justly merit. ["Consent! consent!"] Have we come here and sat eleven weeks, and are we to sit eleven weeks longer, and effect nothing for the people in the way of economy? Are we to spend a hundred thousand dollars, and the people receive no good? I protest against it in the name of my constituents, and in the name of the freemen of Indiana.

Mr. PEPPER of Crawford. I hope the amendment will be adopted. If we apply the same principles to ourselves which we would apply to others, we would progress much better with the business we were sent here to do. The gentleman last up says we are to spend a hundred thousand dollars. Let us bring the principle of economy home; and, as the gentleman from Orange well said, let us test the sincerity of these men. If they want to economize, let it commence in this Convention now. Let it begin from this day forward. Sir, with what kind of grace could these gentlemen carry back to their constituents a tale like this: that the delegates on this floor were seeking to curtail the per diem allowance of those who are to come after us in the business of legislation, but that the same proposition was made on this floor to apply to themselves, and that they refused to pass it. [Great applause.] If the amendment is not adopted, I shall be compelled to vote against the section. [Consent.]

Mr. KELSO. This is a matter about which I do not care a great deal. In the former Constitution no limit was fixed to the time of the sittings of the Legislature, nor was there any to their pay, except as they were not permitted to go higher nor lower than a given sum. They legislated for a long time at two dollars per day,

until the Legislature fixed the amount at three. It remained at that till 1842, when the Legislature took it into their heads that the sessions had been longer than had been useful, and they then passed the law limiting the time of the sessions to six weeks, and fixing the pay at three dollars a day, prescribing that from and after it had exceeded that number of weeks it should be a dollar and half per day. I now venture to say here that the legislation has been worse since that law was passed. It is true that there has never been a longer session than seven weeks, and it may be all very true, as the gentleman from Vigo has said, that at the end of the period the legislators were anxious to get home. That has been the very reason why the legislation has been done so badly. When men cannot obtain a sufficient compensation they will accordingly do the business of the people in a very slovenly manner. Now the gentleman exults that in the Constitutions of other States there is a restriction of this sort. Now the Constitutions to which the gentleman refers restrict their members both in time and compensation; and if it be right in the one it is right in both; and if it is wrong in the one it is wrong in the other. If the Legislature under the new Constitution is likely to sit too long, it will be a matter which the people will take into their own hands. They will elect men who will attend to their wishes. Sir, this is against our notions of honesty. It is equivalent to saying that we have no confidence in men; but that every two years they will come here and drain the treasury by uselessly wasting their time. I have no such opinion of the people of Indiana. If the Legislature have sufficient time to do their business in they will do it well. If you hurry them they will do it badly.

Mr. KILGORE. I think it will be necessary to fix some limits to the sessions of the Legislature, but that the time proposed is too short. I had drawn up an amendment which I had proposed to offer, fixing the limit at seventy days, which I think will be time little enough. We will doubtless provide for biennial sessions, and if we should do so we must necessarily expect from the increase of population, and wealth, and business, that there will also be required an increase of legislation. We find now when our Legislature meets annually that they consume six weeks and sometimes a little more than that. I propose to limit their regular sessions to seventy days, and their extra sessions to thirty days. I also propose to strike out the word "exceeding," and insert the word "less," so as to fix the amount of compensation below which the Legislature should not go. I would be willing to say that the compensation should not be less than three dollars per day, but I am not disposed to fix a limit beyond which they shall not go. We all know that the price of boarding and everything

necessary for the comfort and convenience of the members of the Legislature here, must necessarily be increased with the growth and prosperity of the country. We intend this Constitution to stand for many years. The price of boarding will soon reach such a point that three dollars per day will not be an adequate compensation for members here. What will be the consequence? Why that none but the wealthy men of the land can accept a seat in the Legislature. A poor man could not leave his business and pay a hand to do his work, besides paying all his other expenses; and I am unwilling to put anything into the fundamental law which would prevent the poor men of the country from occupying a seat in the Legislature. Yet this will be the inevitable result if you limit the compensation to that fixed point. And not only so, but I am willing that the Legislature should pay such a compensation, with the approbation of the people, as will secure the best talent and the best business men of the country. I would be willing to vote for such a compensation as would induce distinguished men to turn their attention from other pursuits for the time being to serve the people in the Legislature. We could undoubtedly obtain men at a dollar a day—men who would be willing to come for the glory of the thing. But the time may come when that will not pay their boarding bills, and I am not willing to place things in such a condition as that none but wealthy men should control all the places and offices. That is the main reason why I do not wish to fix a limitation beyond which they shall not go.

In regard to the amendment proposed by the gentleman from Orange (Mr. Sherrod) I have not a word to say. I do not for a moment imagine that it will be adopted. The gentleman thinks it is right and that we have the power, but that it is not expedient. That gentleman undoubtedly acts with a view to expediency. He might think it quite right and proper to get married, but perhaps not expedient. (Laughter.) He does all with an eye to expediency. I think we ought not to limit the sessions of the Legislature, at least below the length of time which we have consumed. We have been here some seventy-six days, and we have not done more than would be embraced in one single act of the Legislature; and yet we would require the Legislature to pass all laws necessary for the State in less time than we have spent in doing nothing at all. I have now done. I shall offer my amendment at the proper time.

Mr. ZENOR. I have not risen to make a speech but a motion, and that is to lay the amendment of the gentlemen from Orange upon the table; simply remarking that a dollar and a-half per day might be quite sufficient pay for that gentleman. [Great laughter.] I do not claim three dollars per day for any great speeches

I have made, or any particular service I may have done the Convention, but I do think I am fully entitled to it for the patience and fortitude I have manifested in sitting here from day to day, listening to Buncombe speeches. [Great applause.] I move to lay the amendment on the table.

The question being taken the amendment was laid upon the table.

Mr. KILGORE moved to amend the amendment by striking out "eight weeks" and inserting "seventy days," and also to strike out the word "exceeding" and insert the word "less."

Mr. MOORE moved to lay the amendment to the amendment upon the table, which was agreed to.

Mr. BADGER. I am in favor of the section as reported by the committee, believing it to be right, and seeing that we are spending our time here nonsensically and unprofitably, I move the previous question.

The previous question was sustained, and the main question being ordered to be now put, the question was first on the amendment offered by the gentleman from Hendricks (Mr. Nave).

The yeas and nays being demanded and ordered, were taken, with the following result:

YEAS.—Messrs. Anthony, Badger, Bascom, Beeson, Berry, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chapman, Chenoweth, Clark of Hamilton, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dick, Dunn of P., Farrow, Foley, Gregg, Hawkins, Holman, Howe, Kelso, Kendall of Wabash, Maguire, Miller of Fulton, Milligan, Morgan, Nave, Newman, Pepper of Crawford, Read of Monroe, Sims, Smith of Ripley, Tannehill, Taylor, Thomas, Thornton, Watts, Wiley, Zenor, and Mr. President—50.

NAYS.—Messrs. Balingall, Beach, Bicknell, Borden, Brookbank, Clark of Tippecanoe, Cookerly, Dobson, Edmondston, Elliot, Fisher, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Johnson, Jones, Kent, Kendall of White, Kilgore, Kinley, Lockhart, March, Mather, May, McClelland, McLean, Miller of Gibson, Milroy, Moore, Morrison of Marion, Murray, Nofsinger, Owen, Pettit, Prather, Rariden, Read of Clark, Ritchey, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Scott, Steele, Stevenson, Todd, Trimble, Wallace, Walpole, Wolfe, Work, Wunderlich, and Yocum—67.

So the amendment was not adopted.

The question then being on ordering the section to be engrossed for a third reading,

The yeas and nays were demanded, ordered, and taken, and resulted as follows:

YEAS.—Messrs. Balingall, Bascom, Beeson, Borden, Bowers, Bracken, Butler, Carter, Chenoweth, Clark of Hamilton, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Elliott, Farrow, Fisher, Foster, Frisbie, Gordon, Hall, Ham-

ilton, Harbolt, Hardin, Helmer, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kendall of Wabash, Kendall of White, Lockhart, March, May, McClelland, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nave, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Thomas, Trimble, Walpole, Watts, Wolfe, Wunderlich, Yocum, and Zeror—68.

YAYS.—Messrs. Anthony, Badger, Beach, Berry, Bicknell, Blythe, Bourne, Brookbank, Bryant, Carr, Chapman, Clark of Tippecanoe, Clements, Cole, Colfax, Crumbacker, Dunn of P., Edmonston, Foley, Garvin, Graham of Warwick, Gregg, Haddon, Hawkins, Hitt, Hogin, Howe, Kelso, Kent, Kilgore, Kinley, Maguire, Mather, McLean, Miller of Fulton, Miller of Gibson, Newman, Nofsinger, Owen, Pettit, Steele, Taylor, Thornton, Todd, Wallace, Wiley, Work, and Mr. President—48.

So the section was ordered to be engrossed for a third reading.

THE PRESIDENT. The next business in the orders of the day, is the following section on its second reading :

"The General Assembly shall have no power to grant divorces, or direct by special legislation, the sale of estates belonging to infants or other persons laboring under legal disabilities, but by general law, shall confer such power on the courts of justice."

Mr. WOLFE moved to amend the section by inserting after the word "divorces," the words "or try impeachments."

Mr. RARIDEN. There is a report on the subject of impeachments.

Mr. WOLFE. There is one on the subject of divorces, too, and they ought to go together.

Mr. RARIDEN. They are not much alike. The question being taken, the amendment was rejected.

The section was then ordered to a third reading by unanimous consent.

The next thing in the orders of the day was the following section, the question being on ordering it to be engrossed:

"No act of the General Assembly shall ever be revised or amended by a reference to its title, but in such case, the act revised, or section amended, shall be re-enacted and published at full length."

The section was ordered to be engrossed for a third reading by unanimous consent.

The next thing in the orders of the day being section 28,

Mr. HOWE moved to strike it out and insert the following as a substitute :

"Suits may be brought in all cases, against the State, in manner prescribed by law, but no special act authorizing suit or suits against the State, shall ever be passed."

Mr. H. said he had not been informed whether the legislative committee intended that some other provision should be made or whether they purposed leaving the question open in regard to presenting claims against the State. He took it that the design was to prevent in any case, the bringing of a suit against the State, and to make the General Assembly a judicial tribunal for the determination of claims against the State. For one, he protested against the adoption of such a rule. No civilized country as yet had adopted a provision of that sort. In all cases wherever a citizen had a claim against a State, the justice of which depended upon the determination of legal questions, he had precisely the same right to have his claim adjudicated upon by a competent tribunal, as any citizen had against another citizen. They all stood upon the same right and hence, in the absence of any general law on the subject, the Legislature had always been in the habit of passing a special act for that purpose. Now there was no sort of doubt that injurious consequences had resulted from that course to the State. In some cases allowances had been given, which should not have been given, and larger damages awarded than would have been awarded, had the contest been between private individuals. But because this thing has been abused, that was no reason why a citizen should not have his just rights, but it rather tended to show that there should be some general rule adopted to give the individual his just rights. What he proposed, was to leave to the Legislature the power to determine under what general provision or rule of law, claims of that sort should be decided. There might be a board of claims consisting of the Secretary and other officers of State, in connection with the Attorney General, or the judges, or allow suit to be brought in the Supreme Court, or a claim might be investigated by one of your officers, and if he should reject it, then give an appeal to the Supreme Court. That would leave the question open and give to every citizen who had a claim against the Government, the same opportunity to prosecute it, as if it was a claim against an individual citizen. It would then stand upon a footing of natural justice—the broadest and best of all. A wise man (Solon) when asked what was the best government, replied "that one under which an injury to the meanest individual was looked upon as an insult to the whole community." Of all rights, those which regard the protection of life, liberty, and property are the most important. They are elementary or public rights only as they tend to carry out natural rights. Unless we adopt a provision of this sort, we strike at the very root of the right of the citizen to be protected in his property.

Mr. GRAHAM moved to amend the section by adding—

"Nor shall the Legislature ever make by

special act compensation to any person claiming damages."

He did not know whether the phraseology of the amendment would convey the idea he intended, but he did not want the Legislature to have the power of settling difficulties between the State and contractors. They all know that contractors on public works were here annoying the Legislature year after year, to make them compensation for breaches of contract between them and the State. His object was to place the matter beyond the power of the Legislature, at the same time to give it to the courts of justice.

Mr. KELSO. I cannot for the soul of me, see what justice there is in saying that the State shall enter into a contract with an individual and then allowing them to say that they will break that contract.

Mr. GRAHAM. All I want is, that such matters should be decided by a court, and not by the Legislature.

Mr. KELSO. I give the gentleman the right hand of fellowship on that. I say that an individual ought to have the right of going into court and presenting his claim against the State when she has violated a solemn contract. I maintain, that everything of a judicial character should be kept from the Legislature—our courts of justice being a separate and distinct part of the Government. I am satisfied with this amendment, because, after the court has once passed upon it, it would be proper to have a provision to prevent parties from suing the same matter in the Legislature. But it would be the greatest possible hardship upon a citizen who enters into a contract with the State to perform a certain duty, and the State fails to perform her part of the contract, to say that he should have no remedy at all. Such a thing would be the height of injustice.

Mr. BORDEN said he was in favor of the section as it stood, but against the amendment. When was a State ever sued, and the plaintiff not succeed? What sovereigns had ever permitted themselves to be sued? Was it right to put a sovereign State down to the capacity of an individual, and call her into court? If such a principle were adopted, they would have to find some other way of raising taxes.

Mr. PETTIT. If we should pass this section, the last one is one that will require, and will have a good deal of discussion, for it involves a principle which I think is not right to be adopted. We shall not get through this evening, and as it is Saturday evening, I move that we adjourn.

Pending the question on the amendment of Mr. GRAHAM,

The Convention adjourned.

MONDAY, DEC. 23, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Dr. SIMPSON, of Cincinnati.

The journal was read and approved.

The PRESIDENT laid before the Convention sundry reports and documents from the Ohio Convention, including the printed debates up to the 8th of the present month (December). The Debates, as far as printed, contain near eight hundred pages in small type.

Mr. WATTS moved to refer so much of the reports as related to banks, to the committee on currency and banking.

The motion was agreed to.

COMPROMISE RESOLUTIONS.

The PRESIDENT laid before the Convention a communication and a series of resolutions upon the compromise measures, received from the Maryland Constitutional Convention. The resolutions were five in number. The fifth resolution demurred to the Fugitive Slave Law, as not being sufficiently stringent in its details, but for the sake of promoting harmony in the Union they would carry out its provisions.

Mr. OWEN offered the following resolution:

Resolved, That the President acknowledge the receipt of the resolutions just received from the Constitutional Convention of Maryland, and that he transmit to the President of said Convention the resolutions heretofore passed by this Convention, relative to the series of acts, usually called the compromise measures, passed at the late session of Congress.

Mr. RARIDEN said he was afraid that these resolutions would lead to difficulty. It was apparent by the resolution in the series adopted by the Maryland Constitutional Convention, that that body did not consider the Fugitive Slave law sufficiently stringent in its details; whereas the resolution adopted by this Convention upon the same subject set forth, that this Convention considered the Fugitive Slave Law too stringent in its details. He was afraid that by transmitting the resolutions they had adopted, to the Maryland Constitutional Convention, it would lead to a correspondence between the two bodies, in regard to the merits of the Fugitive Slave Bill, and lead to dissension and difficulty.

Mr. OWEN remarked that as this Convention had taken its stand in regard to the merits of the compromise measures, he trusted they would not be ashamed or afraid to lay the result of their deliberations before the Maryland Convention.

Mr. KILGORE stated that there could be, in his opinion, no ground of difficulty. This Convention had stated that it objected to the stringency of the details of the Fugitive Slave Law, but for the sake of the Union they were willing to sustain the measure as passed by Con-

gress. It was open, of course, to future amendment. The Maryland Constitution had objected to the lack of stringency in the details of the fugitive slave law, but had declared also that for the sake of the Union it was willing to stand by it as it was. This was the ground upon which both of the Conventions met—the Union.

Mr. DOBSON said that this matter did not require any discussion at all. The Maryland Convention had stated they stood by the Union; this Convention took the same position. The Maryland Convention had informed us of the fact officially, and now this Convention was doing nothing more than was right and proper in informing that Convention that they stood upon the same platform.

The resolution was adopted.

Mr. EDMONSTON moved that the communication and resolutions be spread upon the journals.

The motion was agreed to.

FIREMEN'S FAIR.

Mr. KELSO said that he rose to ask the Convention to suspend the rules in order to introduce the following resolution:

Resolved, That when this Convention adjourn upon Saturday, the 28th, it adjourn to meet upon Tuesday, the 31st inst., at the usual hour."

Some time since, it would be remembered, the citizens of Indianapolis raised a portion of the price of a fire engine, hose, &c., and the State also contributed four hundred dollars toward the purchase, for the protection of private and public property here. Notwithstanding the sum thus raised, there was a balance yet unpaid. Now in order to raise that balance it was proposed to hold a fair in Masonic Hall for two successive evenings, and two evenings had been selected—the 30th and 31st. As the Convention had now engaged the Hall, the favor was asked by the originators of the fair that the Convention adjourn over Monday, and thus facilitate the purpose designed in getting up the fair. The Legislature would meet on that day, and it was not probable that there would be much business transacted.

Mr. SMITH of Scott. What amount is it proposed to raise by this fair?

Mr. KELSO. Some three or four hundred dollars.

Mr. SMITH of Scott. Well, I think, sir, it would be a great deal better for us to appropriate this amount to pay the debt, rather than lose six hundred dollars. I trust the rules will not be suspended, and the State be put to an unnecessary expense.

The rules were not suspended.

RIGHT OF SUFFRAGE.

Mr. HITT presented a memorial from citizens of Knox county, praying for a clause in the

Constitution that no persons be permitted the right of suffrage until they have paid a tax.

Mr. H. trusted the Convention would give the subject a due consideration at the proper time; and for the present he would move that the petition be laid on the table.

The motion was agreed to.

LICENSE.

Mr. KILGORE moved to take from the table the section reported from a select committee on the 19th inst., prohibiting the Legislature from passing laws for licensing the sale of spirituous liquors.

Mr. K. said that the reason he asked to take this section up from the table was, because a number of gentlemen did not understand its true character; they supposing that it was a provision prohibiting the sale of liquor in any form. The object of the section was simply to prevent the State from deriving any profit from the sale of liquor. If it was right that liquor should be retailed, it was intended by the section that no tax should be levied upon its sale; and if it was wrong that it should be retailed, it was designed that the State should not in any way sanction that wrong.

Upon this motion the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 36, nays 73:

YEAS.—Messrs. Balingall, Beeson, Bicknell, Bracken, Bryant, Clark of Hamilton, Cole, Davis of Madison, Farrow, Foster, Frisbie, Hawkins, Helmer, Hitt, Hogan, Holman, Johnson, Kendall of Wabash, Kilgore, Kinley, Maguire, March, Milligan, Milroy, Morgan, Murray, Newman, Niles, Prather, Read of Clark, Robinson, Smiley, Smith of Ripley, Todd, Watts, and Work—36.

NAYS.—Messrs. Anthony, Bascom, Beach, Berry, Biddle, Blythe, Borden, Bourne, Butler, Carr, Carter, Chapman, Chenowith, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crawford, Dick, Dobson, Duzan, Edmonston, Elliott, Fisher, Foley, Garvin, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hardin, Hovey, Howe, Huff, Jones, Kelso, Kent, Kendall of White, Lockhart, Mather, McClelland, McLean, Miller of Gibson, Moore, Morrison of Marion, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Snook, Smith of Scott, Stevenson, Tannehill, Taylor, Thomas, Thornton, Trimby, Walpole, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—73.

So the report was not taken from the table.

PAY OF THE LEGISLATURE.

The twenty-sixth section of Report No. 12, fixing the pay of members at three dollars a day for the services of the members, &c., was taken up and read a third time.

Mr. ROBINSON moved to re-commit the section with instructions to report the following section: "The members of the general Assembly, for traveling to and from the Capitol, shall receive for their services a compensation to be fixed by law, and for their services during the session a compensation not exceeding three dollars per day, to be paid out of the public treasury; but an increase of compensation shall take effect during the session at which such increase shall be made."

Mr. OWEN moved to amend the instructions as follows:

Strike out the entire section and insert "The members of the General Assembly shall receive for their services a compensation to be fixed by law; but an increase shall take effect during the session at which such increase shall be made."

"No regular session of the General Assembly, except it be the first under this Constitution, shall extend beyond the term of sixty days, nor any called session beyond the term of forty days."

Mr. O. said that he was sorry to see the manner in which this question had been treated; he thought it should be dealt with more seriously. He had no doubt that the gentleman from Clark (Mr. Reid) had introduced his proposition from good motives; and with a view to economy. But there was such a thing as running into extremes, and sometimes opposites nearly meet. Nothing could be more unstable than the value of the precious metals. Three or four hundred years ago the amount of money that would now pay for one week's board would have paid for board for ten weeks. Hallam in his work on the middle ages, informs us, that any given sum in the thirteenth century must be multiplied by twenty-four, in the fourteenth century by twenty, and in the fifteenth century by sixteen, to bring it to the standard of our day. In eight or ten years, even, the value of money might depreciate to a considerable extent; particularly when the great amount of the precious metals likely to be brought from California, was taken into consideration. Suppose a gentleman was to introduce a proposition here fixing the pay of the members of the General Assembly in the year 1900 at three dollars per day; not one tenth of the members of the Convention would vote for it. Yet that was what they were, in effect, about to declare if they adopted the proposition which he (Mr. O.) proposed to amend, provided the new Constitution they were framing remained, as he hoped it would, the organic law of the State for half a century to come.

He preferred to have an absolute limit of time fixed to the duration of the sessions of the Legislature. He thought it disreputable to insert any such constitutional provision as that, after a certain length of time, the per diem of the members should be reduced. It was much preferable, he considered, to limit the duration

of its sessions by saying that no regular session should exceed sixty days, except the first after the adoption of the Constitution, and the called sessions should not exceed forty days.

As regarded the pay of the members, he thought that should be left to them to settle. There were always enough men ready, for popularity's sake, to place the amount of pay on the most economical basis. In fact there was more danger of the per diem being fixed at too low, than too high a rate; and if the former was the case the tendency would be, that the Legislature would become an aristocratic body. None but those who were rich enough to work for the people without a sufficiency of pay to support themselves would consent to accept the office of a public representative. He thought the question of the amount of pay might be left, with entire safety, to the General Assembly.

Mr. ROBINSON said that next to his own proposition he would go for the proposition of the gentleman from Posey, (Mr. Owen,) for the reason that that gentleman's amendment proposed to strike out all that part of the section which to his mind was most objectionable. He was opposed, however, to the amendment of the gentleman from Clark (Mr. Read). He believed the adoption of a section containing a clause that the Legislature of Indiana, after the expiration of a certain number of days, should transact the business necessary to be done by them at one and a half dollars a day, was an unjust reflection upon the character of the people of Indiana. He believed that the people of Indiana desired to have their legislation faithfully executed, and that they were entirely willing to pay their representatives liberally for the faithful discharge of their duties. He did not charge upon the gentleman from Clark that he was actuated by demagogical motives; he knew him too well to suppose for one moment that he was influenced by any motive of the kind in introducing this section; but he could only view it as a measure that most properly would emanate from a demagogue. It never originated from the just, common sense of the people, but more particularly partook of some of the efforts of the stump demagogue.

One word as to the difference that existed between the proposition of the gentleman from Posey (Mr. Owen) and the one he had submitted. He was opposed to the proposition of the gentleman from Posey, because it limited the time allowed to the Legislature for the transaction of the business they were sent to perform. It was impossible for this Convention at this time, and any experienced legislator must perceive it, to know what the length of the sessions of the Legislature should be in future time. Emergencies might arise, and will no doubt arise, requiring long sessions, and of those emergencies the Convention at present could have no idea; and, therefore, in his opin-

ion it was neither wise or politic to fix the duration of future sessions of the Legislature, as we had no data by which to judge correctly. The members of the Legislature were the representatives of the people, and as such, were amenable to them for any unnecessary protraction of their sessions. He considered, therefore, it was the more judicious plan to leave the subject with them, and let them fix the duration of their own sessions. To confine the period of their action within certain limits, would lead to hasty, improper, and injudicious legislation, fraught as he believed, with many evils which we could not now perceive. He hoped that if the instructions he had proposed were not adopted, that the amendment to the instructions offered by the gentleman from Posey would be adopted, so that they would get rid of the present odious feature of the section limiting the pay of the members of the Legislature, after sitting a certain number of days, to one dollar and fifty cents per day.

One word further in regard to limiting the length of the sessions of the Legislature. From the time the section first came up for consideration, it had appeared to him that this Convention was the last body in the world that should prescribe to another legislative body the duration of its sessions. Such dictation came with a bad grace from them. This was the commencement of the twelfth week of their labors in revising, amending, and altering a Constitution composed of about fifty-three pages, and they were scarcely able as yet to see the end of their labors. After setting such an example it was somewhat inconsistent, to say the least, and could scarcely fail to awaken restless feelings in the minds of the members of the Legislature to prescribe to that body a limited and a scanty term of session.

Mr. FOSTER said he had but a word or two to say in relation to this matter. The remarks of the gentleman from Posey in regard to the depreciation of the value of money, so far as they applied to its depreciation during the last few years, he did not think were correct. Public economists told a different tale—that money had not depreciated in value for some years, and it was not probable that money would depreciate in value for some years to come unless a universal system of banking was established—every man to have the privilege of issuing shinplasters; and even then it would be only the “rags” that would depreciate in value, not the hard money itself.

Gentlemen seemed to have a wish to limit the Legislature to one dollar and a half a day, if they sat longer than sixty days in any one session. But he had only to say that so far as his section of the State was concerned there was no proposition in regard to which the people were more united than in regard to limiting the term of the sessions of the Legislature; and for years past the course pursued by the

Legislature had been approved of by the people.

In regard to the per diem of the members he thought that the proposition of the gentleman from Clark (Mr. Read) was extremely liberal. He had nothing to say in relation to the per diem being reduced. He was informed that the annual salaries of judges was to be fixed in the Constitution, and he saw no reason why the per diem of the Legislature should not also be fixed.

He thought that the per diem allowance of the members of the Legislature had better be fixed at once so that there would be no doubt in regard to it; therefore, he believed on the whole that the section as it now stood was much better than if either the amendment of the gentleman from Posey (Mr. Owen) or the gentleman from Decatur (Mr. Robinson) was adopted.

Mr. EDMONSTON moved a call of the previous question; which call was seconded by the Convention.

The main question was then ordered to be put,

The question being, Shall the amendment to the instructions be adopted?

Upon this question the yeas and nays were demanded, and being ordered the Secretary reported the following result—yeas 70, nays 42:

YEAS.—Messrs. Anthony, Balingall, Bascom, Beach, Beeson, Berry, Blythe, Bourne, Bryant, Carr, Carter, Chapman, Chenowith, Clements, Colfax, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Foley, Garvin, Graham of Warrick, Gregg, Hall, Harbolt, Hawkins, Hendricks, Hitt, Holman, Hovey, Howe, Jones, Kelso, Kent, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, March, Mather, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Murray, Newman, Nofsinger, Owen, Pepper of Crawford Pettit, Prather, Read of Monroe, Shannon, Sherrod, Sims, Snook, Tannehill, Taylor, Thomas, Thornton, Todd, Wiley, Work, Zenor, and Mr. President—70.

NAYS.—Messrs. Bicknell, Biddle, Borden, Bracken, Butler, Clark of Hamilton, Clark of Tippecanoe, Cole, Cookerly, Crawford, Duzan, Farrow, Fisher, Foster, Frisbie, Gordon, Hardin, Helmer, Hogin, Huff, Johnson, Kendall of Wabash, May, McLean, Moore, Morgan, Morrison of Marion, Niles, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Smiley, Smith of Ripley, Smith of Scott, Trimby, Walpole, Watts, Wolfe, Wunderlich, and Yocum—42.

So the amendment was adopted.

The question then being upon re-committing the instructions as amended by the gentleman from Posey, (Mr. Owen),

The yeas and nays were demanded, and, being ordered, the Secretary reported the following result—yeas 66, nays 45:

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beach, Berry, Blythe, Bourne, Bryant, Carr, Carter, Chapman, Chenowith, Clements, Colfax, Crumbacker, Davis of Madison, Dick, Dunn of Perry, Edmonston, Elliot, Foley, Garvin, Graham of Warrick, Gregg, Hawkins, Hendricks, Hitt, Holman, Hovey, Howe, Jones, Kelso, Kent, Kendall of White, Kilgore, Kinley, Lockhart, Mather, McClelland, Miller of Fulton, Miller of Gibson, Milroy, Murray, Newman, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Robinson, Shannon, Sherrod, Sims, Snook, Smith of Ripley, Tannehill, Taylor, Thomas, Thornton, Todd, Wiley, Work, Zenor, and Mr. President—65.

NAYS.—Messrs. Beeson, Bicknell, Biddle, Borden, Bracken, Butler, Clark of Hamilton, Clark of Tippecanoe, Cole, Cookerly, Crawford, Dobson, Duzan, Farrow, Fisher, Foster, Frisbie, Gordon, Hall, Harbolt, Hardin, Helmer, Hugin, Huff, Johnson, Kendall of Wabash, Maguire, March, May, Milligan, Moore, Morgan, Morrison of Marion, Niles, Read of Clark, Ritchey, Schoonover, Smiley, Smith of Scott, Stevenson, Trimby, Walpole, Watts, Wolfe, Wunderlich, and Yocum—45.

So the section was re-committed with the amended instructions.

MISCELLANEOUS.

The sections prohibiting the Legislature from granting divorces and special legislation with regard to the sale of estates belonging to infants, &c.; and that no act shall ever be revised or amended by a reference: o its titles, but, in such case, the act revised or section amended, shall be re-enacted and published at full length, were read a third time and passed.

SUITS AGAINST THE STATE.

The section prohibiting special acts authorizing suits to be brought against the State, was again taken up—with the pending amendments of Messrs. HOWE and GRAHAM of Warrick.

Mr. WILEY moved to amend the amendment of the gentleman from Warrick by adding the words:

"This provision shall only apply to debts, contracts, and claims, made after the adoption of this Constitution."

Mr. GRAHAM accepted the amendment.

Mr. HOWE. I am well satisfied, upon reflection, that if we do not adopt some other section than that reported by the committee, we shall be justly obnoxious to the charge of causing a failure of justice in regard to one of the most important rights of the citizen. We have only to look back to the history of the past thirty-four years, and it will be seen that, under our present Constitution, and the various codes in force since its adoption, all disputed claims against the State, have been subjected to the mercy of the General Assembly, in providing

special acts for their trial and decision. I think that my amendment, which I now propose, will afford the remedy for the evil complained of. Let this remedy be adopted, and then, if the Legislature neglects to carry out the details, the Constitution will itself afford the remedy. I will read it as a part of my remarks:

"The Auditor and Treasurer of State, and the Attorney General; or, if there be no Attorney General, then the Auditor and Treasurer of State and the Governor, shall constitute a board for the trial and decision of all claims against the State, not provided for by general or special acts of appropriation; and from the decision of such board, either party may appeal to the Supreme Court in all cases."

I think, sir, this is as good and complete a provision upon this subject, as can be adopted. The question naturally arises, if we adopt the provision that the State shall be sueable in cases of contested claims, and that those claims shall be provided for by the act of the Legislature—what remedy do you propose? Do you propose that the State shall be sueable in like manner as citizens are in circuit courts, and the suit carried up by appeal, as ordinarily? I answer, yes—so far as respects the application of legal principles to the decision of the merits of the case. And why not? When the State is spoken of as a party liable to be called upon to do justice, we are haunted by the antiquated objection, that it is derogatory to the dignity of a State, to be sued.

Now, sir, there is no just distinction between the sovereign and the subject, in respect to the obligation to do justice, and it is the right of the citizen or subject to demand that his claim against his sovereign, shall be determined on the same principles as his claim against another citizen or subject.

There is, it appears to me, a manifest propriety in constituting the Auditor and Treasurer a part of the board to adjust claims against the State; and if there is an Attorney General—which office, I trust, will be created—they can call in his legal services to assist in adjudicating upon legal questions that may arise. If gentlemen are not satisfied with this provision, let them prepare something better, and I will accept it. So much for the details of the principle.

A word now, with reference to the main question itself—the principle involved. An objection, as I have already remarked, exists in the minds of some gentlemen, and it is, that it is derogatory to the dignity of the State to be sued. Now, sir, I think if public sentiment has progressed at all since the adoption of our present Constitution, it must certainly have progressed so far as to see the necessity of providing for awarding complete justice to individuals, in all cases of this kind, without fraud or delay—for of what use or benefit is government, unless it is to carry out to the highest practical point of

development, the fundamental principles of protection to life, liberty, and property? Sir, there is no distinction, so far as the equal administration of justice is concerned, between the sovereign and the citizen. Precedents have been referred to, and the question has been triumphantly asked, what sovereign power has allowed itself to be sued? Now, sir, in return, I would inquire, what sovereign in the civilized world, when anything like an approximation to Constitutional government exists, is there, who has not provided some legal and *established* remedy for the claims of the subject, which could not be adjusted under the ordinary provisions of the law? Look to the country from whence we derived all our legal institutions—to whose common law we look for guidance in our judicial decisions. In England, from a very early period, there has been a legal and fixed remedy for the subject. The sovereign there, is the king; but the majority of the people is the sovereign here. From the earliest period of England's history, through the medium of a remedy called the "petition of right," which is a common law remedy, the subject could have his claim against the crown adjudicated. The king's law officers are the persons to whom petitions are referred for claims, and they are subjected to legal adjustment upon the same principles—saving only certain maxims of prerogative—as if sued in the King's Bench. Instead, then, of precedents being in favor of this absurd notion of the gentleman, it is the other way. I trust my amendment will be adopted.

I think, Mr. President, I see in this section and pending amendment, one of the principles for which I have drawn my political sword and thrown away the scabbard determined to fight on, fight ever; I think I see in it the germ of political and judicial equality and right. I am in favor, sir, of the section as reported by the committee—unless it can be made better, which I think it can by the amendment offered by the gentleman from Warrick, (Mr. Graham,) believing it will conduce to a greater degree of justice in the administration of law, than the section proposed this morning by the gentleman from Lagrange (Mr. Howe). Let us now consider for a few moments, the principle involved in this section.

And first, I would allude to the absurd doctrine that it is derogatory to the dignity of the sovereign to be sued. True the maxim of English law is, that the sovereign cannot be sued. And why, sir? Because the king is supposed to be always employed in advancing the interests of all his subjects, and therefore, he cannot give his personal attention to answer writs or subpoenas. He must be employed in his cabinet, endeavoring to administer justice to and promote the general welfare of his subjects.

Second, it is said in the English books that it is derogatory to the dynasty of the sovereign

to be sued—because he represents in his person the entire population of England, and it would take away from him that respect and reverence to which the ruler of the people is entitled, by bringing him before the King's Bench upon every writ that might be issued.

Third, it is a maxim in England that the king is always ready to do ample justice to his subjects, and to effect that object, centuries ago, the right of petition was granted to the subject. This point has already been explained by the gentleman from Lagrange, so I will not dwell upon it.

In contemplation of law, the king holds his courts in person. This was another reason why suits could not be brought against the person of the king, because sitting in court himself, would render it an absurdity for him to be sued in his own court. Yet, sir, in England, the subject has his mode of redress against the king; and his claim can be settled as fairly as though it were against an individual. Then, sir, why advance this absurd doctrine, that the sovereignty may not be sued because such a course would be derogatory to its dignity. Why, sir, in this country, where the only sovereignty is the people, why should not the policy be adopted that the State shall be sued as well as individuals. The principle is the same, whether applied to one man or seven hundred and fifty thousand men, as it is in the city of New York—all may be sued. It would be impracticable to put all these names upon record; therefore, a nominal or fictitious name is given to the city when it is sued. All are sued, however, and all are sueable under that joint co-partnership of name. Hence, sir, I say whether it is one man or whether it is a million, all should be sueable. There is reason, there is justice in this.

I am opposed to the proposition of the gentleman from Lagrange, (Mr. Howe,) because of its imposing an additional and unnecessary duty upon the officers of State. And then again, sir, this Board meets in this Capitol, and an individual residing in a remote part of the State must come away up to the seat of government in order to obtain the liquidation of their claims. Now, sir, I desire that the law may be so framed with reference to this subject, as that an individual may sue for the amount of his claim in his own county, and obtain satisfactory redress. Let us not sanction the idea that sovereignty resides in this capital alone. It is co-extensive with the State.

Now, sir, I am prepared to sanction the principle that the State is sueable in every Circuit Court in the State, leaving the details as to the bringing and conducting of those suits, to the Legislature. Where the sovereignty commits an injury upon the subject let it be liable for that injury. By this arrangement, sir, the State would be saved large expenses, for the committees of the Legislature have to spend their

time in investigating claims, and when they report the Legislature has to debate them before they can be allowed, which proceeding is of course unnecessary. The settlement of these claims, I contend, more appropriately belongs to the judicial department of government than to the legislative.

The objection, sir, is advanced to the settlement of these claims in a court of justice is, that the claim is a large amount to the claimant but a small amount to the people, and therefore the jurors selected from the people will not be very particular in their decisions, but generally incline, from motives of generosity, to the liquidation of the claim. Now, sir, I think the facts in the case will show directly the reverse. The judge who sits upon the bench is interested in keeping the amount of the judgment small, because he must be taxed to pay his portion of it; and this is the case with the twelve freeholders who are to bring in the amount of damages.

If there is anything prejudicial to either party, sir, it is against the claimant; for judge and jurors are interested in bringing a judgment of a small amount, inasmuch as a portion of it has to come out of their pockets. There can, then, be no injustice in this mode of settling these claims. I hope, sir, that the section, with the present amendment, will be adopted; believing it will secure justice throughout the State so far as these claims are concerned, and establish a more effectual political equality.

Mr. BORDEN. Gentlemen will recollect that all our foreign bondholders have not yet come into the arrangement which was proposed in the Butler bill. If, then, we compel the Legislature to pass a law by which anybody and everybody may sue the State, these individuals will at once commence suit against the State, and bankrupt it.

Gentlemen have said that the objection to suing the State arises from the old exploded idea that the king can do no wrong, and therefore he should not be sued. This, however, is not the objection with me. If I lived under a monarchical form of government I should not object, probably, to the king being sued; but here the people are the sovereigns, and if suits are commenced against them what is everybody's business will be nobody's business, and the consequence will be that the people will be imposed upon.

I have only to say that I am willing to take the section reported by the committee and pass it; this will leave the matter entirely within the discretion of the Legislature.

Mr. KELSO. One of the plainest reasons that can be presented why the State has always been defeated in these suits brought by different claimants against the State, is, that the State, by passing acts allowing it to be sued, has acknowledged that the claims were just—and that the State has wrongfully refused

to liquidate the claims as they should do. Another excellent reason why the State has always been defeated is, that the State has been eternally in the wrong in regard to these claims, and the claims presented have been just. An instance cannot be pointed out where suits have been brought against the State for violation of contracts wherein those suits have not been founded upon the principles of justice and equity. For vouchers to the truth of this statement, I refer to the decisions of the Supreme Court.

Now it is well known that the duty of the Legislature is to administer equal justice to all the citizens of Indiana. Heretofore, in cases of claims brought against the State, the Legislature after a due examination of them, have authorized by special acts that the State may be sued for them. The Legislature in regard to those claims acts in a judicial capacity, although they are not authorized so to act, and this occurs scores of times during the sittings. These claims are deliberately investigated by the Legislature, and if it is found to be correct, the Legislature by authorizing the State to be sued, openly declares that the State has violated a solemn contract and ought to be sued. There is where the jurors get their cue, and this is why the decisions of the Court are uniformly against the State—it is because the Legislature have pre-judged the case and have decided against the State.

If we will place in the Constitution a clause authorizing a general law to be framed, whereby in all cases where individuals consider themselves aggrieved by the action of the State, shall have a hearing as between individuals in a court of justice, there would be no difficulty about the adjustment of these claims. They will be laid before the same tribunal as the claims between individuals, and acted upon in the same impartial manner. If there was any weighty interest in favor of either side, it would be in favor of the State. The judge and jurors would be sitting there, not only to do justice to the rights of the claimant, but to the interests of the State and to themselves, for each one of them would be liable to contribute to the payment of the judgment.

The gentleman from Allen (Mr. Borden) seems to be alarmed in regard to bond holders; and fears that if a section of this kind is passed that they will come upon and bankrupt the State. Now, sir, it is my opinion if we adopt the simple principle here—as it is proposed to be done—that the bond-holders will stand a desparately poor chance.

The amendment proposed by the gentleman from Warrick (Mr. Graham) precludes these bond-holders from reaping any advantages by virtue of this section as proposed.

Can these bond-holders by virtue of this section come here and obtain possession of the most valuable property of the State so as to

embarrass and impede the administration of the State Government? Certainly not, sir. If such were the fact, then we have organized a government for the benefit of all the people of the State, subject to be overthrown at any time upon the dictation of a few wealthy capitalists either at home or abroad. I hold, sir, that all the old contracts should stand upon the basis and be governed by the same laws under which they were entered into; and with regard to all new contracts hereafter entered into by the State, let them stand upon the same basis as those made between individuals and the State become sueable for them. We will then, sir, have no difficulty with regard to the adjustment of claims against the State. Nor will we have a set of State agents making loose and improvident contracts with a view to have the State violate them and then shield herself behind the broad mantle of her sovereignty.

That sovereignty, sir, furnishes no good nor even plausible reason why the State should not be held to a strict accountability for her contracts and undertakings. I am decidedly in favor of the proposition that when the State enters into a contract with her citizens and violates that contract, she may be sued and forced to fulfil such contracts as individuals are compelled to do.

MR. RARIDEN. I do not understand, from the reading of this proposition, whether it is intended to give to individuals the right to an action against the State for any other thing than contracts or not. If it is only to apply to contracts, I think it goes upon too narrow a basis.

A MEMBER. It applies to everything.

MR. RARIDEN. Then it confers a right of action against the State for all claims. It is true, as has been remarked by the gentleman from Tippecanoe, (Mr. Pettit,) that the reason why sovereignty is not liable to be sued results from the doctrine that kings can do no wrong. This is a part of the theory of other governments, and there is some wisdom in it. It would be disreputable to the sovereignty if its acts were to be made the subject of discussion. Wherever a government allows the general discussion of acts of sovereignty and the exercise of sovereign power to be discussed by the people, they bring the sovereignty universally into disrepute, and replace it with a sovereignty of their own creating, and more to their liking.

We have another kind of sovereignty—that of State sovereignty—and its power is just as sovereign within its legitimate scope of action, as the power of a king. The security of the public lies in the diffusion of the powers of sovereignty into many hands. It is the people that select and delegates the representative of sovereignty in a State, and that representative is the common arbiter between individuals, and

is always supposed to intend justice to all parties. It is a wrong idea, however, to suppose that the same rule applies here that prevails in England—that the sovereign of a State would willingly wrong individuals in that State. The petition of right should be just as efficacious here as in Great Britain. Whenever the sovereignty is informed of the rights of individuals, the charitable presumption is, that it will administer justice to individuals when informed of their just claims against it, when informed through the organs of intercommunication that exist between the people and the sovereign. That is the theory of sovereignty with us, and its liabilities are to public opinion. Sovereignities never do wrong. It is its spokesman and actors, and it is they that are responsible; and it is they that are and ought to be responsible for wrongs inflicted, or rights withheld in its name.

What would be the result of giving a general license to bring suit against the State and sovereign; for if the sovereign is liable for contracts and damages, it should be still more accountable for an outrage perpetrated upon individual members of society, through its officers and agents. The State sovereignty has a representative in every county of the State, who are called prosecuting attorneys, besides all other State officers who act under State authority.

The courts and juries, in criminal proceedings, generally extricate them from the difficulty, but at a vast expense and mortification of feelings. Now, I would inquire of the gentleman from Lagrange (Mr. Howe) if it is intended by this amendment to allow each individual to bring an action against the State of Indiana for an outrage upon their feelings or rights, and the costs that may have been created?

MR. HOWE. Certainly.

MR. RARIDEN. Then the effect of this would be to make the State of Indiana liable for all the expenses incurred in criminal prosecutions as well for every wrong done through mistake or otherwise, by all her officers and functionaries, thus entailing a heavy expense. Yes, sir, more each year than ever, the State expended in the fatal system of internal improvements. From whence should come the means to meet those State liabilities, except from the people of the State, who are thus made the bondsmen of every petty State officer and agent?

We have here, as in England, held the minister, and not the sovereign liable for all public or private wrongs. What a beautiful scene to allow every scoundrel who would make a false accusation in the name of the State, against his neighbor, and propose himself to be summoned as a witness, to sue the State and recover costs for his time! Such a course would

keep the State busy in levying and collecting taxes to meet such liabilities.

Then I object to it for another reason. If it be true that the subjects of a kind are secured in their rights, simply by the petition of rights—it is still more true in a republic like this, where the people are wiser and better than kings. That our people have greater protection afforded to their rights than in Great Britain, all must admit, and yet gentlemen are disposed to bring down the dignity and love of justice of this republic below that of monarchies.

Mr. READ of Monroe. The doctrine that a government should be sueable in its own courts as same as individuals, has been advocated by the gentleman from Tippecanoe (Mr. Pettit) upon the floor of Congress. The same doctrine, sir, I have had the honor to advocate before a higher and more august tribunal—before the sovereign people themselves.

I hope the section reported by the committee that no special act allowing suit to be brought against the State, will be adopted. And further, I trust, we shall adopt an amendment, providing that the Legislature shall direct by law, in what manner, and in what courts, suits may be brought against the State.

The idea that the State is a body of too great dignity to be sued, is a remnant of the old doctrine of the prerogative of the crown. When an individual has a claim upon the State which is disputed, can any man give a sound reason why that claim should not be investigated and adjudged precisely in the same way, and by the same rules, as a claim against companies or individuals? On the common principles of justice and equality, the people existing in the form of an organized State, has no more right to be unjust collectively than individually; and if the State so far waives its dignity as to sue an individual in order to exact justice from him, how is it less dignified to allow him the same means to determine his rights against the State? If the claim is decided adversely to the State, provision ought to be made for its payment, as in the case of any other debt.

But a provision of this kind is essential to the safety of the State and the purity of legislation. What is the mode of obtaining a disputed claim under the present system? Why recourse is had to "lobbying," "log-rolling," "oyster-suppers," and it is greatly to be feared, to other appliances still more reprehensible, by which legislators are rendered supple and pliant. By such means many exorbitant and more than doubtful demands have been proposed and recovered; while just claims have been overlooked and neglected.

Besides the determination of legal rights appropriately belong to the courts and not to the Legislature. The Legislature is no proper tribunal for their decision. It is the wrong department of government for determining questions of right, and the reference to it of such

questions produces an improper confounding of the peculiar duties of two distinct departments of government.

But the Legislature is also too expensive a tribunal for investigating legal questions, costing the State, as at present organized, for every day's session, at least six hundred dollars.

Where a special act is passed, permitting a suit to be brought against the State; sharp-sighted persons seldom fail to gain an advantage in the preamble or some part of the act; nor is there less danger, as the whole State has been made to feel in a recent case, in instituting a special tribunal by a special act. The objection of increased expense also lies against the establishment of special tribunals. The true and safe principle is, that the State should be entitled to the same legal rights, and held to the same mode of determining its legal obligations as individuals.

But far the greater portion of claims against the State arises from the State Government engaging in concerns foreign to all the true ends of government; and when the State, by suitable constitutional provisions, is strictly confined to its appropriate sphere of action, there will be very few doubtful claims for any tribunal to decide.

Mr. CLARK of Tippecanoe moved an amendment to the section, to the effect, that the judgment of the Court, in cases of suits against the State, should be certified to the General Assembly for payment.

He said: I do not profess, Mr. President, to understand the subject very well; and therefore, if the Convention manifested any inclination to entertain it at all, I should not trespass on their patience. The only objection against allowing suit to be brought against the State, which seems to me to have any weight, is, that a judgment would bind the property of the State, and its revenues. On execution, both might be seized and applied to the payment of the debt. The amendment which I have proposed, prevents this result. It appears to me that a court of justice is a much more suitable tribunal to investigate claims against the State, than the Legislature. A citizen appears before the Legislature, with a claim against the State—it is difficult for him to interest in his behalf any member, unless it be those from his own county. The members suppose themselves charged with the responsibility of much greater interests—the interests of their constituents and the State. Hence, the claimant has to resort to personal appeals to the members—to the oyster suppers, and such other appliances as have been alluded to. This mode of obtaining a hearing is very expensive, and it is not wonderful that claimants should seek to indemnify themselves, as far as practicable, by asking for large allowances. But if the way to justice was open and easy, there would be no prejudice against the State. It is because of the inequality of

the contest, that men sympathize with the individual.

Gentlemen speak of this as a degradation of the sovereignty of the State. Sir, if a State condescend to contract with an individual, she should be willing to provide the means of fulfilling her contract. And in cases of controversy, arising as to the nature of a contract, or where the State may have failed to fulfil, on her part, I think there is more degradation in refusing justice, than in condescending to submit the inquiry to a proper tribunal. The State has, I admit, the higher duty to perform, of maintaining its own existence, and may properly refuse to submit its revenues or public property to be seized on and sold. But if the court merely ascertain the amount which the State owes the individual, and reports to the Legislature, it must still exercise its sovereignty in making the appropriation. I think, with my colleague, that the principle is right, and that we ought, in some manner, to provide to carry it into effect.

Mr. RITCHEY moved to lay the pending amendments upon the table.

Mr. COLFAX called for a division of the question.

The PRESIDENT. The question will be first taken upon laying the amendment of the gentleman from Tippecanoe (Mr. Clark) to the original section upon the table.

The motion was agreed to, upon a division—ayes 50, noes not counted.

The PRESIDENT. The question is now upon laying the amendment of the gentleman from Lagrange (Mr. Howe), and the amendment to the amendment offered by the gentleman from Warrick (Mr. Graham), on the table.

Upon this question the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 64, nays 47:

YEAS.—Messrs. Ballingall, Bascom, Beeson, Blythe, Borden, Bracken, Butler, Carr, Carter, Chenoweth, Clements, Cookerly, Crawford, Dobson, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Gregg, Hall, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kendall of Wabash, Maguire, McClelland, Miller of Gibson, Milroy, Moore, Morgan, Nave, Newman, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Sims, Smiley, Smith of Ripley, Smith of Scott, Tannehill, Thomas, Todd, Trimble, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—64.

NAYS.—Messrs. Anthony, Beach, Berry, Bidle, Bourne, Bryant, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Dunn of Perry, Duzan, Edmonston, Garvin, Gordon, Graham of Warrick, Hawkins, Hitt, Hogin, Howe, Kelso, Kilgore, Kinley, Lockhart, March, Mather,

May, McLean, Miller of Fulton, Milligan, Morrison of Marion, Murray, Niles, Nofsinger, Pettit, Read of Monroe, Shannon, Sherrod, Snook, Stevenson, Taylor, Thornton, and Wiley—47.

So the amendments were laid upon the table.

Mr. OWEN moved to amend by striking out and inserting the following:

“Suits may be brought against the State in all cases arising out of contracts made with the State after the adoption of this Constitution, in manner to be prescribed by general law; but no special act, authorizing any suit against the State, shall be passed; nor shall the General Assembly have power to make compensation to any claimant for damages under any contract that may be hereafter entered into with the State.”

Mr. O. briefly stated that he was in favor of having these claims adjudicated in the courts, and for very sufficient reasons, among which was, that courts were not subject to the many extraneous influences that could be brought to bear upon the Legislature, and which often prejudiced the settlement of claims.

Mr. JOHNSON. I move to amend the original section by adding the following words:

“But general laws may be passed for that purpose as to liabilities originating after the adoption of this Constitution, and no special act making compensation to any person or persons claiming damages against the State, shall ever be passed.”

Pending the question,

On motion by Mr. HOLMAN,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day, the pending question being on the amendment of the gentleman from Dearborn (Mr. Johnson) to the amendment of the gentleman from Posey (Mr. Owen).

Mr. HOLMAN. I would be glad to call the attention of the Convention to the language of the two amendments now pending, the one offered by the gentleman from Posey, and the other by my colleague. The language of the section which the gentleman from Posey proposes to strike out is as follows:

“No special act authorizing suits to be brought against the State shall ever be passed.”

The gentleman from Posey proposes to strike that out and insert as follows:

“Suits may be brought against the State in all cases arising out of contracts made with the State after the adoption of this Constitution, in manner to be prescribed by general law; but no special act, authorizing any suit against the State, shall be passed; nor shall the General Assembly have power to make compensation to any claimant for damages under any

contract that may be hereafter entered into with the State."

The amendment proposed by my colleague, in addition to the original section, reads as follows:

"But general laws may be passed for that purpose, as to liabilities originating after the adoption of this Constitution, and no special act making compensation to any person or persons claiming damages against the State shall ever be passed."

The section, as thus amended, will read as follows:

No special act authorizing suit to be brought against the State, shall ever be passed; but general laws may be passed for that purpose as to liabilities originating after the adoption of this Constitution: and no special act making compensation to any person or persons claiming damages against the State, shall ever be passed."

It may be observed that there is but one shade of difference between the two propositions, and I will point out that difference to the Convention. It consists in this:

The language of the section proposed by the gentleman from Posey is as follows:

"Nor shall the General Assembly have power to make compensation to any claimant for damages under any contract that shall hereafter be entered into with the State."

The language upon that part of the section in the amendment offered by the gentleman from Dearborn is as follows:

"And no special act making compensation to any person or persons claiming damages against the State, shall ever be passed."

I will not enter into any discussion as to the respective merits of the two propositions. The section proposed by my colleague certainly covers the whole ground. The original section offered first, prevents any special act from being passed authorizing suit to be brought against the State. The great ground of complaint heretofore made has been that laws have been passed, and the preamble to those laws has usually taken for granted what ought to have been proved. The courts were in the habit of giving effect to the recital in the preamble. I believe that there has been no instance in which a special act of the Legislature has been passed granting to an individual the right to sue the State, in which such individual has not recovered; and in several instances the amount of damages recovered has been admitted to be much beyond the justice of the claim.

No special act should be passed by which suit shall be brought against the State, but a general law may be passed on the subject. The Legislature possessed this power; and the great object now is to prohibit special legislation. That is the great end to be attained. Another great end is that the Legislature shall not spend its time in investigating claims of individuals in

future. This is the object intended by the last clause of the amendment of the gentleman from Dearborn. I think these two important ends are obtained; and the third is the recognition of the general principle by which a sovereign State in her sovereign capacity shall become subject to the just claims of the citizen. I hope that the amendment as proposed by my colleague, will be adopted, for it seems to me to cover the whole ground; and if it is not better than the proposition of the gentleman from Posey, it is at any rate, equally as good, and I think in one feature it is better. I should not have said one word upon the subject but for this reason: My colleague is one of those meritorious men of whom I am happy to say that there are many in this Convention; and he has brought this matter forward and is not disposed to consume the time of the Convention by debate.

The PRESIDENT. The question is first on the amendment proposed by the gentleman from Dearborn to the original section.

Mr. OWEN. I think the amendment covers the whole ground, and I am not particular about the words.

Cries of "question! question!"

Mr. MATHER (in his seat). No more speeches now.

The question being taken on the amendment it was adopted by consent.

The PRESIDENT. The question now is on the motion of the gentleman from Posey, to strike out the section as amended, and insert what has been read.

Mr. OWEN. I withdraw my amendment. I am satisfied with the section as now amended.

The question was then taken on ordering the section to be engrossed for a third reading, and it was so ordered by consent.

UNIFORM LAW OF ASSESSMENT AND VALUATION OF PROPERTY.

Mr. READ of Monroe. It will be recollected by the Convention that some days ago I introduced two sections on the subject of taxation. It was in the form of a motion to re-commit with instructions. There were objections made to one of the sections at the time. This seems to be as appropriate a place as any other in which to bring forward one of the sections, to which I believe no objection was made. I now propose the following as an additional section:

"The General Assembly shall provide by law a uniform rate of assessment and taxation, and shall prescribe such regulations as will secure a just valuation for taxation of all property, both real and personal, except only such, for municipal, educational, charitable, or religious purposes, as may be specially exempted by law."

I do not know that it is necessary to discuss this provision at any length. It is admitted that the subject of taxation is one of the most important that can occupy the attention of a deliberative body. It was, perhaps, sufficiently discussed a few days since, and no objection was made to the general principle of the sections now read at the Secretary's table. I do not propose to bring forward that section to which objection was made, at the present time, but I should like to have the yeas and nays on the adoption of the section I have just offered.

The yeas and nays were not ordered; and the question being taken on the adoption of the section by a division, there were—ayes 27, noes 35.

So the section was not adopted.

LOTTERIES.

Mr. HELMER. I offer the following as an additional section:

"No law authorizing or sanctioning the establishment of lotteries shall ever be passed."

The section was adopted on a division—ayes 41, noes 27.

It was then ordered to be engrossed for a third reading.

GENERAL LAWS FOR INCORPORATIONS.

Mr. MILROY offered an additional section, to the effect that the General Assembly should have no power to grant any charters or special acts of incorporation, but should pass general incorporation laws, by which companies for all lawful purposes might incorporate themselves. Mr. M. said that, as the Convention were now engaged in forming that article of the Constitution which was to define the powers and place prohibitions on the legislative department of the Government, he thought this was the proper time to insert the section. This was a restriction on the legislative department of the Government, and it should come in the article they were now framing.

Mr. CLARK of Tippecanoe said there was a section on the subject reported by one of the committees.

The question being taken on the adoption of the section, it was rejected.

MONEY APPROPRIATED FOR LOCAL PURPOSES.

The PRESIDENT. The question now is on the adoption of the last section of the twelfth article.

Mr. PETTIT. I move to amend the section by striking out the words "three-fourths," and inserting the words "a majority."

SEVERAL MEMBERS. "No! no! no!"

Mr. PETTIT. If gentlemen will not be in quite so great a hurry with their cries of "No! no!" perhaps I can assign one or two reasons why this ought to be done. It will be recollected that we have passed a section saying that no bill shall pass without the consent

of a majority of all the members elected to both Houses of the General Assembly, and that, too, upon a call of the yeas and nays. I think that that rule might as well apply to private as to public appropriation bills. It will be recollected, likewise, that we have declared that two-thirds of either House shall form a quorum to do business; and now, by this section, we require that more than that quorum shall be present, and more than a quorum shall vote for the passage of such bill. If I understand this, as it reads, the assent of three-fourths of the members of the General Assembly shall be required to pass any bill appropriating money for private purposes. Now, sir, I maintain that every specific appropriation bill is a bill for private purposes. An appropriation to pay the salary of your Governor, or your Secretary of State, or your State Treasurer, or Auditor, or even a Door-keeper of your Senate or House of Representatives, or for stationery, or ink, or pens, or for the repairing of a desk, or the making of a new one, would be an appropriation of the public money for a private use, and that ought certainly not to require a greater number of members to sustain it than any ordinary appropriation bill to supply the common requirements of the State. It appears to me that there is an incongruity in it. No bill can pass without the yeas and nays being had; and that, with the other provisions we have adopted, it seems to me, will make the matter sufficiently secure.

SEVERAL MEMBERS. Strike out the section altogether. Strike it out.

Mr. BORDEN. It seems to me that the gentleman from Tippecanoe has fallen into a great error in regard to this matter. It does not, in any sense of the word, apply to appropriations for the salaries of the Governor, and other officers of State, as being appropriations of public money for private purposes. This section was taken from the Constitution of New York. It was found in that State that the public money was frequently applied to private purposes, such as appropriations for seminaries, the building of bridges, &c. We have had instances in our State of similar appropriations; and had we had such a rule as that proposed in this section, those appropriations would not have been made. If we require a majority of all the members to pass any general law, I think we ought to have at least three-fourths of them to pass any law appropriating money for private purposes.

Mr. CLARK of Tippecanoe. I understand the committee as having reported this section for the purpose of preventing the payment of debts or claims by the Legislature. I was opposed to it myself. It was supposed that individuals always had the advantage of the State, and the design was, to prevent the State from being cheated. I think the section ought to be stricken out, and that matters of this sort

ought to be put upon an equal footing with other laws. I move to lay the section and the amendment on the table.

The question being taken, the motion to lay the section and amendment on the table was decided in the affirmative.

Mr. PETTIT. I offer the following as an additional section to the article—

The PRESIDENT. It is now too late to offer an additional section. The article has passed.

Mr. PETTIT. Let me ask the President by what rule it is provided that all additional sections to an article must be offered before the last one is disposed of?

The PRESIDENT. The rule is, that all amendments to a bill must be offered while the bill is pending. This bill or report has been considered section by section; and the last section having been disposed of, the bill itself is finished.

Mr. PETTIT. But all the sections have not been disposed of. I voted in the affirmative just now to lay one of the sections of this report on the table, in order that I might have an opportunity of offering this additional section. In order that the bill may again be before the House, I shall move for a re-consideration of the vote laying that section on the table.

SEVERAL MEMBERS. "Read the proposed additional section. Read! read! read!"

Mr. PETTIT. I will read it for information: "The General Assembly shall provide by law a uniform rule of assessment and taxation, and shall prescribe such regulations as will secure a just valuation for taxation of all property, both real and personal."

I now move to re-consider the vote I have already alluded to.

The motion to re-consider was agreed to.

The PRESIDENT. The question now is on laying the section and pending amendment upon the table.

Mr. PETTIT. I will withdraw my amendment.

The PRESIDENT. The gentleman cannot now withdraw his amendment.

Mr. PETTIT. Then we can vote it down.

Mr. CLARK of Tippecanoe moved to lay the amendment to the section on the table.

The motion was decided in the affirmative.

Mr. PETTIT. So it is in order now to offer an additional section?

The PRESIDENT. It is.

Mr. PETTIT. Then I offer the section which I read for the information of the Convention a few moments ago.

{The section is reported above.}

Mr. COLFAX. I would like to inquire of the gentleman from Tippecanoe whether he intends that all churches, colleges, benevolent institutions, schools, and other public buildings, should be taxed?

Mr. PETTIT. I will answer the gentleman from St. Joseph in one word. Yes.

Mr. COLFAX. Then it is also intended that all court houses, market houses, state houses, and every other public building should be taxed?

Mr. PETTIT. I mean just precisely what the section says. I mean that all property that is protected by the laws of the State of Indiana, except what the State herself actually owns, should pay an equal proportion of the premium or expense of maintaining it. A few words upon this subject.

Any government may be well compared to an insurance office. The government of the State of Indiana affords protection to all persons and property in the State. It is no more than fair and just that *all* the property thus protected should pay an equal share of the burden of taxation imposed for its protection. Is there any property of any description in the State, around which the protecting arm of the law is not thrown? Is there any property in the State for an injury to which you may not go into your courts, and detain your judges, your witnesses, and all your officers? Is not every description of property as ready and as much at liberty to come in and demand the services of your officers for the protection of one piece of property as another? Now if the gentleman from St. Joseph has any particular sticking for churches, Masonic, Odd Fellow, and Temperance Halls, I am prepared to meet him. I ask that gentleman, supposing that he owned a dwelling house worth two thousand dollars and church property worth five hundred dollars, whether there is any difference in the property? Makes it any difference to him whether he pays all the amount of his tax upon his house worth two thousand dollars, or whether he pays an equal proportion upon that property and his church property? I say that the exemption we have had heretofore, exempts those who own church and other property from bearing a proper proportion of the expenses of the State. That property is protected by the law, and ought to pay a just proportion of the taxation for the protection it receives. I ask you, where is the justice, where the propriety of exempting it? Here, for example, is a Masonic Hall, erected undoubtedly for benevolent purposes, but still paying the stockholders a large interest on their capital, and why is it that they should be allowed to own that amount of property and pay no tax upon it, and thereby increase the burdens of the State upon those who own less than they do, or who own none at all? You have to resort to so much taxation for the expenses of the State, and you ought to resort to property for your taxation. Many citizens of my own town own property in buildings erected for benevolent purposes. There are many churches in my own town. I have no objection to tax church property, and I believe the laity of every church in Indiana is as

much in favor of taxing church property as they are of taxing any other property. Are not your churches protected by your laws? If the torch of the incendiary reaches them, is he not to be prosecuted and sent to the penitentiary? Or if a mob should assail them, are not the courts of the State open for redress? Ought they not, then, to pay their portion of the taxation? What is the difference? They have to pay their proportion on other property. The only difference is, that those who do not own church property are yet compelled to maintain it. This, sir, I hold to be wrong. You say in your Constitution, that no religious sects or creeds shall be maintained at the expense of another, or of the people at large, and that nobody shall be compelled to maintain any given religious principles against their will; and yet you say that corporations may erect property, and churches may be built, which shall be free from taxation for public uses, and you compel every man who is taxed for the support of the State, to contribute to the maintenance of such property. Sir, if the owners of such property require the protection of the law they will be ready, like good citizens, to pay their fair proportion of the expense of sustaining such property under the protection of the law.

Mr. MILROY offered to amend, by adding excepting only such property as may be specially exempted by law."

Mr. READ of Monroe proposed to amend the amendment, by confining the exemption to such property for municipal, educational, charitable or religious purposes, as may be specially exempted by law.

Mr. MILROY accepted of the modification.

Mr. HAMILTON proposed so to amend the section as to include churches, school houses, grave yards, court houses, and other public buildings belonging to the several counties of the State.

Mr. PETTIT. I shall feel constrained to ask the yeas and nays on all these amendments. The proposition is a very plain one.

The PRESIDENT. The question is first on the amendment to the amendment proposed by the gentleman from Allen (Mr. Hamilton).

Mr. COLFAX. I desire to say one word in reply to the observations which have fallen from the gentleman from Tippecanoe, (Mr. Pettit). Although I agree in the general principle that all property should be taxed, I believe with those who have gone before us in this State, and in all other States of this Union, that there should be exceptions to this general rule. I must say therefore that I differ decidedly from him in the extreme views which he has presented. I believe it to be the true policy of the State, to encourage, rather than to discourage the building of churches, and school houses. Government can give no aid directly to any sect,

or creed of religion. It is far better, both for the Church and the State, that this should be so. But it is wise—it is expedient—it is the highest policy, to exempt the temples of Religion and education from taxation. They are not built, sir, for purposes of gain, nor for personal use. They are reared, either wholly or partially, by the munificence of benevolent citizens. Their object is simply and solely the advancement and elevation of the morals, the intelligence, the Christianity, of the community.

Sir, if the Convention should adopt the section as it is now offered, and advocated by the gentleman from Tippecanoe, this State can have the unenviable distinction of being the first State in the whole Union, which has had the honor of taxing such institutions. I have, for one, no desire that the State of Indiana should be the pioneer in such a backward movement. On the contrary I would rather by any and every reasonable means, which would not effect men's consciences, or discriminate in favor of any creed, encourage the erection of buildings for such purposes. The influences which have thus been disseminated, have resulted in the advancement of civilization, and the heightening of civil freedom. Our land has won the proud pre-eminence it now enjoys among the nations of the earth in a great degree, because here, more numerously than in any other nation, do churches and school houses dot our valleys and our plains. And on this account mainly it is that we participate in the blessings of a christian civilization.

But let us look still further, and more closely at the language of the section. It is mandatory in its character—positive in its requirements. According to it, you command the taxing of court houses, jails, county buildings, market houses, poor house farms, for State purposes. You go further—you require that this very State House in which we now hold our sessions, shall be appraised, and the county tax upon it poured into the treasury of the county of Marion, and the corporation tax upon it, into the treasury of the city of Indianapolis, both of which are already greatly enriched and benefited by the location of the Capitol in their midst. Still more, you command that your beautiful benevolent institutions, which stand at either end of the Capital, which have been reared by the freely-offered taxes of every man in the State, and which have reflected so much honor upon her generous and benevolent citizens, shall be assessed and the annual taxes upon them paid to the county of Marion, which neither asks or expects such a privilege. And your State's Prison too must be taxed, for the benefit of the treasury of the county of Clark. All these county taxes—heavy as they would be, and large in amount—are to be taken from the State taxes, paid in by the citizens of the whole State, and given to counties, who do not

ask them, and would have no right to claim them.

It was not expected by the people, when they sent us here to revise the Constitution, that we would undertake anything of this kind. They expected—and if such a proposition had been advocated in the canvass, they would have demanded—that the same liberal rule, in regard to public buildings, churches, and educational edifices, which has prevailed in all other States, shall be continued here. These exemptions have been the settled, the uniform policy of every State in the Union so far as I have any knowledge, and have been most cheerfully acquiesced in by the people generally. For by these means, education, morality, and religion are encouraged in a manner which does violence to the sentiments of no man; because all sects and creeds, whatever their peculiarities and forms, their doctrines or their principles, are equally benefited by it.

Widely different indeed would be the case, if it was sought to make a discrimination in favor of any particular denomination. This, as is well known, is not advocated or intended, and for one, I must say that I shall oppose to the very last, such "progress" as is indicated in the section of the gentleman from Tippecanoe, unless it be so modified as to continue the exemption that I have alluded to in these remarks.

Mr. WOLFE. I do not wish to trespass upon the patience of the Convention, but I must say that I do hope the section proposed by the gentleman from Tippecanoe, will not pass. This thing of taxing churches, school houses, and other public buildings, which have so long been exempted, is a proposition which the people will not bear, and should it be incorporated in this Constitution, I know of no other proposition which could be more effectually incorporated into it in order to ensure its rejection by the people. To insert it, would therefore be impolitic in the highest degree. Sir, let it be taken into consideration for a moment, that most of our meeting houses and school houses are built by means furnished by a very few men; that these men receive no interest for the capital thus expended, and in addition to that, are frequently the main contributors to the support of ministers and teachers. And who are you going to tax? Who would have to pay it? It would be those few who have exerted themselves to the utmost to build these churches. Now suppose the taxes are not paid; are you going to sell these churches? Will you put them up at auction to the highest bidder, in order to raise the amount levied in the way of tax? Certainly not. Then let us go on in the old beaten path, in regard to which no whisper of complaint has ever yet been heard.

Mr. RITCHEY. I hope the section will not be adopted as proposed. I entirely agree with the gentleman from Sullivan, when he says that this is a new and important proceed-

ing, and one which I would not like to see ingrafted upon the Constitution. The gentleman from Tippecanoe has spoken of churches, as if like other property, capital was invested in them for the purpose of realizing interest; and he would say that the man who has given a hundred dollars towards the erection of a church, should be further taxed upon the amount of property which he has given away. I have contributed to almost every church in the town in which I live, and yet the gentleman would tax me on the amount I have contributed. Sir, when I have contributed any sum towards the building or repairing of a church, I consider it as gone.

Mr. PETTIT. I do not propose to tax those who contribute, but those who own the property.

Mr. RITCHEY. It makes but little difference, for this kind of property usually pays no rent. Now, suppose a man contributes to the building of most of the churches in his township, besides helping to sustain the minister. I ask you whether it is fair to tax these few men on the property which they have there given away?—for the payment of the taxes would fall upon them. So far from attempting to impose any such restriction as this on the building of churches—for I can look upon it in no other light than as a restriction—I would rather see those buildings encouraged in the towns and neighborhoods of the State. And, sir, let me say, that just in proportion as churches are built up, just in that proportion do you render your village sites and country localities desirable places for dwelling in, in the State of Indiana; and I hope they may be exempted from taxation, so that they may be considered as sacred, and that every individual in the State may feel that he has an interest in their establishment.

Mr. HAMILTON withdrew his amendment.

Mr. BASCOM said he was not going to argue the propriety of taxing churches or corporations, but there were so many other corporations got free from taxation under the garb of churches, that he hoped gentlemen would set forth in plain language what they wanted to be exempted. We had now one of the worst systems of assessment and taxation, that could be adopted. A great portion of the capital of the State was exempted from taxation, and he hoped that some means would be taken to lighten the burdens of taxation borne by those who had but little property, by placing a proportional share of it upon the shoulders of those who had much.

Mr. MATHER. I think this subject has been debated as much as it is worth, and I therefore move the previous question.

The call for the previous question was not sustained.

Mr. READ of Clarke offered to amend the amendment by exempting churches, school-houses, cemeteries, and grounds on which re-

ligious edifices are erected, not exceeding in value the sum of two thousand dollars.

Mr. MAGUIRE said he was in favor of the section as it had been offered by the gentleman from Monroe. He had had his attention called to this subject several years since, and he knew that there was great inequality in the assessment and taxation of property, both real and personal. He had, in his official capacity, as Auditor of State, called the attention of the Legislature to the subject. In the annual report made to the Legislature in December, 1847, he had made out a table, showing the average rate per acre at which the lands in the several counties were valued for taxation, in 1842 and in 1847, by which it appeared that very great inequality existed. By this table it appeared, also, that the lands, in some counties, were rated much lower, at the general valuation in 1846, than at the previous general valuation in 1841. This would appear singular enough, when we reflect, that in 1841 a general pressure prevailed all over the country, affecting sensibly the value of property, and that in 1846, every thing had become comparatively prosperous, and when every species of property was, consequently, held more valuable. In some counties, as shown by this comparison, the average value of the lands was but little over half as high in 1846, as in 1841. He would not detain the Convention by particular references to this table, his object being simply to call the attention of members to the subject, and to show that a remedy for such inequality was loudly demanded. It could hardly be expected that justice can be done, and that real estate can be equitably valued, under our system. At present, there is no check upon county assessors, and each one values the property according to his own notion. Some of them value property high, and some low, according to their respective opinions of justice, and it may be that they may sometimes be influenced to make low valuations, for the purpose of acquiring popularity. It had long appeared to him, that there should be some sort of a Board of Equalization, by which something like an approximation to equality might be attained.

With regard to personal property, he said, the matter was perhaps still worse. He was satisfied that the present system of assessing personal property, as carried out in many counties, if not universally, was exceedingly defective and inefficient. By our system, as practically carried out, every individual is permitted, as a general thing, to put what value he pleases, upon his own personal property. In Ohio, and perhaps in other States, a blank schedule is furnished to each tax-payer, which he is required to fill up, giving a description of the various kinds of property, of which he is the owner, with the value of each, and to this statement he is required by law to make affidavit. He would not say that we should require an af-

fidavit, but something should be done to remedy the evils obviously attendant upon our present system. Some individuals, no doubt, give in the whole value of their property, whilst others probably rate theirs, for taxation, at less than half of its value. There is no question, that a large amount of personal property, entirely escapes taxation. This is unjust to those whose property consists of land, and which, being visible, never escapes taxation.

In regard to the amendments to the proposition of the gentleman from Tippecanoe, he would make a single remark: If the amendments should not prevail, and no exemptions be permitted, Indiana would be the first State in the Union, if not the first country in the world, to set the example of taxing churches, and school-houses, and grave-yards. He could not believe that this Convention would adopt a section, which would prevent the Legislature from making exemptions in favor of charitable and benevolent objects. He did not care to say what particular property, or what amount, should be exempted from taxation, but thought it the duty of the Convention, if any section about taxation should be adopted, to recognize the principle of exemption for such purposes, leaving the details to the sound discretion of the Legislature.

Mr. WATTS. Mr. PRESIDENT: I did not expect to take any part in this debate; but, sir, I feel bound to say a few words in opposition to the section as introduced by the gentleman from Tippecanoe (Mr. Pettit). There are several reasons why I oppose the proposition:—one is that it lays the broad ground to tax everything—meeting houses, school houses, and all other benevolent institutions in the State. Mr. President, that is laying a broader ground for taxation than I am willing to go for.

It is true, sir, that we may lose a little tax on this kind of property; but, sir, much more than the amount lost in that way, will be gained in the correction of the morals of the people of the State, and thereby saved to community, in preventing crime; and in criminal prosecutions in your courts of justice for violations of your laws. And, Mr. President, there is one other reason I will offer before I sit down, and that is—that I consider our civil and religious liberty and prosperity, is so inseparably connected to each other, that the one cannot exist or prosper, without the other; and, sir, when the laws of the State encourage good morals, education, and religion, you thereby diminish vice, immorality, and crime, and the result will be, a lessening of the burthens of your government; and for these reasons, and others that might be named, I hope the proposition may be voted down without further delay of the Convention.

Mr. ZENOR moved to lay the section and pending amendments upon the table.

Mr. PETTIT asked for the yeas and nays which were ordered.

Mr. HALL. I hope the gentleman will withdraw his motion for a moment.

Mr. ZENOR. I will do so if the gentleman from Gibson wishes to speak, but I think we have consumed time enough on this matter.

Mr. HALL. I merely wished to say that I think the section, as proposed by the gentleman from Tippecanoe, is based upon a correct principle. I think that the Convention should do something towards equalizing the taxation, and that the principle embraced in this proposition will do it. Perhaps, however, it would be better to re-commit the section, in order that it might be brought before the Convention in a proper shape. I move that the section be re-committed to a select committee, to consist of the gentleman from Tippecanoe, the gentleman from Harrison, and the gentleman from Marion.

Mr. KILGORE. The section proposed by the gentleman from Tippecanoe, I understand to be an original section. It may have in view a very praise-worthy object, and if ingrafted in the Constitution, may have good consequences. Take it in connection with the amendment proposed by the gentleman from Monroe, (Mr. Read,) and I think it covers the whole ground. It leaves to the Legislature to specify what objects should be exempted from taxation, and if the time should ever come when the people are prepared to levy a tax upon the churches and other institutions of the country, the Legislature will have the power to do so. I hope, however, that the time will never come when the Legislature of Indiana will be prepared to tax churches or other buildings constructed by the charitable portion of the community, for charitable purposes. Sir, is it so that you, in the first place, appeal to an individual to contribute to the building of a church or an asylum, and then ask him to pay a perpetual tax upon his contribution? On the one hand, it is a voluntary act; on the other it is constraint. The burden of building churches most generally falls upon a few individuals, and the burden of paying taxes, if you undertake to tax them, will fall upon the same.

There is another objection to the proposition of the gentleman from Tippecanoe. In most of our counties there is a pauper farm for the benefit of the indigent; and if this proposition is adopted, then, sir, you will tax even the labor of the pauper.

Mr. PETTIT. Mr. President: I rise to a point of order.

The PRESIDENT. What is the point of order?

Mr. PETTIT. The gentleman from Delaware is not confining himself to the question. The motion is to refer the matter to a select committee, and the gentleman is speaking on the merits of the section itself.

The PRESIDENT. The gentleman from Delaware must confine himself to the question under consideration.

Mr. KILGORE. Well, sir, I want the Legislature to have the power to exempt churches and charitable institutions, if they think proper to do so. Reference has been made to Masonic lodges, and other institutions of the kind. If the Legislature think proper to levy a tax upon them, let them do so. But if these institutions are intended for the benefit of the poor, then I think they ought to go free. True, if they are got up upon a joint stock principle, and the stock pays a good interest, then tax stock. You can reach it just as well as you can reach any other individual property. But, sir, I do hope that the State of Indiana will never adopt the old English mode of taxation, which begins with the highest luxury a man enjoys, and runs down even to the very hangman's rope, the lumber of the culprits coffin, and the very screws which fasten down forever the remains of the violator of the law. The people of Indiana are not prepared for any such mode of taxation. All that is required, is, that there should be a uniform mode of taxing property which is properly the subject of taxation. It is not simply the amount of property that is exempted that the State feels; but it is the amount that is *not reached*, and that is not exempt, which makes the remainder of taxation fall heavily upon some portions of the country. I know that great injustice is done; that individuals worth two or three hundred thousand dollars, not unfrequently give in their property as being worth not more than fifty thousand dollars. Now, what we want, is, that the actual property should be assessed, and taxed, and when that is done I think that there will be little fault to find in regard to churches, and institutions intended for benevolent purposes. When that is done, I think we will obtain all that the country can ask at the hands of the Legislature.

Mr. PETTIT. I believe that the section I offered, embraces a principle, fair and just in itself. It is true that I had not time to give it all the consideration that might be necessary to bestow upon it; and I have, therefore, no objection to its being referred, with the amendments, to a select committee, that it may be perfected and brought back to the Convention.

The PRESIDENT. Of what number does the gentleman propose the committee shall consist?

Mr. PETTIT. I should think a committee of five.

The question was then taken on the motion to refer the section and amendments to a select committee of five, and a division being called for, there were for the motion—ayes 45, noes 35.

So the motion to refer was adopted.

APPROPRIATIONS FOR LOCAL PURPOSES.

The PRESIDENT. The question now is on the adoption of the last section.

Mr. BORDEN. I move to amend the section by striking out the words "three-fourths" and inserting "two-thirds."

Mr. STEVENSON moved to lay the section and amendment on the table.

Mr. BORDEN demanded the yeas and nays. The yeas and nays were ordered, and being taken resulted as follows:

YEAS.—Messrs. Anthony, Biddle, Blythe, Bourne, Bracken, Bryant, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Cookerly, Crawford, Crumbacker, Davis of Madison, Farrow, Frisbie, Gordon, Graham of Warrick, Hall, Helmer, Hendricks, Hovey, Howe, Jones, Kent, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Mather, Miller of Fulton, Miller of Gibson, Morgan, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Pettit, Prather, Rariden, Read of Monroe, Ritchey, Sherrod, Sims, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Taylor, Thomas, Thornton, Todd, Watts, Wiley, and Mr. President—61.

NAYS.—Messrs. Balingall, Bascom, Beach, Beeson, Berry, Bicknell, Borden, Golfax, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Hamilton, Harbolt, Hardin, Hawkins, Hitt, Hogin, Holman, Huff, Johnson, Kelso, Maguire, March, May, Milligan, Milroy, Moore, Murray, Pepper of Crawford, Read of Clark, Robinson, Schoonover, Smiley, Trimby, Wolfe, Work, Wunderlich, Yocum, and Zenor—45.

So the section and amendment were laid upon the table.

NOTICES OF MOTIONS.

Mr. NEWMAN gave notice that he should move to alter the rules so that after all the sections of a report had been finally passed upon, additional sections might be offered.

Mr. COLFAX also gave notice that on Saturday next he should move that the time for offering resolutions should be confined to the hour between 9 and 10 o'clock on Saturdays; and that speeches on resolutions should be limited to five minutes each.

VOTING AT ELECTIONS.

The PRESIDENT. The next thing in the orders of the day is report No. 13.

The first section of the report was read as follows:

"In all elections not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the State six months immediately preceding such election; and every white male of foreign birth of

the age of twenty-one years and upwards, who has resided in the United States, conformably to the laws of the United States on the subject of naturalization, and having resided in this State six months immediately preceding such election, shall be entitled to vote in the township where he resides, except such as shall be enlisted in the army of the United States or their allies."

Mr. SIMS moved to amend the section by striking out the word "township" where it occurs in the 9th line, and inserting the word "county."

Mr. GRAHAM. I hope that amendment will not be adopted.

The question being taken on the amendment, it was rejected.

Mr. CLARK of Hamilton. I move to strike out the section and insert the following:

"In all elections not otherwise provided for by this Constitution, every white male citizen of the United States of the age of 21 years and upwards, who has resided in the State one year immediately preceding such election, shall be entitled to vote in the county where he resides, except such as are enlisted in the army of the United States or their allies."

Mr. READ of Clark. I move to amend the original section by adding after the word "township" the words "or precinct."

Mr. MILLER. There are several townships in my county that have precincts, and surely the gentleman does not mean to provide that each precinct shall be an independent place of voting?

Mr. READ. I will only remark that in our county, parts of two or three townships form a precinct; and certainly I think they ought to have the same privileges as townships.

Mr. HOVEY. I will not detain the Convention further than to say that I am satisfied a large majority of the people of the State are satisfied with the law as it is. At any rate I think there are details that may safely be left to the Legislature.

Mr. COOKERLY. I believe that if we put that provision in the Constitution it will lose a great many votes. I am in favor of every man voting in his own township.

Mr. WOLFE. I am entirely in favor of allowing the people to vote anywhere in their county, because the people in various counties of the State have been applying to the Legislature for years to have the law changed; and even now one-half of the counties have special laws on the subject. The people in this matter ought not to be trammelled. It appears that every kind of latitude is to be given to the Legislature, but the people themselves are to be bottled up and corked [laughter. and "consent"].

The question was then taken on the amendment proposing to add the words "or precinct," and it was rejected.

Mr. ——— moved to amend the section by adding the words, "and has paid a poll tax the preceding year of one dollar towards the support of the Government." He said that there were thirty-two thousand polls delinquent—those who paid no taxes, and it appeared to him that as taxation and representation went together, there was no other way of making those voters contribute to the support of the Government than by making them pay a poll tax. Precedents were not wanted for this. There were eleven States in the Union which had adopted a provision of this kind in their Constitutions. It was to be found in the Constitutions of Massachusetts, Rhode Island, Pennsylvania, Delaware, Vermont, North Carolina, South Carolina, Ohio, and Georgia. He thought there was no other way of getting a poll tax of thirty thousand dollars which was annually lost to the State.

Mr. KENT moved to lay the amendment on the table, which was agreed to.

Mr. HAMILTON. The substitute proposed by the gentleman from Hamilton (Mr. Clarke) strikes at the very root of the section, and I am really surprised at the source from which it has emanated. The gentleman and myself both belong to the same political party, and yet in that party there are constant quarrels in regard to foreigners. What does the proposed substitute say? Why that none but citizens of the United States shall exercise the elective franchise. We have already adopted a section saying that persons coming into the United States and declaring their intentions shall, after a residence of six months, enjoy the privilege of the elective franchise. Does the gentleman from Hamilton expect that the Convention will rescind what they have already acted upon? Sir, I regret exceedingly that I have to speak upon this subject. Delicacy, perhaps, would say I ought not. When this subject was up before I endeavored to provide that we should have nothing beyond the elective franchise until naturalized. This has ever been my opinion. We ask not to hold office until we are citizens in the fullest sense of the term. But, sir, there is a large class of intelligent men who come from the old world, who desire to be free and to get away from the land of the oppressed, although I own that many of them, too, are unworthy. I must say that I regret that this amendment has emanated from the source from which it has come; and I regret it as a still greater misfortune that the whig party should generally act in that way. I say here that this course of conduct has been the bane of that party. So far as I am concerned, I never will recognize a party which acts in any such way.

Mr. GORDON moved to amend the section by striking out the words "in the township where he resides" and inserting "at such place as may be provided by law." [Loud cries of "consent, consent, consent."]

Mr. MURRAY said, the township system had been introduced for the purpose of preventing corruptions. He believed that the people generally were well satisfied with the law—that it had produced peace and purity in the country. Complaints had often been made by electors on the score of being dragged away from home to attend to the public business. He was satisfied that they should vote in their townships rather than go elsewhere.

Mr. CLARK of Hamilton. The gentleman from Allen (Mr. Hamilton) has adverted in somewhat severe terms to the substitute I have offered for this section. In reply to his observations in regard to foreigners, I think it is quite proper that they should have some short time in which to become acquainted with the institutions of our country, and the habits of our people. I think that they come here ignorant of all that appertains to the nature and principles of our government, and that they are consequently not in a condition to vote knowingly. I do not however expect the Convention to pass this section as a whig measure. I have as much respect for foreigners as the gentleman from Allen has; but for their own sakes and for the sake of the country, when they do vote, I want them to vote with a knowledge of our institutions. When foreigners come here they have not, in a large majority of cases, either a knowledge of our institutions or our language; and I am satisfied that even now those who are duly naturalized hold the balance of power between the two great political parties. I would give them sufficient time to become thoroughly acquainted with our political institutions.

Mr. CLEMENTS said—

Mr. PRESIDENT: In justice to myself, I must explain the reasons I have for voting for the amendment. My constituents, sir, are opposed to being confined to their own townships for the purpose of voting. We have had such a law as that in force, and it was unpopular with us. I therefore hope the word "township" will be stricken out, and the word "county" substituted therefor.

If this amendment does not prevail, I shall feel bound to vote against the engrossment of the section as it now stands. Not on the ground of the liberal provisions contained in it, in extending the elective franchise to foreigners, but because it will restrict voters to their own townships, a principle I know my people do not want.

Mr. MORRISON of Marion. I have paid considerable attention to the operation of this township business. I am satisfied that much good grows out of the present law, restraining voters to their own townships. So far from its being the case, that the county seats desire to have the votes of the out townships cast there, my experience is directly the contrary. Previous to that time, it was the custom to invite

them up by arrangement. A good deal of treating was done at the county seats. Arrangements were made to have certain drill officers to manage the voters when they came. In the county of Marion, one-half of the votes of the townships were given at the county seat. So far from desiring anything of the kind, we are satisfied that each township should regulate its own affairs, and have its own votes polled there. The consequence is that by this means we know the result by eight or nine o'clock. There is no rioting, no disturbance, no shoudering of men out. This thing only suits trickstering politicians. They get a large multitude together for the purpose of carrying out some scheme which they could not otherwise carry out. I hope that the amendment will not be adopted, and that the section will remain as it is. I now move to lay the amendment, and the amendment to the amendment on the table.

The yeas and nays were demanded, and ordered.

The PRESIDENT. The question will be taken first on laying the amendment offered by the gentleman from Howard on the table.

The question being taken by yeas and nays, they resulted as follows—yeas 72, nays 31:

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bourne, Bracken, Bryant, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Edmonston, Elliott, Fisher, Foley, Foster, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hendricks, Hogin, Holman, Howe, Johnson, Jones, Kent, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Maguire, March, Mather, Miller of Gibson, Morgan, Morrison of Marion, Murray, Newman, Niles, Nofsinger, Owen, Pettit, Rariden, Read of Clark, Read of Monroe, Ritchey, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Taylor, Thomas, Thornton, Trimble, Watts, Wiley, Work, and Wunderlich—72.

NAYS.—Messrs. Blythe, Clark of Hamilton, Clements, Dobson, Farrow, Frisbie, Gordon, Hardin, Hawkins, Helmer, Hitt, Hovey, Huff, Kelso, Lockhart, May, Miller of Fulton, Milligan, Milroy, Moore, Nave, Pepper of Crawford, Prather, Robinson, Schoonover, Sims, Todd, Wolfe, Yocum, and Mr. President—31.

So the amendment to the amendment was laid on the table.

Pending the question on laying the amendment of the gentleman from Hamilton on the table,

The Convention adjourned.

TUESDAY, DEC. 24, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. FARROW, a Delegate. The journal of yesterday was read and approved.

Mr. HALL, from the select committee on that subject, reported a section, "providing that no man shall be held for the debt, default, or miscarriage of any other person, upon any contract entered into from and after the year 1860, except in cases where executors, administrators, guardians, trustees, and public officers are required to give bond and security, and where security is given by persons acting in a fiduciary capacity."

The section was read a first time, and passed to a second reading.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day.

The first thing in order being the section on its third reading, which prohibits the Legislature from passing special acts, authorizing suits against the State.

The question being, Shall the section pass? the yeas and nays were taken with the following result—yeas 91, nays 16:

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beeson, Berry, Bicknell, Borden, Bourne, Bryant, Bracken, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hendricks, Hitt, Hogin, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Morgan, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Monroe, Schoonover, Sherrod, Sims, Snook, Smith of Scott, Stevenson, Taylor, Thomas, Thornton, Todd, Wiley, Work, Wunderlich, Yocum, and Mr. President—91.

NAYS.—Messrs. Blythe, Hardin, Hovey, Kilgore, Moore, Prather, Read of Clark, Ritchey, Robinson, Smiley, Smith of Ripley, Trimble, Walpole, Watts, and Wolfe—16.

The section prohibiting lotteries, was read a third time, and the rule requiring the yeas and nays being suspended, it was passed by unanimous consent.

QUALIFICATION OF VOTERS.

The Convention resumed the consideration of the section defining the qualification of voters, fixing the place of voting, &c.

The pending question being on the motion of the gentleman from Hamilton, (Mr. Clark,) to strike out the section, and insert a substitute, to the effect that in all elections, not otherwise

provided for by this Constitution, every white male citizen of the United States of twenty-one years of age and upwards, who has resided in the State one year immediately preceding such election, shall be entitled to vote in the county where he resides, except such as shall be enlisted in the armies of the United States or their allies.

Mr. NILES. I would inquire whether it would be in order now, to move an amendment to the original section?

The PRESIDENT. Yes, sir.

Mr. NILES. I move the following amendment:

"Strike out, in the fifth line, the words 'the United States,' and insert the words 'this State.' Also, strike out in the seventh and eighth lines, the words 'and having resided in this State six months immediately preceding such election.'"

The part of the section relating to persons of foreign birth, would then read as follows:

"And any white male of foreign birth of the age of twenty-one years and upwards, having resided in this State one year, and having declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township where he resides, except such as shall be enlisted in the army of the United States or their allies."

I will take the liberty of remarking, that my object in moving this amendment is, that while persons who settle among us in good faith, with a view to make this State their permanent home, may have the right to vote on declaring their intentions, according to law, to become naturalized; the section may not include those transient persons who are employed in large numbers on our public works, and who could sometimes be induced to vote at the instance of their employer. The effect of the section, as it now stands, might be to give a railroad contractor fifty votes instead of one. Such a man would occasionally be able to control our local elections. This would be an irregularity and an evil which all good citizens would regret, and by guarding against it we do no wrong to our substantial immigrant population. A residence of a year would generally exclude from voting, the companies of railroad hands who follow the progress of our public improvements from point to point, and who acquire little knowledge of our institutions and no fixed interest in the country; but it would require of a German of foreign birth, only the same actual residence in the State as has hitherto been required of native born citizens of Ohio or Virginia. I think this would be no more than a fair compromise on the part of those who advocate the section as it now stands. We certainly do no injury to the foreigner when we require a residence of one year to entitle him to all the political rights enjoyed by native born

or naturalized citizens of the United States. I am by no means certain but that the section ought to require that the application for naturalization should be made, say six months, before the time of voting; but I am willing to compromise on the plan I have suggested.

It is undoubtedly the true interest of the State to invite emigration from Europe as well as from our sister States, and after some reflection upon the subject, I am well convinced that we shall suffer no essential injury by extending the right of suffrage to our entire permanent population. The only object in requiring a six months residence of a citizen of New York is, that we may have some substantial evidence of an actual change of domicile, and I can see no essential necessity of a five years residence in the United States to qualify a foreigner to give a judicious vote. I have not been able to satisfy myself that the Constitution and laws of the United States prohibit to unnaturalized foreigners, who are residents of the State, the right to vote.

It may be remembered by some members of the Convention, that I opposed with great earnestness, if not with too much warmth, the proposition to disfranchise men because of their particular occupation or calling. I also had the misfortune to differ with nearly all the gentlemen from the northern part of the State, with whom it affords me very great pleasure, generally, to act, upon the proposition to give to the smaller counties more than their due proportion, according to numbers, of representation. While I am disposed to make citizenship and manhood the only essential tests of qualification for office, and to base representation solely upon men without any reference to the territory over which they might be scattered, so in determining the right to vote I would look more at the fact of our common humanity than at the place where the voter happened to be born. I am willing to go as far as any prudent man, in recognizing by our laws the great fact of the brotherhood of the human race. The same principle governs me in determining the qualifications for office, the basis of representation, and the right to vote. Some evils may result from universal suffrage, but they are evils which will cure themselves. And if our institutions can be sustained at all, it will be upon the principle of equal rights.

Mr. GRAHAM of Warrick. I cannot come to the conclusion that the gentleman who has just taken his seat has arrived at. In judging of the merits of a law, we have to look at its general action, and not its operation in an isolated case. We are not to bring up isolated cases to determine the policy of that law—we are to take the general principle and see how it acts upon the State of Indiana. The gentleman says that those who are employed upon public works, might be induced to act in this matter under the influence of their employers. That may be true; and if it be, I think it is the duty

of this Convention to guard against the exercise of such influences. But, sir, while we are guarding the public against a mere fragment of the foreign population, we are doing an injustice to the mass. The great mass of the foreign population which has settled amongst us, is engaged for the most part, in agricultural pursuits; they are intelligent and moral in character, very industrious, and make most worthy and respectable citizens. And, sir, I have no doubt, bearing in mind the characteristics of the people of the country from whence they come, that when they once get into a land in which they can exercise the rights of freemen, they would be the last to surrender their rights at the dictation of any man. I will add further, that this is a subject which can be debated *pro* and *con.*, at great length. When we talk of enfranchising the foreign population, we see that the field is boundless—inexhaustible; yet I hope the question will not be opened up for discussion. It is a question which has been thoroughly discussed in nearly every State in the Union, and I presume every member has made up his mind as to how he shall vote upon the subject now before the Convention. I would throw out the suggestion, as it is probable we shall adjourn over to-morrow, that we vote to-day, without any speech making. Let us try it and see how the experiment will work. [Loud cries of "consent."]

Mr. GREGG. I hope, Mr. President, that the motion made by the gentleman from Hamilton, (Mr. Clark,) to strike out the latter clause of this section, will not prevail. And especially do I hope that the few whigs who have the honor of a seat in this body, will not place themselves in a false position in regard to this matter, by voting against the section as it now stands, or by seeking to encumber it with unnecessary amendments. I know, sir, it had been the policy of political demagogues for the last twenty years, and I am sorry to say they have succeeded to some extent, to impress upon the minds of the foreign population among us, that the whigs, as a party, were opposed to their acquiring any political rights under our State or national governments, and that the democratic party were their particular and peculiar friends. And, sir, I was sorry to hear my worthy friend from Allegheny, on my left, (Mr. Hamilton,) giving color to this idea, in his remarks on yesterday afternoon.

Sir, I deny the truth of the proposition, that the whigs as a party, are or ever have been opposed to foreign immigration, or to the adoption of the most liberal policy for extending to them all the rights and privileges of American citizenship. It is true there may be exceptions to this rule among the whig party, as there are exceptions in all other parties. There may be those among us who are at heart Native Americans, and who honestly believe that the true policy of our government is to disfranchise our foreign

population until they shall have resided here at least twenty-one years. But this sentiment is not peculiar to those who may affiliate with the whigs in other respects, but may be found with those also, who take rank with the democratic party, in matters of general politics. And indeed, sir, if I may be pardoned for alluding to Thomas Jefferson in this connection, I might say that he once entertained a sentiment very nearly akin to Native Americanism. He says "I hope we may find some means in future of shielding ourselves from foreign influence, political, commercial, or in whatever form it may be attempted. I can scarcely withhold myself (he adds) from joining in the wish of Silas Deane, that there was an ocean of fire between us and the old world."

There may be those in our day who entertain similar sentiments. But I am not one of them. There may be those among us who would distrust the patriotism and fidelity of our foreign population, should a difficulty arise between our government and that to which they were lately subject. But I for one have no fears of them. They have, it is true, their national prejudices, and early predilections in favor of their native land—but they are none the less good citizens, because of this feeling. And upon many a hard fought battle-field have they attested their devotion to the honor and interests of their adopted country, by pouring out their blood like water, and laying down their lives side by side with our native born citizens.

But, Mr. President, I do not desire to discuss this question. My position in regard to foreigners was clearly defined upon the consideration of another question some time ago. I then remarked, and I now repeat, that I would throw open wide the portals of our country, and bid the oppressed and down trodden of all the earth a hearty welcome. I would say to the honest German, and open hearted Irishman, come—and this, let me say to my friend on the left, would embrace all of his countrymen of the Emerald Isle, for, so far as I know, they are all open-hearted and generous to a fault. I would say to the oppressed of all Europe, come, and share with us freely all the blessings of civil, political, and religious liberty. This, sir, I regard as the true whig doctrine, pure and unadulterated—and I, for one, am willing to stand by it.

Mr. BORDEN. Mr. PRESIDENT: It will be remembered, perhaps, that, at an early period of the session, I presented a resolution which was sent to the committee upon the right of suffrage. It was to this effect, viz.:

"Resolved, That the committee on the elective franchise inquire into the expediency of providing in the Constitution for the exercise of the right of suffrage, so that, in no instance shall the exercise of that right depend upon the naturalization laws of Congress; and, also, to inquire into the propriety of allowing per-

sons of foreign birth, who shall have resided one year in this State, declared their intention to become citizens of the United States, (or denizens of this State,) and taken the oath of allegiance to our own, and abjuration of all foreign governments, the privilege of voters."

I desire now to endeavor to carry out the object which I had in view when I proposed that resolution. I desire, sir, as soon as it will be in order, to amend the section under consideration by striking out the words "United States," in the seventh line, and inserting the words "denizen of this State," immediately after the words "citizens of the United States," in the sixth line. The section, if thus amended, will read as follows: "Every white male of foreign birth, of the age of twenty-one years and upwards, having resided in the State one year, and having declared his intention to become a citizen of the United States, or a denizen of this State, conformable to the laws on the subject of naturalization, &c., &c., &c., shall be entitled to vote." My object in desiring to make this amendment is this: that the privilege of the right of suffrage shall never depend entirely upon the action of Congress. If we pass the section as it now stands, the matter would wholly depend upon the action of the General Government.

Sir, suppose Congress should entirely repeal all the laws admitting persons of foreign birth to citizenship, would it be the policy of Indiana not to have the power reserved in her Constitution to enable her to pass laws on this subject herself, and admit foreigners to the privilege of denization? The policy of the State, it seems to me, demands the retention of that power. I know that it is usually said there is no probability that Congress would wholly repeal the naturalization laws. But, sir, we cannot say what will be the future action of that body upon this subject. The time may and probably will come, when not only the British Possessions north of us, but the half-civilized Mexican Republic south of us, will be swallowed up by the spread of our dominion, and form a part of this country. Ours will in truth be an "ocean bound republic." What laws men representing such a vast continent may pass, no human foresight can now anticipate. Other States, in their amended Constitutions, have provided for such a contingency. I desire that we should follow their example; for, hereafter, if Congress should entirely repeal the naturalization laws, or extend the term of residence in the country to enable persons to avail themselves of the naturalization laws, to an unreasonable length, foreigners immigrating to this continent will be induced to settle in those States where they might be admitted as denizens, and thus capital and labor would be diverted from our State. This can be easily avoided by making the change in the language of the section, as I have suggested. It would

place the matter where it now is as long as the acts of Congress now in force shall remain unrepealed. But, when such an event should occur, as the repeal of those laws, then the State could pass a law by which persons of foreign birth could apply to become denizens of this State.

It may be objected that the subject of naturalization is exclusively committed to Congress, and that the States can pass no laws on that subject. This I believe is a mistake. It will be recollected by gentlemen that, before the formation of the Constitution of the United States, while the States were acting under the old Articles of Confederation, every State exercised the uncontrolled power to make denizens or citizens at their pleasure. All the persons inhabiting the States were divided into two classes: citizens by birth, or those who were aliens born. These last were, in respect to their rights, divided again into what were called naturalized citizens or denizens. The rights of each of the two latter classes depended upon the Constitution of the several States, the acts of their State Legislatures, and the common law. The rights conferred by naturalization were much fuller and more plenary than those granted to the denizen. The fact of naturalization conferred in the mother country the full and unqualified privileges of the subject born within the dominions of Great Britain—except, perhaps, such political rights as being elected to Parliament and so forth—while the rights conferred upon the denizen were more limited in their operation. A naturalized citizen, by the common law, could not only take and hold real estate, and convey the same as a natural born citizen, but his children can inherit the same as a natural born subject. But when the privilege of denization was granted, it might be upon certain conditions; as for instance: it might only be for a term of years, or for life, or to the heirs of his body, or to his heirs generally, or for a particular purpose and intent. The denizen may purchase lands and transmit them to his heirs—that is, his issue born after, and not before his denization—and the person does not necessarily acquire the right of taking by inheritance.

I allude to this merely to show that there was a broad distinction between a citizen and a denizen, according to the British laws, and the laws of the several States, previous to the formation of the United States Constitution. Now it has been a question with some, whether the power of naturalization is not in its nature, one which must be exclusively exercised by the General Government, or whether it is one which can be exercised by the States in connection with the General Government.

At an early period in the history of our Government, it was decided by judges Wilson and Blair, of the Supreme Court of the United States, both of whom were in the Convention that

formed the Constitution of the United States, that the States enjoyed a concurrent jurisdiction with Congress, upon the subject of naturalization. The correctness of this decision has since been questioned by Kent and several others, but some of the most learned jurists in the United States are still of the opinion of the judges who made the first decision. But, sir, whether the power be exclusively vested in Congress or not, when it is exercised by them, the question rises whether the rule laid down in the case of *Sturgis vs. Crownshield*, (4th Wheaton's Report,) will not apply to this subject. The power of Congress to pass laws on the subject of bankruptcy and naturalization, are conferred in the same section of the Constitution, and it would necessarily seem that the same rule should govern in both cases. It was decided in that case, that if Congress neglected to pass a bankrupt law, then the States could pass laws upon the subject of bankruptcy. Now sir, I infer that the same course of reasoning will confer upon the States the right to pass laws on the subject of naturalization in case Congress should repeal all the laws on the subject, and thus persons might apply to become citizens under the laws of the State. I ask then, would it not be prudent for us to alter the section under consideration, as I suggested, and not place words in it by which aliens cannot become citizens but by force of the acts of Congress. Sir, the time may come when we might desire to admit those persons by virtue of our own laws, but in case the section is adopted as it was reported, it would be out of our power to do so, except by an alteration of the Constitution.

But, sir, whatever may be the decision of the question, as to the power of the State to naturalize persons of foreign birth, either with or without any law of Congress on the subject, I am clearly of opinion that every State has the power to make what is termed a "denizen." As I stated before, not only the common law, but the laws of the several States made a broad distinction between a citizen and a denizen. And when the power was surrendered by the States, to the General Government, to pass laws on the subject of naturalization, they have always unquestionably retained to themselves the power of "denization." The Constitution of the United States declares that all power not given to Congress and not prohibited to the States, are retained to the States. Is the power of denization granted to Congress?—is the exercise of it prohibited to the States? These are the questions. I presume that no one will contend that either is the case. Then, sir, why not insert the words I propose, so that the person who has been by the laws of the State, admitted to the privilege of a denizen, may be allowed to vote and hold an office in the State, from the Governor down to the smallest county office in the gift of the people. Sir, I believe the States

have wisely retained this power of "denization," and while it was very proper for them to give up to Congress the exclusive control of the subject of naturalization, yet they probably thought the time might come, especially in those States having large unsettled tracts of land, when they would desire to adopt a more liberal course towards foreigners, than the General Government would pursue. Gentlemen will recollect that towards the close of the last century, at the time the celebrated alien laws were passed during the administration of the elder Adams, the wisdom of the States in retaining this power was made most completely manifest. Sir, I think that every motive of sound policy demands of us to so form our Constitution as not to place this matter wholly under the control of Congress, and entirely beyond the reach of the policy which our own State may hereafter desire to pursue. If the change be made which I propose, then the alien will only be under the necessity of applying to become a citizen under the laws in force for the time being, no matter whether they were laws of the State, or laws of the United States.

Mr. HAMILTON. The gentleman from Jefferson alludes to a remark I made on the subject of a motion of the delegate from Hamilton, (Mr. Clark,) expressing my regret that all the opposition to foreigners on this floor should come from members of the whig party, with whom I have long acted—that this was the second time it was made manifest by members of that party in this Convention—that many who, like myself, had emigrated from a foreign land to seek a home in this Republic, had long urged to me that the whigs, as a party, were much opposed to an early naturalization of foreigners, or to their right to vote until they became fully naturalized. If this was true, and that was to be ingrafted on the whig creed, I could not act with them. True it matters little to any party whether I act with them or not. This, Mr. President, was, I think, the substance of what I then hastily said last evening, so far as I recollect, for I kept no notes. It is perhaps due from me to say, that I may have spoken too generally of the whig party. To the liberality of several members of that party on the subject of foreigners exercising the elective franchise, I can bear my humble testimony. What I intended to say was, to express my regret that all attempts against them here was by whigs. I denounce no gentleman. They have a right to their opinions, and I to express my regret that such should be held by any member of the party with whom I have acted. I have no desire to make a charge against the whigs as a party. It is enough for me, as a member of this Convention, to express my disapprobation of these measures affecting a large class of inhabitants in the county I have the honor in part to represent. I have no desire to injure the feelings of any honorable member of this Convention.

It is enough for me to govern my own actions. This, Mr. President, is all I desire to say on this subject.

Mr. CLARK of Tippecanoe. I feel almost compelled to occupy the attention of the Convention a few moments on this subject. I do not purpose to discuss the question; but, sir, as I am a whig and as I shall vote against the section under consideration, I feel it necessary to make a short explanation. It has been intimated that as whigs are charged with being opposed to foreigners, that, therefore, to counteract such a supposition, every whig should vote for this clause to be inserted in the new Constitution.

I am happy to be able to say that so little of party feeling have we had manifested in this Convention, that I had almost forgotten that I was a whig. And I cheerfully testify that the gentlemen who are in a party majority here, have carefully abstained from party discussions and allusions to parties. These topics have more frequently been referred to by those of my own political faith. But in voting now, as I trust I have hitherto voted, I shall have no reference to the influence which my vote may have on the political fortunes of my party.

I hope I shall, as I believe every gentleman in this body will, vote conscientiously, and only in reference to the propriety of the measure itself. I cannot admit, sir, that it is any part of the duty of a whig to give any electioneering vote in this body for the advancement of his party. With the gentleman from Allen, who intimated that if the whig party should oppose this section he would hardly act with it longer, I can almost say that if the whig party should, instead of seeking after what is true and right, set about auctioneering for votes, that I would be almost constrained to abandon it too. But then, sir, I do not say this by way of threatening it with any great harm, for, sir, I do not fancy that it would suffer any great loss.

Mr. HAMILTON [interposing] said: Will the gentleman repeat what he said; I did not hear.

Mr. CLARK. No great matter. I only said that if I should separate from the whigs they would suffer no great loss.

But, sir, in voting against this section I do it with no feelings of hostility to the foreigners, and with no disposition to exclude them from our State, or from the enjoyment of any essential right necessary to them. But independently of any other reason, I oppose this as an evasion and a violation of the Constitution of the United States. The States have delegated to the General Government the authority to naturalize foreigners; Congress has passed laws on the subject, and prescribed the conditions on which foreigners may become citizens and acquire the right to vote. If all the States evade these laws by prescribing other conditions and other modes of making citizens, this provision

of the Constitution of the United States becomes a nullity. And thus one of those compromises of the Constitution, designed for the common security of all, the sacredness of which has been so eloquently described heretofore, is defeated and disregarded. Now, sir, I do not feel myself authorized to disregard, or in any manner to evade this Constitutional provision, or to assume authority to the State which has been expressly delegated to the General Government.

If it be thought that our naturalization laws are unreasonably burdensome toward foreigners, providing that they shall be residents for five years, and disavow all allegiance to other governments, before they are permitted to vote, the proper remedy appears to me would be found in a modification of the laws of Congress. If it be desirable that the moment a foreigner sets his foot on our shores, that he shall be invested with the privilege of voting, let that object be brought in the proper manner, and let it be accomplished through the intervention of the proper authority. Now although I am unwilling to dispute the truth of the principle of universal suffrage, yet I should think it could fairly embrace only the citizens of the nation over which the government, in which such a principle is recognized, extends. All mankind are not at present of one nation. And when any one is invested with this privilege, it by no means follows that no guarantee ought to be demanded of him, for the proper performance of so sacred a trust. It would not seem unreasonable that the voter shall in some manner identify himself with, or attach himself to the people over whom he is to exercise the right of government.

I profess, sir, to have as great sympathy and as fraternal a regard for all men as the gentleman can. But in all the affairs of government it is necessary to exercise discretion, and discretion is entirely necessary in the delegation of the sovereignty of the State which places in the hands of those to whom it is entrusted, the power of controlling the destiny of all others. We have appointed a probation for our native born citizens; we do not allow them to vote until they have attained the age of twenty-one years. We have provided that before they shall be eligible to some offices they shall have attained a still greater age. This is done, not because of hostility to them, but for their security as well as for the security of all others.

I felt it my duty to make this brief explanation, because we who are whigs have been admonished not to vote against this clause, lest foreigners should be prejudiced against the whig party, and because this measure would be carried at all events by a very large majority. I cannot allow any such reason to influence my vote. It is my duty to submit to the decision of the majority, but not to surrender my judgment merely for the sake of being on the

stronger side. I think patriotism requires the contrary course. The minority ought, if they think their opinions to be founded in truth to maintain them, and endeavor to convince the majority of their error.

The lover of truth ought not to be venal, and barter honest opinions for power. Our government contemplates no such degradation as this. Obedience to the will of the majority, when expressed in the form of a law, is all that it demands. But it will not permit any law to restrain the freedom of speech or of thought.

Mr. EDMONSTON. I do not wish to occupy more than a moment of the time of this body. I feel it due to my constituents and myself, to say a very few words. The amendment of the gentleman from Hamilton, at first sight, appears to be equitable, but it is not so. The moment the foreigner lands here, you require from him all the support which taxation affords, the same as from any citizen; but when he comes to the ballot-box, you tell him to stand back for five years. This, I think, is not equitable. Now it is *prima facie* evidence, to me, that when a foreigner wends his way to this country, he must have some idea of the principles which govern us. It is clear, to me, that it must be a feeling of republicanism that leads him from the land of tyranny, to this land of liberty, for the purpose of becoming a citizen. Those are qualifications sufficient, I think, to entitle the poor foreigner, who loves liberty better than the land of his birth, to exercise the right of voting, after living in the State six months. I hope the amendment of the gentleman from Hancock will not be adopted.

Mr. CRUMBACKER. I must remark here, that I regret exceedingly, the names of the two great parties being called into question upon this occasion. I do hope that party considerations, and party predilections and party questions will be entirely kept out of view here. If gentlemen of any party have excuses to make for their conduct in reference to this question, let them make those excuses and apologies to their constituents, and not throw anything into the Convention that will act as a fire-brand, and excite party strife and contention amongst us. I will frankly declare my preference for the section as reported by the committee; I think I am duty bound to vote for it as it is. I would do so for the reason that I can conceive of no course by which we could more strongly attach to our government and institutions, the foreigners who are so constantly flocking into the country, than to give them a share in the privileges we enjoy—the privilege of choosing rulers for themselves, and of voting at our general and special elections. It certainly would attach them to our institutions quicker and more permanently than any other method. It is true we have here an asylum for the oppressed of all nations; we want them to flock here; we are heartily willing to receive them—in fact,

they are coming in by thousands. I think then, it would be sound policy to adopt that course which would the sooner attach them to our Government, and national institutions. From what portion of the world do the most of them come? A very large proportion from Germany. The character of that people is one conspicuous for honesty, uprightness and integrity. Perhaps in no portion of the world is there to be found a more upright, honorable, and industrious people than in Germany, with the exception of our own people. There is a large German population in this State, which truly may be classed amongst our most valued citizen. Wherever they settle, though it were a desert, by dint of their earnest perseverance and industry, they soon make it blossom like a rose. In my own county we have a large German population—and they are flowing in continually—and I will say without any disparagement to others in that county, that the Germans are as upright, hard-working people, and have done as much for the improvement of the county, as any of the other inhabitants of it. And I will add, that they have nearly as good an idea of our laws and institutions, as have any other citizen of the county. Therefore, to attach them the more permanently, I would say that as soon as they are here six months, "You will walk up to the polls and record your vote like any other man." I would invite the down-trodden victims of all Europe to come in here; for here, sir, is emphatically "the home of the free." I would like that those who have been crushed down by the iron arm of despotism, should come here among us in this land of freedom, and share the blessings which have been secured for us by the blood and the treasure of our forefathers. I would say, come and share all the privileges which we enjoy, as soon as you declare your intention to become citizens of our Republic.

Mr. HOVEY. I would not detain the Convention a moment on this occasion, were it not for the constitutional objection raised by the gentleman from Tippecanoe (Mr. Clark). He alleges that we have no right to permit foreigners to vote until they have complied with the acts of Congress in regard to naturalization. It will be remembered that HENRY CLAY used the same argument in the Senate of the United States in the debate on the pre-emption law, in 1841, in which he contended that "*the exercise of the elective franchise implies citizenship*," and that, consequently, no State has the power to confer the right of suffrage upon foreigners not naturalized.

The section now under discussion, if adopted, will permit foreigners who have taken the first oath of naturalization under the acts of Congress, and resided one year in the United States and six months in this State immediately preceding the election, the right to vote

There are two questions which present themselves to my mind in considering this section. The first is, does it conflict with the Constitution of the United States and the acts of Congress passed in conformity therewith?

And secondly, if constitutional would it be prudent and wise to adopt it?

To a correct understanding of the first question it is necessary to define the rights of the people, the rights of the States as political corporations, and the rights of the government of the United States under the Federal Constitution.

The true theory of government is, that all power is inherent in and emanates from the people who compose a State, and it is perfectly immaterial, so far as the laws of nature are concerned, whether that people is composed of native born citizens or aliens.

To make my meaning more comprehensible, I will suppose a territory not under any laws or government, filled with inhabitants, native born and aliens, in a sufficient number to make it necessary that some rules should be established for their protection and happiness; they meet in mass, every one being independent of each other, and equal as to their political rights and privileges; they agree upon certain rules, and consign to persons to be chosen the power to enforce them. In such rules, too, it is generally laid down who shall and who shall not exercise the rights and privileges of a citizen of the State, and who shall and who shall not be permitted to enter the body politic. Without restrictions, whoever might enter the territory would, by complying with the laws, be entitled to all the privileges and immunities of the native born; hence laws prohibiting the exercise of the elective franchise until after a limited time—laws of naturalization, &c. A state thus formed, can exercise all the powers conferred, and no other; the residue is reserved to the people, in their sovereign capacity.

In the same manner, theoretically, the United States government was formed, the people of the States conceding, by the Federal Constitution, certain rights and privileges for the welfare of the whole; and the only powers that can be exercised under that instrument, are those which are *plainly expressed, or which arise from the same by necessary implication*. All other persons, of what kind soever, are retained by the States or the people, in their sovereign capacity. This being the case, the constitutionality of the question before the Convention is narrowed down to this: Did the States confer upon the General Government the power to prescribe for them rules or laws regulating the right of suffrage in the States? If so I would ask, in which part of the Constitution that grant is to be found? I am certain that no such grant can be found; and if not, that power is reserved to the States, and we can establish any rule in regard to suffrage that we may think proper. I will

read the only section that I can find, that relates to suffrage, in the Federal Constitution. Section two, of article one, is as follows:

"The House of Representatives shall be composed of members chosen by the **PEOPLE** of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures."

In the first paragraph of this section it will be observed that the **PEOPLE of the several States**, not "the *citizens* of the United States," are to choose the Representatives in Congress. From this phraseology I think it is reasonable to infer that the framers of that Constitution contemplated the possibility of the States, in their several capacities, granting suffrage to those who might not be citizens of the United States. But should doubt exist, it seems to me that the succeeding part of the section will at once dispel it. Those who vote for Representatives to Congress, are to have the same qualifications as those who are authorized by the State laws to vote for Representatives in the State Legislatures; thus leaving the qualifications to be determined by the laws of the several States, which it is well known are very dissimilar. Now if it was not intended to leave to the States the power of determining who should and who should not vote, why did not the Delegates who formed the Federal Constitution specify the necessary qualifications? I think no reasonable answer can be given inconsistent with the construction which I have placed upon the section which I have read.

Again: the history of our territories and new States fully prove that this is the correct construction. The "*free white inhabitants*" of Michigan, a large number of whom were aliens, constituted the population under which that State was admitted into the Union. California, within the last year, with a population of at least one-third alien, has been admitted as a State without, I believe, any serious objection on that account. Illinois, even since her formation as a State, has permitted aliens to exercise the elective franchise before naturalization. They have elected Congressmen by such votes, and their Representatives thus elected have been admitted to their seats without objection.

It is contended that the power conferred on the General Government "*to establish a uniform rule of naturalization*" in section 8, article 1, Constitution United States, deprives the States of the right to admit to foreigners the privileges of citizenship without a compliance with the laws passed by Congress under that section. At least it is said that the States cannot confer upon them the right of suffrage. Now it seems to me, that this argument leads further than its friends desire. If the States cannot grant them the privilege of voting, they cannot permit them to purchase lands. One is as much of a natural right as the other, and as good reasons

can be given for the prohibition in the one case as in the other.

It has sometimes been contended that if we allow foreigners to vote, they might use their influence to subvert our government. Might it not be just as reasonably said that we ought to prohibit them from purchasing lands, lest they should have the means within our country, in times of war, of "giving aid and comfort to our enemies?"

Experience has taught us that all such fears are groundless. They are generally patriotic and devoted to our institutions and are found with our native born citizens, standing shoulder to shoulder, in the battles of our country.

There is still another view which satisfies me that the position assumed by the gentleman from Tippecanoe, is incorrect. If the effect is to be given to the clause in regard to naturalization which he contends for, Congress would virtually have power to check immediately, all immigration to the States. They could pass such laws as would for many years deprive aliens of the privileges of citizens and thus roll back the full tide of immigration to our State. Men worthy of becoming American citizens, would not settle in a State where they would be thus denied the ordinary privileges of freemen.

In my opinion, those who framed the Constitution of the United States, only intended to give to Congress, under the naturalization clause, the power to protect the general government—to prevent aliens filling *federal offices* without complying with the laws they might think proper to adopt, and to say under what conditions the *government of the United States* would receive and protect those born in foreign lands in the same manner that she guards and protects her native born freemen.

From these considerations, I am constrained to believe that there is no doubt of our constitutional authority to adopt the section. I have taken some trouble to investigate it, for I was confident the question would be raised. My friend from Vanderburgh (Mr. Blythe) for whose legal opinions I have much respect, has also examined the constitutional question, and I am happy to say that he has no doubt of our power to adopt the section.

A few words now in regard to the second question. "Would it be prudent and wise to adopt the section?"

I shall not attempt to eulogize our foreign population, but will merely say that by a compliance with the provisions of the section under debate, I am willing to hail them as freemen. Indiana has a population of scarcely a million, while her commercial, agricultural, and manufacturing resources are capable of sustaining in ease and affluence, at least ten millions of souls. I hold it sir, to be the duty of this Convention, and that it should be the policy of our legislators, to increase our numbers by every honorable means; and I regard the offer of *equality* to those

who flee from the oppressions of other lands to be one of the surest means that can be used to bring about that desirable result. We need not fear them, they have left the yoke of the tyrant behind, and will be among the last who would willingly wear it here. I shall support the section as reported by the committee, and vote against all amendments.

Mr. TAYLOR said it was with deep regret that he found himself compelled to differ from his honorable colleague, in relation to this subject. The reasons which had been assigned had failed to satisfy his mind that the original section ought to be adopted.

It does seem to me, continued Mr. Taylor, that where a man comes to this country to seek a new home here, he ought not on an account of a mere technical reason, to be deprived of the right of suffrage. We have nothing to lose by granting it, but every thing to gain.

I have no desire sir, to make any political capital out of this question. I make no speeches for Buncombe. It has always been the pride of my life to succor by all practicable means, the oppressed of every country, who seek a home among us. I have always been in favor of granting all privileges that can properly be granted to those who come to reside in this State. And sir, because we may have a few persons coming among us who have no intention to become citizens, does that constitute a sufficient reason why we should exclude the honest man from the enjoyment of the rights of citizens who comes here and brings with him his family with the intention of becoming a permanent resident? Why should we say to him, you must be subjected to a certain probationary process, you must be a resident for twelve months, before you shall be permitted to exercise the elective franchise? Is this necessary, in order to exclude some two or three hundred foreigners who are mere temporary residents in the State? I think not. I think he should be entitled to exact at our hands the privileges to which a citizen is entitled. It is too great a burthen upon him, that he should be deprived of the right of suffrage, merely because a few votes may be cast which ought not to be given.

I do not mean to discuss the question, but merely to indicate my opposition to the proposition of the gentleman. I am in favor of opening the door to the admission of foreigners, when they come among us, and giving them political rights, which appertain to citizens of the State.

Mr. PETTIT. I am in favor of this resolution as it stands without alteration of any kind either in form or substance. Sir, one word as to the objection raised by my colleague, the gentleman from Tippecanoe, (Mr. Clark) as to the power of the State to extend the elective franchise beyond the provisions of the Constitution of the United States, or the acts of Congress in relation to the subject of naturaliza-

tion. Sir, naturalization is one thing, and voting, or the right to vote is another thing. The foreigners who comes to this country, is naturalized for two purposes, first, for the purpose of protection, and in the next place, to enable him to take part in the political affairs of the country. Although he may take this on himself, without naturalization; but the great boon that naturalization confers upon foreigners is this: It imposes on the Government the duty of protecting the naturalized citizen. If a man comes here, and becomes naturalized, and then goes abroad to England, or to Ireland, or South America, to Brazil, to Spain, or Portugal, or to any other foreign country, this Government is still bound to protect him.

If the Government of the country to which he goes, commits an act of oppression towards him, this Government is bound to redress the wrong. If such foreign Government should confiscate his property, it would become the duty of this Government, the Government which he has taken an oath to maintain—to protect his interests. All of us are under the obligation of an oath, to protect him in the enjoyment of his rights. It is as much the duty of the General Government to protect his rights and redress his wrongs in a foreign country, as to protect the rights of a natural born citizen. Not so with the alien; so long as he is an alien we are under no obligation to throw the protection of the law around him when he chooses to go abroad. If gentlemen will refer to the reports of committees of the House of Representatives, of the last session of the 29th Congress, they will find an elaborate report upon this subject that is directly conclusive. It originated in this way: numerous petitions were sent to Congress praying for the repeal of the present naturalization laws, for the extension of the time, or term of residence, in order to become naturalized, to twenty-one years, and the prohibition upon foreigners to exercise political rights; all these petitions were referred to the judiciary committee, of which I was a member, and of which Mr. Rathbone of New York, was chairman. We made a report in which the whole subject is reviewed, and which concludes with the declaration that the Government of the United States have nothing to do with the question, as to who shall have the right to vote in the several States. It only requires that members of Congress, and electors of President of the United States, shall be voted for by such persons as have the right to vote for members of the most numerous branch of the State Legislature. The State Constitution confer that power upon whomsoever it is considered proper by the State, to confer it.

It will be recollected that negroes vote in some of the States. Cave Johnson, of Tennessee, who was formerly Postmaster General, told me that the first time he went to Congress, he was elected by the votes of free negroes:

that but for their votes, he could not have been elected. Why, sir, in some of the States, the women, God bless their souls, are emphatic, ["consent,"] had the right to vote formerly. I do not know but that in some they may have the right still. Gentlemen, no doubt, recollect the time when they used to vote in New Jersey. Is there any restriction placed upon the States in this respect, in the Constitution of the United States? None at all. You may confer the right of suffrage upon women, or upon minors if you please. The report that I have referred to, was unanimously concurred in by the House of Representatives of the 29th Congress of the United States, as being an elucidation of the whole question.

Now, sir, in my view of the matter, it is entirely a question of policy. If I could be led to believe that it was likely to prove mischievous—to set the political cauldron boiling, until there would be danger of its overflowing and scalding us all, I should resist it, but I do not believe any such thing.

Sir, these foreigners vote just as we vote. It might as well be said that we would endeavor to overthrow the institutions of the country, as that they will. They vote either with the whigs or with the Democrats. If they vote with the Democrats, there is no danger ["consent," and "laughter."] And I will not say that if they vote with the whigs, there would be danger. The only effect is to swell the vote. But to treat the matter a little more seriously. Examine the policy of Governments from the earliest vestage of civil Government, and you will find that it has always been regarded as the most wholesome policy to increase their population. Sir, Moses, the wisest of secular law-givers—I will not speak of him in any other light—provided for an increase of population, and it has given energy, strength, and vigor, to all nations who have adopted this policy. It has been the policy of all nations that have prospered, more especially ours. What is the prospect now before us? We are not getting from Ireland, Germany and other nations of Europe, the same description of population that we got twenty-five years ago. I may be allowed to say we are getting a better class. Men of property are coming to this country with a view of becoming permanent settlers; and the next generation—their children—will love the soil as you do.

Sir, if you do not hold out these inducements to those people to settle here, they will go beyond you. This is not the only State where they may settle. They will go to the broad plains of Illinois and Wisconsin. They will not be willing to settle in your State, unless they can, at an early day, have a voice in the government, and in controlling the taxation of property. And it is but a liberal and statesmanlike view of the question, that they should have this right. If you give them a participa-

tion in the making of the laws, they will be willing to come here. I take it that our State is not so fully populated, that we need reject them. The true policy of the State is, to increase her population—to fill up her borders with a “hardy population.” As a matter of justice to them, and of policy to ourselves, we ought to adopt the section.

MR. RITCHEY. I am not going to detain the Convention by making a speech, but to give every member an opportunity to vote, by demanding the previous question.

The previous question was seconded, and the main question was ordered to be now put.

MR. COOKERLY. I move to lay the amendment on the table.

SEVERAL MEMBERS. “Too late!” “too late!”

THE PRESIDENT. The gentleman’s motion cannot now be entertained. The question is on the adoption of the resolution.

The amendment was not agreed to.

The question then recurred on the amendment of the gentleman from Hamilton, (Mr. Clark,) to strike out the section, and insert the substitute moved by him.

The substitute is as follows:

“In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of twenty-one years of age and upwards, who has resided within the State for one year previous to the election, shall be entitled to vote in the county where he resides, except such as have been enlisted in the army of the United States; and none else.”

The yeas and nays were demanded, and they were ordered, and being taken, were—yeas 14, nays 90—as follows:

YEAS.—Messrs. Bourne, Clark of Hamilton, Clark of Tippecanoe, Crawford, Farrow, Frisbie, Helmer, Kelso, Kilgore, Morgan, Robinson, Steele, Thomas, and Todd—14.

NAYS.—Messrs. Anthony, Badger, Bascom, Beach, Beeson, Biddle, Blythe, Borden, Bracken, Bryant, Butler, Carr, Carter, Chapman, Clements, Colfax, Cookerly, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hardin, Hawkins, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Taylor, Thornton, Trimble, Walpole, Watts, Wiley, Wolfe, Work, Yocum, and Mr. President—90.

So the substitute was not adopted.

The question then being, Shall the section be engrossed for a third reading?

The yeas and nays were demanded, and they were ordered.

MR. WOLFE desired to make a statement, explanatory of his vote.

THE PRESIDENT remarked that the vote upon the engrossment was under the operation of the previous question.

MR. KELSO. As the previous question has been ordered, I shall decline voting upon this section.

THE PRESIDENT. The gentleman is aware of the rule, which requires the Secretary, in case a member declines voting, to make an entry thereof, in the journal.

MR. KELSO. I am perfectly willing that that should be done. Being prevented, by the operation of the previous question, from assigning my reasons, I desire that it shall be stated that I decline voting.

The yeas and nays were taken, and resulted—yeas 87, nays 15—as follows:

YEAS.—Messrs. Anthony, Balingall, Bascom, Beach, Beeson, Bicknell, Biddle, Blythe, Borden, Bryant, Butler, Carr, Carter, Chapman, Colfax, Cookerly, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hardin, Hawkins, Hendricks, Hogin, Holman, Hovey, Johnson, Jones, Kent, Kendall of Wabash, Lockhart, Maguire, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Taylor, Thornton, Trimble, Walpole, Watts, Wiley, Work, Wunderlich, Yocum, and Mr. President—87.

NAYS.—Messrs. Bourne, Clark of Hamilton, Clark of Tippecanoe, Clements, Crawford, Farrow, Frisbie, Helmer, Hitt, Huff, Kilgore, Kinley, Morgan, Robinson, Thomas, and Wolfe—15.

So the section was ordered to be engrossed for a third reading.

MR. KILGORE’S name being called, he said: He would not, like the gentleman behind him, (Mr. Kelso,) decline voting. He would vote “No,” because he loved his country better than he loved himself. [A laugh.]

MR. WOLFE. I now move to re-consider the vote, in order that I may give my reasons. It does appear to me that this matter is going a little too far.

THE PRESIDENT. The matter is still subject to the previous question.

MR. WOLFE. I understand that the previous question is exhausted when the vote is taken on the engrossment of the section.

The PRESIDENT. But if the Convention re-consider that vote, it is as if it had not been taken, and the previous question is in force.

Mr. WOLFE. Do I understand that I have no right to give my reasons?

The PRESIDENT. It is not in order for the gentleman to assign his reasons.

Mr. WOLFE. I moved the re-consideration for the express purpose of saying that it was not on account of any objection which I have to extending the elective franchise, but on account of the limitation—

The PRESIDENT. The gentleman is not in order.

Mr. WOLFE. Well, sir, I withdraw the motion to re-consider, and ask leave to change my vote. Having voted "yea" for the purpose of moving a re-consideration, I now vote "no."

The section which declares that all other elections not herein-before provided for shall be by ballot, was read a second time.

Mr. FARROW moved to amend, so that the ballots shall be numbered to agree with the numbers opposite the names of voters.

Mr. FARROW. The amendment that I have proposed is intended to obviate a difficulty that connects itself with the section in relation to confining voters in giving their votes to the township in which they reside. I believe that a law has been in force for a number of years in this State, which directs that the right of suffrage shall be exercised only in that portion of the county in which the voter resides, yet we find that the Legislature have not yet been able to close up all the avenues to fraud.

I believe, sir, that there is not any species of offence that the citizens of this State may commit against the laws of the country for which there is not a competent remedy provided, except in this particular case.

When a vote is given fraudulently, you are without remedy, because you are unable to ascertain where the vote comes from. The result is, that when a contested election takes place, you are at a loss to ascertain the justice of the case. It is true you have the voter's name on the poll-book, but you cannot tell where the vote is. If you can extract it from the voter himself it is all very well, but if not, you have to guess for whom it was given. But, sir, I insist upon it, that there may be a remedy provided; each ballot may be numbered agreeing with the number opposite the name of the voter, and still all the secrecy you wish may be observed and the ballot never need be examined. All you have to do is to find the voter's name on the poll-book, and to ascertain the number opposite the name you have only to refer to the ballot, and there is no necessity for examining all the ballots, and there is no necessity while counting the ballots that the poll-book should be opened. Therefore, I

insist that if this arrangement be adopted, the strictest secrecy may be observed.

I wish to bring this matter to the consideration of the Convention, and ask them if they cannot devise a means whereby all the necessary protection shall be afforded to voters, and at the same time establish a rule by which frauds may be detected. If this object can be accomplished it is certainly desirable, and if the Convention will bestow on the subject that consideration which its importance demands, I believe they will not lightly pass over the suggestions that I have made.

Mr. KELSO. It seems to me that the gentleman can just as well or even better accomplish all he wants by changing the mode of voting. Now it is very certain that in this mode of voting by ballot, secrecy exists not only in fact in regard to the voter, but you do not know for whom he casts his vote; but if you number his vote and let that supply the place of his name, where is the secrecy? All you have to do is to take his number and go to the poll-book, to ascertain for whom he voted. And I presume the gentleman will not deny this right to examine the poll-book. It is kept open and accessible for six months for that purpose by law.

I am willing to go for a change in the mode of voting, and for this reason: You expose the voter to every inconvenience he would be subjected to were the vote given *viva voce*. And there are great advantages in changing to the mode that the gentleman proposes, and the advantage is this: When a voter comes up to give a vote, you put down his name and the name of the candidate voted for; all this is done at once, and you are able at a glance to see for whom he voted; and in order to prove upon him the fact of illegal voting, you have only to turn to the record. It can all be done within a trifle of the same length of time that you can receive the ballot and record the name of the voter. And then you have all the trouble of looking into another record. That will all be saved; and it will be infinitely better to change the mode at once. If the gentleman's doctrine is good, the same thing may be accomplished by changing the mode of voting.

Mr. FARROW. Will the gentleman allow me?

Mr. KELSO. Certainly, with pleasure.

Mr. FARROW. According to the mode I propose it will never be necessary to examine the number of the ballots, except in the case of a contested election. After having ascertained who has cast an illegal vote, then his vote may be examined by referring to the number.

Mr. KELSO. If that is the case the gentleman is radically wrong; it will be making a private matter of the poll-book; whereas every citizen should have the right to go to the poll-book and examine it. I am against withhold-

ing from them that privilege. Therefore I maintain that the better mode of arriving at the object which the gentleman has in view is to change the mode of voting. I shall vote against the amendment.

The question was taken upon the amendment of the gentleman from Putnam, and was not agreed to.

The question then being, shall the section be engrossed for a third reading?

Mr. MOORE moved to strike out the word "ballot" and insert "viva voce."

Mr. PRATHER. As gentlemen seem to be greatly adverse to technicalities, I think it would be as well to use the words "living voice." [Consent.]

Mr. KENT moved that the amendment be laid upon the table.

The motion was agreed to.

The section was then ordered to be engrossed for a third reading.

On motion by Mr. MATHER,

The Convention adjourned.

AFTERNOON SESSION.

The Convention took up the third section of Report No. 13, providing that electors shall be free from arrest on days of election, except for treason, felony, or breach of the peace; and it was ordered to be engrossed.

Section fourth of the same article, providing that the Legislature shall have the power to exclude from electing or being elected, any person convicted of any infamous crime, was also ordered to be engrossed.

Section fifth of the same article, providing that no person shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State, was also ordered to be engrossed.

CONTESTED ELECTIONS.

Mr. WOLFE proposed an additional section, providing that all contested elections for Senators and Representatives, and for all county and township officers shall be sent back to the people for their decision in a manner to be prescribed by law.

Mr. W. said, that he hoped the Convention would give this subject due consideration. Such a provision he thought was necessary to be ingrafted in the Constitution, as it would prevent much difficulty in cases of contested elections. They had all seen in the case of the delegation from Union, that notwithstanding due investigation had been made of the manner and result of the election, yet the question had to go back to the people for final settlement. He thought the matter should be entertained by the Convention.

Mr. PETTIT said he hoped the section would not be adopted. He had a great respect for the mover of this proposition, but he was inclined to think that he (Mr. W.) was going

out of the beaten track in offering it. By the section as it now stood, every man who saw fit to contest an election, although he may have been beaten ever so fairly, enjoyed the privilege of having a new election. If he did it once, he might run it over and over again.

Mr. WOLFE. I said that the difficulty referred to could easily be obviated by the Legislature's enacting some provision in regard to it. He should like to see the section pass.

Mr. KENT moved to lay the section upon the table.

On this motion the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 67, nays 17:

AYES.—Messrs Anthony, Balingall, Bascom, Borden, Bourne, Bracken, Bryant, Butler, Carr, Carter, Chapman, Clark of Tippecanoe, Colfax, Crawford, Edmonston, Elliott Fisher, Garvin, Gordon, Graham of Warrick, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Holman, Jones, Kent, Kinley, Maguire, March, Mather, May, Miller of Gibson, Milligan, Milroy, Morrison of Marion, Murray, Nave, Newman, Nofsinger, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Ritchey, Robinson, Schoonover, Sims, Snook, Smith of Ripley, Smith of Scott Steele, Stevenson, Thomas, Thornton, Todd, Trimby, Walpole, Watts, Wiley, Work, Wunderlich, and Mr. President—67.

NAYS.—Messrs. Chandler, Clark of Hamilton, Clements, Dick, Dunn of Perry, &c., Farrow, Foley, Frisbie, Gregg, Hitt, Huff, Johnson, Kendall of Wabash, McClelland, Smiley, Wolfe, and Yocum—17.

So the amendment was laid upon the table.

RIGHT OF SUFFRAGE.

Mr. McCLELLAND offered an additional section, providing that the Legislature may have the power to extend the right of suffrage to persons other than those included in the Constitution, should a law giving the privilege receive a majority of the votes of the people.

Mr. EDMONSTON moved to lay the section on the table.

The motion was agreed to.

PAPERS OF NATURALIZED FOREIGNERS.

Mr. MURRAY offered an additional section, providing that no person shall be debarred from voting on account of having lost or mislaid a certificate of qualification as a voter.

Mr. M. hoped his amendment would be adopted. He had seen great injustice done for the want of a law of this character, defining the right of persons to vote who had not and could not have their naturalization papers in their possession on the day of election. He would allude to an instance in his own district which occurred some two years since.

A man, of lawful age, who had resided in Huntington county more than eighteen months,

an industrious and peaceable citizen, offered to vote at the August election, stating that he had received his full naturalization papers, but had left them where he formerly resided in Pennsylvanian. To this he was willing to swear. The judges of election suffered him to be sworn, but even then refused his vote. They listened to a member of the bar, who told them that the law in all cases required the *best evidence*, and although they were informed that this was not the practice of the State, nor consistent with the statute on the subject, yet, through darkness of perception or party bias, they persisted in refusing the man his vote. To illustrate the case still farther, he would add, that an hour afterwards, a miserable immoral creature, that hailed from the Rocky Mountains, offered his vote, offering to swear that he had lost his naturalization papers. His oath was received, and his vote also. It was scarcely necessary to say these men belonged to different political parties. His object was to make the law read so plainly, that judges of elections could not find a shelter to save them from merited punishment, when they disobeyed it. He wished to clear the mist from the eyes of party prejudice, and compel the dullest apprehension to see its duty.

Mr. PETTIT said, that he had no doubt that the gentleman from Huntington had stated the facts correctly in regard to the man in his district who was debarred from voting; and he had only to say that the inspectors who refused to swear the man and under the circumstances not allow him to vote, were guilty of an offence under the law, and ought to have been indicted and prosecuted civilly.

He had never heard before that under any law in the State, a man who has once taken out his papers of naturalization and who may have lost them, was not entitled to a vote if he swore that he was a citizen. He had never heard before that it was necessary for a man every time he voted, to show his papers. Talk about producing papers! Were the inspectors of election qualified to judge of the genuineness of papers? Suppose a man should present a paper drawn up in some county court in the State of New York or the State of Louisiana, sealed and certified, how were the judges to know that they were genuine? They must trust to the oath of the holder of the papers; and his oath might as well be taken without as with the papers. All that was necessary to do with a voter was to swear him and ascertain if upon oath, he would declare that he was entitled to a vote.

Mr. MURRAY would merely remark that he had given the reasons urged by the gentleman from Tippecanoe to the board of election, but still they refused to receive the vote. He (Mr. M.) had an unspeakable desire to see this question settled by the adoption of the amendment. The incident alluded to was a painful one. He

fervently hoped he might never witness the like again.

The question was put upon the passage of the section, and it was rejected.

BRIBERY IN ELECTIONS.

Section six, providing that every person shall be disqualified from holding office for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, threat, or reward, to procure his election, was then taken up and read a second time.

Mr. EDMONSTON. I know, sir, that it was the object of the committee who reported this section, to punish all these corruptions in elections; and, as I do not think the section, as it stands, goes as far as it was intended to go on the subject, I move to amend by adding after the word "or," first occurring in the 23d line, the words "caused to be given, or."

Mr. HENDRICKS. I move to amend by striking out, in the 21st and 22d lines, the words "been convicted of." I do not suppose, sir, that it is for the conviction of the act that a man is to be disqualified, but for the act itself.

The amendment was concurred in.

Mr. KINLEY moved to amend by striking out, in the 21st and 22d lines, the words "for the term for which he shall have been elected."

The amendment was rejected.

Mr. MAGUIRE. I move to strike out the word "threat," in the 23d line, and insert the word "treat;" inasmuch as I cannot see what sort of a threat it would be.

Mr. MATHER (in his seat). A threat to give a man whisky. [Laughter.]

Mr. DUNN of Perry moved to lay the amendment of the gentleman from Marion upon the table.

The motion was agreed to.

The section was then ordered to be engrossed.

ELECTION OF OFFICERS.

Sec. 1 of report No. 14, providing for the election of all officers by the qualified electors of the State, except as was otherwise provided in the Constitution, was taken up and read a second time.

Mr. MATHER moved to amend by striking out the words "of this State."

Mr. PETTIT said he could see no earthly necessity for the section; he would, therefore, move to lay the section and pending amendment upon the table.

Mr. DOBSON (in his seat). It was reported in accordance with certain instructions adopted by the Convention.

The motion of the gentleman from Tippecanoe was agreed to.

HOLDING OF OFFICES.

Sec. 1 of report No. 15, providing that no person shall hold more than one lucrative office

at the same time, except as in the Constitution is expressly permitted, was then taken up and read a second time.

Mr. HOLMAN moved to amend by adding the following additional section:

"Every person elected to an office of profit, shall be ineligible to any other lucrative office during the continuance of the term for which he may have been elected, provided that this section shall not apply to justices of the peace or to any township, town, or municipal office."

Mr. H. said that he thought the principle involved in the section was a very important one. He would not now occupy the time of the Convention further with reference to it, as he desired simply to have a direct vote upon its adoption.

Mr. WOLFE moved to amend by adding the words "nor shall anything in this Constitution be so construed as to prevent any clerk of a circuit court from performing the duties of county auditor or recorder."

Mr. W. said, that, unless the offices of clerk, auditor, or recorder, in the smaller counties, were combined and given to one person, they could not get competent persons to fulfil the duties appertaining to them. He trusted gentlemen from the larger counties would remember that the weaker counties were equally desirous with the larger ones of having competent officers, and would, therefore, grant them the privilege asked for in this amendment.

Mr. PETTIT moved to lay the section and the pending amendment upon the table.

Mr. HOLMAN asked for a division of the question.

The question being first upon laying the amendment submitted by the gentleman from Sullivan, (Mr. Wolfe,) upon the table, it was decided in the affirmative.

The question then recurring upon laying the additional section, submitted by the gentleman from Dearborn, (Mr. Holman,) on the table, the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 42, nays 61:

YEAS.—Messrs. Anthony, Bascom, Beach, Biddle, Butler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Crumbacker, Davis of Madison, Farrow, Fisher, Hall, Harbott, Hardin, Helmer, Hogin, Huff, Kendall of Wabash, Lockhart, Maguire, Mather, Miller of Gibson, Moore, Morgan, Morrison of Marion, Pettit, Robinson, Smiley, Smith of Scott, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Walpole, Wiley, and Yocum—42.

NAYS.—Messrs. Ballingall, Beeson, Blythe, Borden, Bourne, Bracken, Bryant, Carr, Carter, Colfax, Cookerly, Crawford, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Hamilton, Hawkins, Hendricks, Hitt, Holman, Hovey, Johnson, Jones, Kent, Kinley, March, May, McClelland, Miller

of Fulton, Milligan, Milroy, Murray, Nave, Nofsinger, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Sims, Snook, Smith of Ripley, Taylor, Watts, Wolfe, Work, and Wunderlich—61.

So the additional section was not laid upon the table.

Mr. WOLFE moved to amend the additional section, by adding the words "and no postmaster, whose office is not worth a hundred dollars per annum."

Mr. MOORE moved to lay the amendment upon the table.

Upon this motion the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 50, nays 49:

YEAS.—Messrs. Anthony, Ballingall, Beeson, Biddle, Blythe, Bracken, Bryant, Carter, Clark of Tippecanoe, Colfax, Crawford, Crumbacker, Dobson, Duzan, Elliott, Farrow, Fisher, Foster, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Jones, March, Mather, Miller of Gibson, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nave, Pettit, Prather, Robinson, Sims, Snook, Smith of Scott, Steele, Stevenson, Todd, Walpole, and Wunderlich—50.

NAYS.—Messrs. Bascom, Beach, Borden, Bourne, Butler, Carr, Chapman, Clark of Hamilton, Clements, Cookerly, Davis of Madison, Dick, Dunn of Perry, Edmonston, Foley, Frisbie, Garvin, Harbott, Hardin, Huff, Johnson, Kendall of Wabash, Kinley, Lockhart, Maguire, May, McClelland, Miller of Fulton, Milligan, Niles, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Smiley, Smith of Ripley, Taylor, Thomas, Thornton, Trimble, Watts, Wiley, Wolfe, Work, and Yocum—49.

So the amendment was laid upon the table.

Mr. McCLELLAND, I move, Mr. President, that the proviso of this additional section be stricken out.

Mr. EDMONSTON. I think, sir, we had better settle this matter at once. I, therefore, call for the previous question.

The call was not seconded by the Convention.

Mr. EDMONSTON. I move to lay the amendment of the gentleman from Randolph upon the table.

Upon this motion the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 62, nays 35:

YEAS.—Messrs. Anthony, Ballingall, Beach, Beeson, Biddle, Blythe, Butler, Carr, Carter, Clark of Tippecanoe, Colfax, Crawford, Crumbacker, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Gordon, Graham of Warrick, Gregg, Hall, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Johnson, Jones, Kent, Kendall of Wa-

bash, Kinley, Lockhart, March, Mather, Miller of Fulton, Miller of Gibson, Milligan, Pepper of Crawford, Pettit, Prather, Read of Monroe, Ritchey, Sherrod, Sims, Smiley, Snook, Steele, Stevenson, Taylor, Thomas, Todd, Trimble, Watts, Wiley, and Wunderlich—62.

YAYS.—Messrs. Bascom, Borden, Bourne, Bracken, Bryant, Chapman, Clark of Hamilton, Clements, Cookerly, Davis of Madison, Farrow, Frisbie, Hamilton, Harbolt, Hardin, Huff, Maguire, May, McClelland, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nave; Read of Clark, Robinson, Schoonover, Smith of Ripley, Smith of Scott, Thornton, Walpole, Wolfe, Work, and Yocum—35.

So the amendment was laid upon the table.

Mr. HARBOLT moved to amend by adding a proviso that counties casting less than one thousand votes may elect the same person clerk, recorder, and auditor, or to any two of said offices.

Mr. H. said, as he had consumed but very little of the time of the Convention, he felt it to be his duty to make a few remarks in favor of this proviso. As this proviso was not imperative in its character, and as it did not affect any county casting more than one thousand votes, he could not see why there should be any opposition to it. As he had stated, the proviso was not an imperative one; for it set forth that the counties might elect one person to fill two or three of the offices, or not, as they might think best. One thing I am satisfied of, and that is, if they could get a person qualified to accept each one of these offices, they would hardly give one man two offices; for he was satisfied that the people had an aversion to one man holding more than one office.

I have the honor, continued Mr. H., to represent four counties. The county of White is the largest of the four. I spent some time in these offices, as deputy, (in White county,) and was to receive one-half the emoluments of said offices; but I came to the conclusion that I would sooner push the jack-plane for a living, than trust to the paltry emoluments of office which are granted in the new counties. I do not expect, sir, that my own county will be benefited very much by this provision. White county has now at least nine hundred polls, so that this provision cannot affect her much. Benton county, by the late returns, has two hundred and six polls, and in that county, the three offices combined cannot give more than a decent support to a family. I do not think that the recorder's office can be worth much over one hundred dollars a year in Benton county; so, therefore, it is evident that it is almost impracticable to obtain a person qualified to fill the office, who would be likely to accept of it, or of any office, the emoluments of which would not more than pay for his board. Besides, it will put the county to extra expense to provide the different rooms for these offices and

furnish them with the necessary stationery. I desire, therefore, that this proviso should be adopted, so that these new counties may have the privilege to do as they think best in regard to this subject.

If I thought there was anything unjust or unreasonable in this proviso, I would not offer it, or trouble this Convention with it; but I am satisfied, in my own mind, that there is nothing unfair in it, and that it will be for the benefit of the new counties. I am not in favor of tying the people's hands in such small matters. I think the people are able to judge for themselves and decide aright in regard to them. I therefore hope the proviso will be adopted.

Mr. COOKERLY remarked that he was in favor of adopting the amendment. There was not a county in the State, having less than one thousand votes, that could support the offices of clerk, recorder, and auditor; for it was not to be expected that men, competent to perform the duties of those offices, could do it for the petty salary of a hundred or a hundred and fifty dollars. Unless these three offices were bestowed upon one individual in the smaller counties, they would be filled by persons totally incompetent to fill them.

While up, he would say, in regard to the amendment proposed by the gentleman from Dearborn, (Mr. Holman,) that he could not see why the gentleman should wish to make any reservation in favor of justices of the peace, and township, town, and municipal officers.

Why not, he would ask, with equal propriety, apply the rule to councilmen and township trustees? His opinion was, when the section was perfected by the amendment of the gentleman from White, (Mr. Harbolt,) the amendment proposed by the gentleman from Dearborn (Mr. Holman) should not prevail. [Here there were cries of "Question! question!"]

Mr. C. continued to say that gentlemen might as well hold their breath; for he had the floor, and he intended to keep it until he had got through with what he had to say.

He could not forbear remarking, now that he had been so impertinently interrupted, that, as representatives of the people—as members of a State Constitutional Convention—he did think gentlemen should remember where they were, and what was decorous and statesmanlike occasionally. A member could hardly rise to the floor without being interrupted with cries of "question," and "consent," and "no consent." He had seen old men—men of great legislative experience—who, after a member had been speaking some few minutes, would bow their heads to their desks, and sneakingly and impolitely cry out "question! question!" He thought members should have more respect for each other, and for themselves, than to act in this manner. It was this indecorous action that aided in retarding the business of the Convention; and the people would most assuredly

hold members who acted in this manner—if their conduct was publicly exposed—responsible for such action. He hoped that the amendment of the gentleman from White would be adopted, and the section thus be perfected; and that the amendment of the gentleman from Dearborn would be voted down.

Mr. HOLMAN said that he wished to make a suggestion to the Convention, and especially to his friend from White (Mr. Harbolt).

The section originally reported and contained in the article now under consideration reads thus:

"SEC. —. No person shall hold more than one lucrative office at the same time, except as in this Constitution is expressly permitted."

The gentleman's proviso is, therefore, much more appropriate, as an amendment to that section, than the one which I have offered. I would ask this gentleman to withdraw his amendment for the present, and offer it as a proviso to the section I have read, when that section comes up for amendment. I think there is much force in the reasons urged by the gentleman from White in favor of his proviso, and I doubt not that, at the proper time, it will receive the careful consideration of the Convention.

I have not discussed the merits of the section I have offered, for the reason that the main arguments in its favor have already been presented in the consideration of other sections limiting eligibility to office. Offices are not created for the benefit of the office-seeker or politician, but for the good of the people—for the purpose of carrying into effect the great purposes of government. No one man, or set of men, have an exclusive claim on the people for the offices within their gift; and no citizen should be permitted to wield the influences of station in advancing his prospects for political rewards; for the public trust should be the free-will offering of the people to those of their number most suited to discharge that trust, and not the "spoils" to be contended for by political trickery and management.

If, sir, you permit one citizen to wield his influence, the patronage, and the very profits of one office, into which he may have been placed by the confidence of the people, to advance what *he may deem* to be his claim upon the people, or upon his party, for another, you virtually annul the force of a section already adopted, "that all elections shall be *free and equal*." Sir, what *equality* is there in a contest where the one candidate, in addition to the rights and influences possessed by his opponent, wields the patronage, influences, and appliances connected with an office already in his possession?

Sir, the evils resulting to the country from permitting one citizen to make use of a public trust as a mere stepping stone—as a mere source of influence in obtaining office—and the corrupt and corrupting tendencies of such a

practice on the purity of the elective franchise, and the sanctity of public trust, can never, in my humble opinion, be compensated for by the advantage we may sometimes enjoy of placing a citizen in one station, which he is peculiarly adapted to fill, during the term for which he was elected to another; for, fortunately, the general intelligence and capacity of our people renders it almost impossible that there should be an office to fill, and no citizen, disconnected with another public trust, could be found of sufficient intelligence, capacity, and integrity to fill it.

When the people have conferred an office on one of their number, and he has accepted the trust, he owes it as a debt commensurate with the confidence reposed in him, that, unless rendered incapable by circumstances beyond his control, he should faithfully and honestly discharge every duty pertaining to it during the continuance of his term.

I cannot believe that any, except aspirants for office and the political wire-workers of the country, can object to the restriction.

The PRESIDENT. The question is upon the amendment of the gentleman from White, (Mr. Harbolt,) to the additional section offered by the gentleman from Dearborn (Mr. Holman).

Mr. HARBOLT here withdrew his amendment, stating that, after the question was taken upon the additional section offered by the gentleman from Dearborn, he would offer it as an amendment, to perfect the original section.

The PRESIDENT. The question then is upon the adoption of the additional section offered by the gentleman from Dearborn (Mr. Holman).

Upon this question the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 42, nays 58.

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beeson, Blythe, Bracken, Bryant, Butler, Carter, Crawford, Dobson, Dunn of Perry, Eliott, Foley, Garvin, Gordon, Graham of War-rick, Hamilton, Harbolt, Hendricks, Hitt, Holman, Johnson, Jones, Kent, Kinley, March, May, McClelland, Miller of Fulton, Milligan, Milroy, Nave, Nofsinger, Ritchey, Sims, Taylor, Watts, Work, Wunderlich, and You-cum—42.

NAYS.—Messrs. Beach, Bicknell, Biddle, Borden, Bourne, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Cookerly, Davis of Madison, Dick, Duzan, Edmonston, Farrow, Fisher, Foster, Frisbie, Hall, Hardin, Hawkins, Helmer, Hogin, Howe, Huff, Kelso, Kendall of Wabash, Lockhart, Maguire, Mather, Miller of Gibson, Moore, Morgan, Morrison of Marion, Murray, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Robinson, Schoonover, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele.

Stevenson, Thomas, Thornton, Todd, Trimby, Walpole, Wiley, and Wolfe—58.

So the additional section was not adopted.

The consideration of the original section was then resumed.

Mr. HARBOLT again offered his amendment, as a proviso to the original section, as follows: "Provided, that counties casting less than one thousand votes, may confer the offices of clerk, recorder, and auditor, or any two of said offices, upon one person."

Mr. NAVE said he hoped that the Convention would not adopt in the organic law of the land, a feature that had been repudiated in every other portion of the provisions they had framed for the government of Indiana. If they were to adopt a provision in the Constitution, whereby a man should be allowed the privilege of holding more than one office, it would be acting directly in opposition to the course they had hitherto pursued. It was for the reason that they had hitherto adhered to the principle, that he did not desire, for the sake of favoring a few small counties in the State, to violate and set aside that principle. He desired that the principle should be adhered to, notwithstanding it might produce some inconvenience in the smaller counties.

Mr. BASCOM moved to amend the amendment, by striking out the words "casting less than one thousand votes," and insert "containing less than one thousand free white male inhabitants."

The amendment was rejected.

The question then being on the adoption of the amendment offered by the gentleman from White, (Mr. Harbolt,) to the original section,

The yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 66, nays 30:

YEAS.—Messrs. Anthony, Beach, Beeson, Bicknell, Biddle, Blythe, Bordon, Bourne, Bryant, Carr, Carter, Clark of Tippecanoe, Clements, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hitt, Hogin, Holman, Howe, Huff, Johnson, Jones, Kendall of Wabash, Kinley, Lockhart, Maguire, Mather, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Marion, Nofsinger, Pepper of Crawford, Pettit, Rariden, Read of Clark, Sherrod, Sims, Snook, Smith of Scott, Steele, Taylor, Thomas, Walpole, Wolfe, Work, and Yocum—66.

NAYS.—Messrs. Ballingall, Bascom, Bracken, Butler, Chapman, Clark of Hamilton, Colfax, Fisher, Foley, Foster, Hendricks, Kelso, Kent, March, McClelland, Morgan, Murray, Nave, Prather, Robinson, Schoonover, Smiley, Smith of Ripley, Stevenson, Thornton, Todd, Trimby, Watts, Wiley, and Wunderlich—30.

So the amendment was adopted.

The section, as amended, was then ordered to be engrossed.

Mr. READ of Clark moved to adjourn until Thursday morning, 9 o'clock.

Upon this motion the yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 47, nays 49:

YEAS.—Messrs. Anthony, Bascom, Biddle, Borden, Bourne, Bryant, Chapman, Clark of Tippecanoe, Clements, Colfax, Crumbacker, Dobson, Dunn of Perry, Duzan, Foster, Frisbie, Graham of Warrick, Gregg, Hall, Harbolt, Hitt, Hogin, Howe, Jones, Kelso, Kent, Lockhart, Maguire, May, Miller of Gibson, Milligan, Milroy, Murray, Niles, Nofsinger, Pettit, Prather, Rariden, Read of Clark, Ritchey, Robinson, Snook, Steele, Taylor, Thornton, Walpole, and Wiley—47.

NAYS.—Messrs. Balingall, Beeson, Bicknell, Blythe, Bracken, Butler, Carr, Carter, Clark of Hamilton, Cookerly, Crawford, Dick, Edmonston, Farrow, Fisher, Foley, Garvin, Gordon, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Holman, Huff, Johnson, Kendall of Wabash, Kinley, March, Mather, McClelland, Miller of Fulton, Nave, Pepper of Crawford, Schoonover, Sherrod, Sims, Smiley, Smith of Ripley, Smith of Scott, Stevenson, Thomas, Todd, Trimby, Watts, Wolfe, Work, Wunderlich, and Yocum—49.

So the Convention refused to adjourn until Thursday morning.

On motion of Mr. MOORE, the Convention adjourned until 9 o'clock to-morrow morning.

WEDNESDAY, DEC. 25, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. FARROW, a Delegate from the county of Putnam.

The journal of yesterday was read and approved.

Mr. GRAHAM of Warrick offered the following resolution:

"Resolved, That the roll be called, and the names of the absentees entered upon the journal of the Convention."

The object, said Mr. GRAHAM, is this: Yesterday, there was a feeling manifested by many gentlemen, in favor of proceeding with business; to-day, I want to see how many of those gentlemen are here, and how many are absent.

The resolution was adopted, and

The roll having been called by the Secretary.

Further proceedings under the call were suspended, and,

On motion,

The Convention adjourned until to-morrow morning.

THURSDAY, DEC. 26, 1850.

The Convention met, pursuant to adjournment, in the Masonic Hall.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

The PRESIDENT laid before the Convention a communication from Mr. Brough, the President of the Madison and Indianapolis Railroad Company, tendering to the members of the Convention a free passage over the road on Wednesday next, or such time thereafter as will suit their convenience.

On motion by Mr. MAGUIRE,

The communication was referred to a select committee of five.

ORDERS OF THE DAY.

The PRESIDENT announced the first thing in order to be sections from one to six inclusive, of the report from the committee on the elective franchise and the apportionment of representation, the same being on their final passage.

QUALIFICATION OF VOTERS.

The first section provides that in all elections not otherwise provided for by this Constitution, every white male citizen of the United States of the age of twenty-one years and upwards, who has resided in the State six months immediately preceding such election, and every white male of foreign birth of the age of twenty-one years and upwards, having resided in the United States one year, and having declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, and having resided in this State six months immediately preceding such election, shall be entitled to vote in the township where he resides, except such as shall be enlisted in the army of the United States, or their allies.

The question being, Shall the section pass?

The yeas and nays were taken, with the following result—yeas 89, nays 10—as follows:

YEAS.—Messrs. Allen, Anthony, Ballingall, Bascom, Beeson, Biddle, Blythe, Bracken, Bryant, Butler, Carr, Carter, Chapman, Clements, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foster, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Marion, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Schoonover, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of

Scott, Spann, Steele, Stevenson, Taylor, Thornton, Trimble, Walpole, Watts, Wiley, Work, Wunderlich, Yocum, and Mr. President—88.

NAYS.—Messrs. Bourne, Clark of Tippecanoe, Frisbie, Helmer, Kelso, Morgan, Robinson, Thomas, Todd, and Wolfe—10.

So the section was passed, and referred to the committee on revision.

On motion by Mr. RARIDEN, it was

Ordered, That the vote be taken on the remaining sections collectively.

The sections were then read, as follows:

"SEC. —. All elections, not otherwise provided for in this Constitution, shall be by ballot.

"SEC. —. Electors shall, in all cases, except treason, felony, or breach of the peace, be free from arrest in going to, during their attendance at, and in returning home from, elections.

"SEC. —. The General Assembly shall have power to exclude from electing or being elected, any person convicted of any infamous crime.

"SEC. —. No person shall be deemed to have lost his residence in the State by reason of his absence on business of the United States or of this State.

"SEC. —. Every person shall be disqualified from holding office for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, threat, or reward, to procure his election."

On motion by Mr. CLARK of Tippecanoe,

The vote which requires the yeas and nays to be taken was suspended.

The sections were then passed, by unanimous consent, and referred to the committee on revision and phraseology.

PLURALITY OF OFFICES.

The section which provides that no person shall hold more than one lucrative office at the same time, was read a third time.

Mr. WOLFE moved to re-commit the section, with instructions to insert a proviso exempting post-masters whose compensation does not exceed ninety dollars a year, &c.

Mr. KELSO. Will a motion to lay the instructions on the table take with it the section?

The PRESIDENT replied in the affirmative.

Mr. KELSO. I will move, then, that the instructions be indefinitely postponed.

The PRESIDENT. That will carry with it the section also.

Mr. KELSO. Well, sir, I believe if we cannot get rid of the instructions in any other way, it will be as well to let the section go.

Mr. DUNN of Jefferson. As I understand the instructions, they provide that a person who holds the office of post-master where the annual income of the office does not exceed ninety dollars, will be eligible to, and entitled to hold, any other office under the State government. Now it appears to me that that is right. I call the attention of gentlemen to it, because I fear that it is not clearly understood, and I wish the

Convention to come to a vote upon the question understandingly.

It has been truly stated, that in various parts of the State it is difficult to get a man to act as post-master; the emoluments of the office are no inducement, and I do not think there is any necessity for rendering him ineligible to hold any other office that his neighbors or the public choose to confer upon him.

Mr. KELSO. I will withdraw the motion to postpone indefinitely, and let the question be taken directly on the re-commitment. But I wish to say one word in reply to the gentleman from Jefferson. I ask him if a post-master has any more right to hold a seat in the Legislature than a justice of the peace, or a notary public, or a sheriff, or any other officer whose income does not exceed ninety dollars? And if he may be eligible when his income is ninety dollars, why may he not with equal propriety be eligible if his income were nine hundred dollars? What good reason can be given for drawing the line of distinction at that particular amount? If ninety dollars will leave him an honest man, why will not nine hundred and ninety, or any other amount? I say, if we are going upon the principle of single offices, let us do so; let the rule apply to all offices.

Mr. READ of Clark. I really do not think that there can be any new light thrown on the subject. I have heard the same argument over and over several times. I therefore move the previous question.

Mr. WOLFE. I ask the gentleman to withdraw the demand for the previous question for a moment?

Mr. READ. Certainly, if the gentleman will renew it.

Mr. WOLFE. I will do so. The gentleman from Switzerland says he can see no difference between the office of postmaster and that of justice of the peace. Sir, there is a manifest difference in one particular, at all events. A justice of the peace, if he goes into the Legislature, will have the power to act in reference to his own fees as such justice of the peace. Not so with the postmaster. And again: it is well known that a postmaster may have a deputy to discharge his duty at home, but a justice of the peace cannot employ a deputy to perform the duties of his office. I think that postmasters, where their compensation is so small, should not be rendered ineligible. I hope the Convention will act upon this matter consistently.

Mr. COOKERLY. I move to strike out "ninety" and insert "fifty."

Mr. OWEN. I concur in the observations of the gentleman from Jefferson. I do not think the argument of the gentleman from Switzerland a good one. In my part of the State a large portion of the postmasters accept the office, not from any advantage they derive from it, but purely for the sake of rendering a

service to the neighborhood; whereas, justices of the peace accept the office for their own gratification, and from a desire to serve as justices. They hold the office for their own convenience, but the postmaster takes the office for the convenience of his neighbors. I can see no good reason, then, why he should be prohibited from holding a seat in the General Assembly.

Mr. BASCOM moved to amend the instructions so that counties containing less than seven hundred votes, may elect the same person clerk, auditor, and recorder.

Mr. WOLFE. I forgot to redeem my pledge to the gentleman from Clark. I now renew the demand for the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being first on the amendment to the instructions, it was decided in the negative.

So the amendment was rejected.

The question then being on the motion of the gentleman from Sullivan to re-commit with instructions,

The yeas and nays were demanded, and they were ordered, and being taken were—yeas 54, nays 49—as follows:

YEAS.—Messrs. Beach, Bicknell, Biddle, Bourne, Bryant, Butler, Carr, Chapman, Davis of Parke, Dick, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gordon, Haddon, Hall, Hamilton, Hardin, Hawkins, Hitt, Hovey, Huff, Kelso, Kilgore, Kinley, Lockhart, Maguire, Mather, May, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Nofsinger, Owen, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Schoonover, Sherrod, Smiley, Smith of Ripley, Smith of Scott, Taylor, Watts, Wolfe, Yocum, and Mr. President—54.

NAYS.—Messrs. Allen, Badger, Ballingall, Bascom, Beeson, Blythe, Borden, Bracken, Carter, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Madison, Dobson, Duzan, Graham of Miami, Harbolt, Hawkins, Helmer, Hendricks, Hogin, Holman, Johnson, Kent, Kendall of Wabash, March, McClelland, Moore, Morgan, Morrison of Marion, Nave, Pettit, Prather, Robinson, Sins, Snook, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimby, Walpole, Wiley, Work, and Wunderlich—49.

So the section was re-committed.

Mr. KELSO. I suppose it will now be in order to move further instructions.

The PRESIDENT. The gentleman may offer additional instructions.

Mr. KELSO. I then move that the committee be instructed to strike out "one thousand," where it applies to the number of votes in the county to be given upon the election of clerk,

auditor, and recorder, and insert "five hundred."

The object of moving this instruction is this: There are but very few counties, perhaps not exceeding twelve in the State, that have now below a thousand votes, and it seems to me that if we are going to authorize them to confer two or three offices upon the same person, five hundred votes would be a large number, and out of those ten or twelve counties there are not over two or three that will not, in all probability, within a short time, have beyond that number.

Mr. HARBOLT. By the provision contained in the original instructions, the people are not compelled to give more than one office to one individual. They are only permitted to do so in case they desire it. I am satisfied that where they can get a sufficient number of officers to fill all the offices, they are not going to give more than one to one man. It is only where the people think it is absolutely necessary that they will confer more than one office on one individual. There is nothing imperative in it. I think that members of the Convention must have their minds made up on the subject.

Mr. EDMONSTON said he hoped the amendment would not be adopted. If it were adopted there would not be more than two or three counties benefited. He was of the opinion that it would be better to leave it discretionary with the people whether they would confer more than one office upon one individual or not.

Mr. RARIDEN said he was opposed to the restriction contained in the section, and he would be glad to have it stricken out. He thought the proper way was to leave all these things to the people. There was no disposition on their part to accumulate offices in the same hands. He could not see the propriety of taking extreme ground.

A great many delicate questions might grow out of the section as at present worded, as to whether the powers of different offices may be exercised by different individuals. &c. He was opposed to it entirely, and if in order, he would move a re-commitment of the section, with instructions to strike out the whole section without inserting anything in lieu of it.

The PRESIDENT remarked that such instructions would not be in order, inasmuch as the Convention had already acted upon the section, and by direct vote had adopted an additional provision. The rule prohibited the striking out of what had been thus inserted.

Mr. RARIDEN. I will make one other remark. There is so much confusion prevailing in this Hall in consequence of the imperfect preparations that have been made, that we can scarcely hear what is said by each other. A different arrangement must be made before we can get along with business. I propose therefore that we adjourn until to-morrow, in order that something may be done under the

direction of the President, to render the Hall more suitable for the purpose of our deliberations. [Cries of "no, no," "go on with the section."]

Mr. MATHER moved to amend the instructions by striking out "one thousand voters," and inserting "not exceeding one thousand white male inhabitants over twenty-one years of age."

Mr. BORDEN. Let me say that I am willing to go for this section because it makes the matter definite, but if you insert the number of voters, you will create a difficulty, because there will be sometimes one number, and sometimes another within the county. I would like to have it read thus: "free white male persons over twenty-one years of age." And it seems to me that every county not having five hundred free white male persons, over twenty-one years of age should be allowed to elect one person to fill the office of clerk, auditor, and recorder, otherwise it will be taxing the small counties tremendously. If you are going to confer the offices of clerk, auditor, and recorder all on one man, why not let the clause provide generally, that the people, if they please, may give these several offices to one man? Why not leave it open? I hope the amendment of the gentleman from Elkhart will prevail.

Mr. GORDON. The section as it now stands is as definite, I think, as if we should say, "a thousand white male inhabitants." It may happen at some election, that not more than one-half of the votes in the county may be given. I move that the instructions be laid on the table.

The motion was, upon a division, agreed to—ayes 40, noes 24.

So the instruction were laid upon the table.

Mr. RARIDEN renewed his motion that the Convention adjourn until to-morrow for the purpose of enabling the officers of the Convention under the direction of the President, to prepare the Hall in a more suitable manner, for the accommodation of the Convention.

After some discussion as to what was necessary to be done, the motion to adjourn until to-morrow morning was withdrawn, and

The Convention took a recess until two o'clock.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day,

The first thing in order being the section on its second reading, which provides "that no work of public improvement shall be made without a vote of the people."

On motion, by Mr. BASCOM, the section was laid on the table.

The section which provides that the executive power shall be vested in a Governor, who shall hold his office for — years; and that a Lieutenant Governor shall be elected and hold

his office for the same length of time, was then taken up and read a second time.

Mr. PRATHER moved to fill the blank with the word "two."

Mr. COOKERLY moved that the blank be filled with "four."

Mr. PETTIT. I hope that "four" will be inserted.

The PRESIDENT. The question will be put on the largest number first.

The question being on filling the blank with the word "four," the yeas and nays were demanded, and they were ordered.

Mr. BASCOM moved that there be a call of the Convention.

The motion was not agreed to.

The yeas and nays were then taken with the following result—yeas 52, nays 41—as follows:

YEAS.—Messrs. Blythe, Bourne, Bryant, Butler, Carr, Carter, Clark of Tippecanoe, Clements, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Frisbie, Garvin, Gordon, Hall, Harbolt, Helmer, Hitt, Hovey, Huff, Johnson, Kelso, Kendall of Wabash, Kilgore, Lockhart, McFarland, Milroy, Morgan, Nave, Niles, Nofsinger, Pepper of Crawford, Pettit, Robinson Schoonover, Sims, Snook, Smith of Scott, Spann, Steele, Stevenson, Taylor, Thomas, Trimby, Watts, Yocum, and Mr. President—52.

NAYS.—Messrs. Anthony, Balingall, Bascom, Beach, Beeson, Biddle, Borden, Bracken, Chapman, Colfax, Crumbacker, Graham of Miami, Haddon, Hamilton, Hawkins, Hendricks, Hogin, Kent, Kinley, Maguire, March, Mather, McClelland, Miller of Fulton, Milligan, Moore, Morrison of Marion, Prather, Rariden, Read of Clark, Ritchey, Smiley, Smith of Ripley, Tannehill, Thornton, Todd, Walpole, Wiley, Wolfe, Work, and Wunderlich—41.

So the blank was filled with the word "four."

Mr. EDMONSTON moved to amend the section by striking out all that part of it relating to the Lieutenant Governor. He said he supposed every gentleman's mind was made up upon the subject. If a majority of the Convention were disposed to continue the office of Lieutenant Governor, they would, of course, vote against his motion. For his own part, he was for abolishing the office.

The question being on the motion to strike out, the yeas and nays were demanded, and they were ordered, and being taken were—yeas 17, nays 86—as follows:

YEAS.—Messrs. Beeson, Bryant, Crumbacker, Duzan, Edmonston, Frisbie, Huff, Kinley, McFarland, Nave, Pepper of Crawford, Prather, Rariden, Read of Clark, Sherrod, Walpole, and Mr. President—17.

NAYS.—Messrs. Allen, Anthony, Balingall, Bascom, Beach, Biddle, Blythe, Borden, Bourne, Bracken, Butler, Carr, Carter, Chapman, Clark of Tippecanoe, Clements, Colfax, Cookerly,

Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Farrow, Fisher, Foster, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Hovey, Johnson, Kelso, Kent, Kendall of Wabash, Kilgore, Lockhart, Maguire, March, Mather, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nofsinger, Pettit, Read of Monroe, Ritchey, Robinson, Schoonover, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Taylor, Thomas, Thornton, Todd, Trimby, Watts, Wolfe, Work, Wunderlich, and Yocum—86.

So the motion to strike out was not agreed to.

Mr. SMITH of Ripley moved to amend by providing that the Governor and Lieutenant Governor shall not be eligible for more than four years in any term of eight years.

Mr. MORRISON of Marion said, it appeared to him that this would be too great an innovation. It would be taking away one of the greatest incentives to a faithful discharge of the duties of the office. There was no stimulant to the proper discharge of duty so potent as the desire of the approbation of the people. He could see no good reason why a man who had discharged the duties of his office properly should be made ineligible.

Mr. SMITH of Ripley said, that his own inclination would be to make the term of office two years; and then he would have no objection to making the same individual eligible for a second term. He thought that four years was long enough for any man to hold an office.

The question being on the amendment of the gentleman from Ripley, the yeas and nays were ordered and, being taken, were—yeas 69, nays 35—as follows:

YEAS.—Messrs. Allen, Balingall, Bascom, Beach, Beeson, Biddle, Blythe, Borden, Bourne, Bracken, Carter, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Foster, Frisbie, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Hardin, Hawkins, Hendricks, Hitt, Hogin, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kilgore, Lockhart, Maguire, March, Mather, McClelland, Milligan, Moore, Nave, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ritchey, Robinson, Sims, Smiley, Snook, Smith of Ripley, Stevenson, Tannehill, Taylor, Thornton, Trimby, Walpole, Wolfe, Work, Wunderlich, Yocum, and Mr. President—69.

NAYS.—Messrs. Anthony, Bryant, Butler, Carr, Chapman, Davis of Madison, Dunn of Jefferson, Duzan, Edmonston, Farrow, Fisher, Garvin, Gordon, Harbolt, Helmer, Hovey, Kinley, McFarland, Miller of Fulton, Miller of Gib-

son, Milroy, Morgan, Morrison of Marion, Murray, Pettit, Rariden, Schoonover, Sherrod, Smith of Scott, Spann, Steele, Thomas, Todd, Watts, and Wiley—35.

So the amendment was adopted.

The section was then ordered to be engrossed for a third reading.

The section which makes it necessary to be a citizen of the United States five years, and a resident of Indiana for five next preceding an election, and thirty years of age, to be eligible for Governor or Lieutenant Governor, was then read a second time.

Mr. KINLEY moved to amend the section by striking out the words "who has not been five years a citizen of the United States and a resident of the State of Indiana five years next preceding his election," and to insert the words "who is not a citizen of the United States and an elector of the State of Indiana."

The question being taken, the motion was not agreed to.

The section was then ordered to be engrossed for a third reading.

The section which provides that the Governor shall be ineligible to any other office during the term for which he was elected, was read a second time.

Mr. BORDEN moved to insert after the word "Governor," the words "and Lieutenant Governor."

The motion was agreed to.

Mr. WALPOLE moved to amend the section so as to require the Governor to take an oath that during the time for which he is elected he will not accept any other office.

Mr. BORDEN said, he could see no necessity for the amendment. The section provided that he should be ineligible to any other office. That, he thought, was sufficient.

Mr. DOBSON was in favor of the amendment. His doctrine was that no man should hold more than one office at one time; and that he should continue to discharge the duties of that office for the term for which he was appointed. He did not want to place it in the power of the General Government to tamper with those in authority in the State Government. He did not wish that the President of the United States should form his Cabinet or select foreign ministers, from State officers. He should select them from the ranks of the people.

Mr. KELSO took the opposite view. He thought there should be no prohibition against the appointment of a State officer to a more important office. He thought it was altogether wrong to require a man by oath to disfranchise himself. It was going beyond what any other State had done. The fact that a man was elected to office by the people was the best recommendation that he could have of being qualified for office.

Mr. RARIDEN said he was well satisfied that the only way to prohibit (if it were desi-

able to prohibit State officers from being sent to the Senate of the United States was to adopt a provision of this kind. But he had always been opposed to such restrictions, and he conscientiously believed that if members of the General Assembly and State officers were prevented from aspiring to higher offices, it would tend to lower the character of State officers. The privilege of being promoted to higher office was a great incentive to a faithful discharge of the duties of office. If the prospect of promotion was cut off it would do as much harm to the community as to the officer. But if members of the Legislature were to be disfranchised in this respect, he was in favor of extending the disability to State officers.

He had never yet seen a Legislature that did not contain men of superior ability to the Governor. He was for giving to the Legislature the whole State from which to make their selection of United States Senators. It was a matter of importance that men should be sent who would do credit to the State. He would say, let there be no restriction, but if there was to be restriction, let it tend to the executive officers. He would go for the proposition of the gentleman from Hancock.

The question was taken upon the amendment and it was rejected.

The section was then ordered to be engrossed for a third reading.

The section prescribing the manner of electing the Governor and Lieut. Governor was read a second time.

Mr. KELSO moved to strike out the latter part of the section and insert a provision to the effect that if it should become necessary to fill a vacancy in the offices of Governor and Lieut. Governor, at a time when no general election was held, it might be done.

Mr. MORRISON of Marion said he could see no reason for a change in this respect. The offices would all be filled at the next general election. Beside, such a provision would not be consistent with another part of the same article.

The amendment was rejected.

Mr. FOSTER moved to amend, by providing that in case of a tie vote for Governor, or Lieut. Governor, they shall be chosen by a joint *viva voce* vote of the two Houses of the General Assembly.

The amendment was adopted.

The section was then ordered to be engrossed for a third reading.

The following sections were then read a second time, viz.:

The section defining the manner of making returns of election for Governor and Lieutenant Governor; the section which declares that the Governor shall be commander-in-chief of the military forces of the State, &c.; that he shall transact all necessary business with officers of Government, requiring information in writing

from them, &c.; take care that the laws shall be faithfully executed; convene the General Assembly on extraordinary occasions; give information to the Legislature by messages; convene the General Assembly at another place, should the seat of Government become dangerous from disease or a common enemy; and issue writs of election to fill vacancies in the Senate and House of Representatives.

The above sections having been read, were ordered to be engrossed.

The section giving the Governor power to grant reprieves, commutations, and pardons, except in cases of treason and impeachment, upon conditions to be provided by law, and declaring that he shall communicate to the General Assembly, at each session, information of each case of reprieve, commutation, and pardon granted, and the reasons therefor; and that he shall have the power to remit fines and forfeitures, to be also reported to the Legislature, was read a second time.

Mr. SMITH of Ripley moved to amend by striking out all that part of the section relating to the remission of fines and forfeitures.

He remarked that there could not be a more responsible duty imposed on the executive, than that of granting pardons and remitting fines and forfeitures. He thought that it was imposing upon the Governor, a burden that he would gladly be relieved from. It appeared to him that it would be better to assign the performance of this duty to the circuit court. It was a very easy thing to get up a petition for the remission of a fine, and it was no easy matter for the Governor to resist applications of this kind in many instances where they ought not to be complied with.

The PRESIDENT. The gentleman will send up his amendment in writing.

Mr. SMITH. There is no difficulty about it: it is merely to strike out.

Mr. CLARK of Tippecanoe. Before the motion is made to strike out, I wish to move to insert after the word "forfeitures," the words "without the concurrence of a majority of the judges of the Supreme Court."

I propose, said Mr. CLARK, to make the judges of the Supreme Court the advisers of the Governor in the remission of fines and forfeitures. I agree with the gentleman that this is a duty that the Governor ought not to be subjected to, without affording him some aid and counsel, because when an appeal is made to his sympathies, it is placing him in a very unpleasant position.

Mr. MORRISON of Marion remarked, that this matter had been considered by the committee. They were aware that the duties devolving upon the executive in reference to the granting pardons, and the remission of fines and forfeitures was always a delicate one, but the committee considered that by adding the checks that were provided in the section, by making it

obligatory upon him to report to the Legislature, there could not be any danger of an abuse of the power.

Mr. CLARK of Tippecanoe said he would withdrawn his amendment and offer it in another place.

The question being on the amendment proposed by the gentleman from Ripley,

Mr. NAVE said he wished to say a single word before the question was taken on the amendment. It had hitherto, under the old Constitution, been customary for the executive of the State, in many cases, after individuals accused of offenses, had been tried by the court and convicted, to pardon the convict, or to remit the fine imposed by the court. This had universally been done by the executive, without having the evidence before him upon which the party was convicted. And more injury had arisen from this practice than from the exercise of any other power that had been conferred upon the executive. He was in favor of the amendment of the gentleman from Ripley. If the power to remit fines and forfeitures had to be vested anywhere, it ought to be given to the courts and not to the executive, who could hardly be supposed to be acquainted with the facts of the case as given in evidence before the court. Why then should they clothe the Governor with such a power as this? The power had often been abused and might be abused again.

Mr. DOBSON said that rather a strange idea seemed to have taken possession of the gentleman from Hendricks and the gentleman from Ripley. It was a new idea to him at least. He had always supposed that it was the business of the Legislature to make laws, and the business of the courts to decide cases arising under them, and to do nothing else. And he had always supposed if the pardoning power should be lodged anywhere, it should be lodged in the hands of the Governor, and not in the tribunal which had passed sentence in the case. There was an inconsistency in it which he thought the gentleman would find it difficult to reconcile. The law-making power might create a law, but it was not their business to decide what the law is. It was the business of the judiciary to decide what the law is, and the business of the executive to enforce the execution of the law. Would it not be an absurdity for the court to say to an individual accused of some offense—assault and battery for instance—we fine you ten dollars, but we will not cause it to be collected—we remit the fine. Would not this be a singular kind of punishment? It would bring your courts, in a short time, into a ridiculous position like that of the parent who says to his child, "I am going to chastise you," and after raising the rod, says to him, "there that will do, you are sufficiently punished."

It was in the hands of the executive of the State that the pardoning power should be vested. It was so in the Constitution of the United

States; in fact it could be properly lodged nowhere else. He hoped the amendment would not be adopted.

Mr. LOCKHART said he hoped the amendment would not prevail. There was no duty that was so responsible and so onerous as that of granting pardons and remitting fines and forfeitures. Every possible means were resorted to by the friends and relatives of those who were convicted of offenses, to have their fines remitted, and it was often a difficult matter for the Governor to resist their importunities.

The question was taken on the amendment of the gentleman from Ripley, and it was not agreed to.

Mr. LOCKHART moved to amend by inserting after the word "forfeitures," these words: "Under such rules and regulations as may be prescribed by law."

The amendment was adopted.

Mr. READ of Clark moved to amend by adding the following: "By and with the advice and consent of a majority of the judges of the Supreme Court."

This, said Mr. READ, will refer to the higher crimes, and I trust the Convention will see the necessity of inserting a provision of this kind. We all know that great abuses have been practiced in Indiana, in relation to executive pardons. There is no power granted in the Constitution, that has been so much abused. Those who have filled the office of Governor acknowledge this, and they ask to be relieved from its exercise.

We have been at considerable expense to get a report from the Penitentiary, and gentlemen will be astonished upon reading that report, to see how many convicts have been turned loose by means of executive pardons. Nearly one-fourth of all those who have been sentenced to the penitentiary, have been released by pardon of the Governor. I call upon the Convention then, to adopt some provision of this kind in order to relieve the Governor from the exercise of this power, or else to give aid in its exercise, by requiring the concurrence of the courts. The country calls loudly for a change in this respect.

Mr. DUNN of Jefferson. It appears to me that this is one of the most important sections that we shall have occasion to act upon. We hear the opinion expressed by gentlemen from all parts of the State, that the pardoning power has been greatly abused. I can testify that in every part of the State, it has had a tendency to encourage breaches of the law. Persons have come to understand that they have not only a chance of escape by the failure of the Grand Jury to find a bill of indictment, but the best of all chances, by an appeal to the Governor for pardon. I could, if necessary, adduce many witnesses to show that this power has been abused, and that it has encouraged a violation of the law. I think, myself, that the Governor

ought to have some counsel, associates, or advisers in regard to the exercise of this power. Many influences can be brought to bear upon the Governor, which it is difficult to resist. He holds in his hands the issues of life and death. It is too much responsibility to be imposed upon one man.

I am not prepared at this moment, to propose a substitute for the section; but for the purpose of giving time to consider of it, I will move that the section, together with the pending amendment, be referred to a select committee of five.

The motion was agreed to.

The section which renders ineligible to the office of Governor or Lieutenant Governor, members of Congress, and persons holding office under the United States government, was read a second time, and ordered to be engrossed for a third reading.

GOVERNOR'S SALARY.

The section which provides for the compensation of the Governor was read a second time.

Mr. CHAPMAN moved to amend the section so that the compensation of the Governor shall not exceed twenty-five hundred dollars per annum nor be less than fifteen hundred.

Mr. BASCOM moved that the amendment be laid upon the table.

The motion was, upon a division—ayes 55, noes not counted—agreed to.

Mr. STEVENSON moved to insert the words, "to be fixed by law."

The motion was not agreed to.

The section was then ordered to be engrossed for a third reading.

The section which relates to the right of the Lieutenant Governor, by virtue of his office as President of the Senate, to debate and vote upon all subjects in committee of the whole, and when the Senate was equally divided to give the casting vote, was read a second time and ordered to be engrossed for a third reading.

The section empowering the Lieutenant Governor in case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, to exercise all the power and authority appertaining to the office of Governor, &c., was read a second time.

Mr. MAGUIRE moved to amend by striking out the words, "until another be duly qualified," and insert, "during the residue of the term."

The object of the amendment, he said, was simply to render the meaning of the section clear and explicit. He was induced to offer the amendment from the fact that in a neighboring State of which he was formerly a resident, with a section in the Constitution precisely like the section reported by the executive committee, an angry, bitter, and long-continued controversy

took place, on the death of the Governor, as to whether the Lieutenant Governor should serve out the full term of the Governor, or an election for a successor should take place immediately; and a large majority of the popular branch of the Legislature was actually elected by the people with instructions to call an immediate election of Governor. The popular current however was checked by the Senate, and the Lieutenant Governor, as was obviously intended by the Constitution, served out the whole term. His amendment would clearly define what he doubted not was the intention of the committee, and prevent the possibility of such a controversy as that to which he had alluded in the State of Kentucky.

The amendment was adopted.

Mr. KELSO. I have an amendment to offer, and perhaps I had better explain it before reading it. There are other disqualifications than those enumerated here, and important ones, which may render it necessary that somebody should supply the place of the Governor; and while we are making a Constitution we ought not to be prevented by false delicacy from making it as it ought to be. It is a thing by no means impossible that the Governor may become insane, and in that case there is no one authorized to take his place. I move, therefore, to add the words "other disability." [Cries of "that's right,"]

Mr. RITCHEY. I hear gentlemen say that is right. I am not sure, myself, that it is right. I fear that if we insert the words "other disability," they may have too extended an application. Suppose the Governor should become palsied, although his judgment, his intellect, might remain as good as ever, would he not necessarily be superseded under the operation of this provision. I agree with the gentleman from Switzerland that in case of the Governor's insanity he should be deprived of office; but I should prefer to insert the word "insanity," and there is nothing indecorous in it, because the Governor is just as liable to become insane as any other man. [A voice—"he is more so."] I move to amend by inserting the word "insanity."

Mr. DOBSON said that it seemed to him that the word "disability" was the proper word to be used in this instance. There might be other disabilities besides insanity that would disqualify the Governor from discharging the duties of the office.

The question being taken, the amendment of the gentleman from Johnson was not agreed to.

The question was taken on the amendment of the gentleman from Switzerland to insert the words "other disability," and it was adopted.

The section was then ordered to be engrossed for a third reading.

The section which provides that whenever the government shall be administered by the

Lieutenant Governor or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own members as President for that occasion, &c., was read a second time.

On motion by Mr. KELSO, the words "or other disability" were inserted in the proper place.

Mr. McCLELLAND moved to strike out the word "*pro tem.*," where it occurred in the section, and insert the words "for the time being."

Upon this motion the yeas and nays were demanded, and were ordered, and, being taken were—yeas 73, nays 34—as follows:

YEAS.—Messrs. Allen, Anthony, Ballingall, Bascom, Beeson, Biddle, Borden, Bracken, Bryant, Butler, Carr, Carter, Chapman, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foster, Garvin, Hamilton, Harbolt, Hardin, Hawkins, Johnson, Kendall of Wabash, Kinley, March, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nofsinger, Owen, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tannehill, Taylor, Thornton, Trimble, Walpole, Watts, Wiley, Wolfe, Work, Yocum, and Mr. President—73.

NAYS.—Messrs. Beach, Blythe, Bourne, Clark of Tippecanoe, Clements, Dunn of Jefferson, Frisbie, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Kelso, Kent, Kilgore, Lockhart, Maguire, Mather, Nave, Niles, Pepper of Crawford, Robinson, Sims, Stevenson, Thomas, Todd, and Wunderlich—34.

So the amendment was adopted.

The resolution was then ordered to be engrossed for a third reading.

The section which provides for the compensation of the President *pro tempore* of the Senate was read a second time, and ordered to be engrossed for a third reading.

The section which provides that in case the Lieutenant Governor shall be called upon to administer the government, and shall while in such administration resign, die, or be absent from the State during the recess of the General Assembly, it shall be the duty of the Secretary of State for the time being, to convene the Senate for the purpose of selecting a President *pro tempore*, were read a second time.

On motion by Mr. KILGORE,

The words "for the time being," were stricken out.

On motion by Mr. MORRISON of Marion, the words "become insane or otherwise disabled," were inserted.

The section was then ordered to be engrossed for a third reading.

The section which gives the Governor power to fill vacancies in office, the appointment of which is vested in the Governor or in the General Assembly, during the recess of the General Assembly, was read a second time, and

On motion by Mr. DUNN of Jefferson,

It was re-committed to the committee on the Executive department.

The section which provides that every bill which shall have passed both Houses of the General Assembly shall be presented to the Governor; if he approve he shall sign it, if not he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to re-consider it. If, after such re-consideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be re-considered, and if approved by a majority of all the members elected to that House it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the general adjournment prevents its return, in which case it shall not be a law—was read a second time.

Mr. PEPPER of Crawford. I move to strike out all after the word "law," in the hundred and fourth line, including the word "respectively" in the hundred and sixth line.

It will be recollected that the Convention has passed a section in the legislative department, requiring the yeas and nays to be recorded on the final passage of every bill and joint resolution, which, I think, will extend to that portion of the section now under consideration. If so, it amounts to nothing more than surplusage in this section, and should be stricken out.

Mr. MORRISON of Marion said that the reason why that phraseology was retained in the section, was because it was the phraseology commonly employed, and it was thought necessary to retain it, in order to make the provision explicit.

The amendment was rejected.

Mr. RARIDEN moved to amend, by striking out the word "not," in the last line of the section.

Mr. R. said that he wanted that word stricken out, so that the bill might still be a law if the Governor were prevented from returning the bill by the adjournment of the Legislature. He took it for granted that the affirmative action of the representatives of the people was more to be relied on than an omission on the part of the Governor to return the bill.

Mr. MORRISON of Marion said that the intention of the committee was to prevent members of the General Assembly from holding back bills until the last day of the session, by rendering the bills liable to be lost if so withheld.

Pending the question on the amendment of the gentleman from Wayne,

On motion by Mr. EDMONSTON,

The Convention adjourned.

FRIDAY, DEC. 27, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. FARROW, a delegate from the county of Putnam.

The journal of yesterday was read and approved.

Mr. DUNN of Perry presented a petition from citizens of the counties of Spencer and Perry, in relation to the formation of new counties by a division of the old; which was, without reading, upon his motion, referred to the committee upon the legislative department.

Mr. SMILEY, from the committee on the legislative department, reported back the section which provides that Senatorial and Representative districts—where more than one county shall constitute a district—shall be composed of contiguous counties. The committee having stricken out the provision which prohibits the division of counties for representative purposes,

The report was concurred in, and the section was passed, and referred to the committee on revision.

Mr. BRIGHT, from the committee on education, reported against the expediency of inserting a provision in the Constitution allowing other than the English language to be taught in common schools.

The report was concurred in.

Mr. DOBSON, from the select committee on the subject of the communication from the President of the Railroad Company tendering to the members and officers of the Convention a free passage to Madison, reported resolutions to the following effect:

That in view of the time already occupied by the Convention in its deliberations they respectfully decline the invitation of the Railroad Company to visit Madison; and that the thanks of the Convention be tendered to the Company for their kind offer.

The resolutions were adopted.

Mr. DUNN of Perry, from the committee to which was referred a resolution on the subject of a geological survey of the State, made a report on that subject—setting forth that it would bring capital to a considerable amount, into the State, and thus repay all expenditures, as well as aid in creating a sinking fund to pay

off our public debt;—accompanied by a section making it the duty of the General Assembly to provide for a thorough geological survey of the State in five years.

The section was read a first time, and passed to a second reading.

Mr. COLFAX. I now make the motion of which I gave notice on Tuesday last, which sets apart Saturday for the consideration of resolutions. The purport of the amendment is, that on Saturday, resolutions shall be in order until ten o'clock, at which time the orders of the day shall be taken up, and speeches upon resolutions shall be limited to five minutes each. I think that the adoption of this amendment will save us at least a week's time before the end of the session.

The resolution having been read,

Mr. WATTS suggested to the mover to insert eleven o'clock instead of ten.

Mr. MAY moved to strike out "ten," and insert "eleven."

The amendment was agreed to, and the resolution, as amended, was adopted.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day; the first thing in order being several sections of the report from the committee on the Executive Department.

Mr. COLFAX moved that the question be taken upon these sections collectively, with the exception of the first section.

Mr. READ of Clark moved to amend the motion so as to take the question on the sections without exception.

The amendment was not agreed to.

The question was then taken on the motion of the gentleman from St. Joseph, and it was decided in the affirmative.

The first section was then read by the Secretary.

It provides that the executive power shall be vested in a Governor, who shall hold his office for four years; a Lieutenant Governor shall be elected and hold his office for the same length of time.

Mr. KILGORE moved to re-commit the section with instructions to strike out the word "four" and insert "two," and to provide that the Governor be eligible only four years out of every six years.

The question being on the motion to re-commit with instructions, the yeas and nays were demanded, and they were ordered.

Mr. BORDEN said, it appeared to him somewhat strange that the Convention had consented to insert "four" in the section, making the term of office of the Governor, four years. It seemed to him very much like reforming backwards. He had supposed that the term of office of public officers was to be shortened, and not increased. Upon looking at the action that

had been taken in other States in reference to that subject, it would be seen that the most approved policy was to shorten the term of office of public officers.

Mr. COOKERLY said, it would be strange if the Convention should decide to elect a Governor every two years, while at the same time Senators were to be elected for four. He cared not what policy other States had adopted, we had a right to elect our Governor for any length of time we chose. In Illinois and Kentucky, the Governor was elected every four years. There was no reason why it should not be so in Indiana. The Convention had decided yesterday, by a large majority, that the Governor should hold his office for four years. He trusted that that decision would be adhered to.

Mr. DOBSON moved to amend by adding to the instructions, that the Governor shall be eligible six years out of eight.

Mr. MARCH accepted the amendment.

The question being on the motion of the gentleman from Delaware to re-commit with instructions, the yeas and nays were taken with the following result—yeas 53, nays 55:

YEAS.—Messrs. Allen, Balingall, Bascom, Beach, Bicknell, Biddle, Borden, Bracken, Chandler, Chapman, Colfax, Crumbacker, Davis of Parke, Dobson, Dunn of Jefferson, Duzan, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Hawkins, Hogin, Howe, Johnson, Kent, Kilgore, Kinley, Maguire, March, Mather, May, McClelland, Miller of Fulton, Milligan, Moore, Morrison of Marion, Nofsinger, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Smiley, Smith of Ripley, Smith of Scott, Tannehill, Thornton, Todd, Walpole, Wolfe, Work, and Wunderlich—53.

NAYS.—Messrs. Anthony, Blythe, Bourne, Bryant, Butler, Carr, Carter, Clark of Tippecanoe, Clements, Cookerly, Davis of Madison, Davis of Vermillion, Dick, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Harbolt, Helmer, Hitt, Hovey, Huff, Kelso, Kendall of Wabash, Lockhart, McFarland, Miller of Gibson, Milroy, Morgan, Murray, Nave, Owen, Pepper of Crawford, Pettit, Robinson, Schoonover, Sims, Snook, Spann, Steele, Stevensdn, Taylor, Thomas, Trimby, Wallace, Watts, Wiley, Yocum, Zenor, and Mr. President—55.

So the section was not re-committed.

The question then being, Shall the section pass? the yeas and nays were taken under the rule, and the Secretary reported—yeas 63, nays 44—as follows:

YEAS.—Messrs. Allen, Anthony, Bicknell, Blythe, Bourne, Bryant, Butler, Carr, Carter, Chandler, Clark of Tippecanoe, Clements, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Farrow, Fisher, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Hall, Harbolt, Helmer, Hitt, Huff, Kelso,

Kent, Kendall of Wabash, Lockhart, McFarland, Miller of Gibson, Moore, Morgan, Murray, Nave, Nofsinger, Owen, Pettit, Robinson, Schoonover, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Taylor, Thornton, Trimby, Wallace, Watts, Wiley, Yocum, Zenor, and Mr. President—63.

YAYS.—Messrs. Ballingall, Bascom, Beach, Biddle, Borden, Bracken, Chapman, Colfax, Dobson, Duzan, Edmonston, Graham of Miami, Haddon, Hamilton, Hardin, Hawkins, Hugin, Howe, Johnson, Kilgore, Kinley, Maguire, March, Mather, May, McClelland, Miller of Fulton, Milligan, Milroy, Morrison of Marion, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Smiley, Tannehill, Thomas, Todd, Walpole, Wolfe, Work, and Wunderlich—44.

The sections from 2 to 20, inclusive, were read, with the exception of section 13, which had been referred to a select committee yesterday.

MR. KILGORE moved to re-commit the sections with instructions to amend the sixteenth, by adding at the close of that section, the following words:

“Except in the case of a resolution or motion to go into the election of any officer or officers, and if on any such resolution or motion, the Senate be equally divided, they shall proceed to the election in the same manner as they would be required to do, if a majority had voted in favor of the same.

MR. RARIDEN. Does the gentleman's motion to re-commit embrace all the sections?

THE PRESIDENT. It embraces all that are now pending on their third reading.

The question being taken on the motion of the gentleman from Delaware, to re-commit with instructions, it was decided in the negative.

MR. HOWE moved to re-commit with instructions to strike out the 6th section, and insert the following:

“The Governor shall be commander-in-chief of the army and navy of the State, and of the militia, except when called into the service of the United States; but shall not command personally in the field,” &c.

The section, said Mr. H., which I have offered in lieu of the one reported by the committee, is the section contained in the old Constitution, and I think it is better than the one reported. The section that has been reported by the committee may be well enough, but it strikes me that it is conferring too much power upon the Governor.

MR. MORRISON of Marion said he did not know that he had any particular tenacity about the terms of the section; but it certainly seemed to him that the Executive ought to be clothed with power to suppress insurrection or repel invasion. He could see no danger that could possibly arise from conferring this power upon

the Governor. It did not compel him to go to the field, but merely empowered him to call out the militia, in case the necessity for doing so should arise.

MR. READ of Clark. It appears to me, sir, that, after we have deliberated for weeks upon a section, we ought to be able to decide upon it without re-commitment, unless some cogent reason can be shown why it should be re-committed. I therefore move the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being first on re-committing the sections, with instructions as proposed by the gentleman from Lagrange, it was decided in the negative.

The question then being, Shall the sections pass?

The yeas and nays were taken, in accordance with the order, and resulted—yeas 98, nays 9—as follows:

YEAS.—Messrs. Allen, Anthony, Ballingall, Bascom, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bracken, Bryant, Butler, Carr, Chandler, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hitt, Hugin, Hovey, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Lockhart, Maguire, March, Mather, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tannehill, Taylor, Thomas, Thornton, Trimby, Wallace, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—97.

NAYS.—Messrs. Carter, Chapman, Duzan, Howe, Kilgore, Kinley, Murray, Todd, and Walpole—9.

So the sections were passed, and referred to the committee on revision and phraseology.

SECTIONS ON THEIR SECOND READING.

The Convention then resumed the consideration of the section relating to the veto power of the Governor, on its second reading. The pending question being on the motion of the gentleman from Wayne to strike out the word “not,” in the last line, so that if the Governor were prevented, by the adjournment of the General Assembly, from sanctioning a bill which was sent to him for his signature, it should nevertheless be a law.

Mr. RARIDEN. I wish to add to my motion.

The PRESIDENT. The gentleman may withdraw the first motion and move another.

Mr. RARIDEN. I will state to the Convention the purport of the amendment that I propose to make. It is to strike out the words, "within five days after it shall have been presented to him," &c., to the end of the section, and insert "unless he return it in time for each branch of the General Assembly to act upon it, it shall still be a law."

A VOICE. "No, sir; that will not do."

Mr. RARIDEN. Some gentlemen say "No, sir;" I say yes, sir. I desire to have this Convention understand what they are doing. I aver that this section, as it stands, enlarges the veto power four-fold. Let me direct the attention of gentlemen for a moment to what will be the condition of the Legislature hereafter. A section has been reported to us which provides that there shall be but one session in every two years, and we have adopted a section which provides that no law shall pass unless it have the sanction of a majority of all the members elected. Well, sir, this section provides that, if the Governor does not think proper to sanction a bill which has been sent to him for his signature, it shall not be a law. The object of my amendment is, to say that it shall be a law, and the question is: Which is the better guarantee to the public: a majority of all the members elected to the Legislature, or the Governor putting the bill in his pocket and avoiding the responsibility of giving an opinion or reason for his conduct, leaving the world to see that it was not his will to act?

It is proper enough that the Governor should have the power to call upon the Legislature to re-consider a measure that they had passed. It would be but a salutary check upon hasty legislation to require them to reflect upon what they had done. But the provision contained in this section puts it in the power of the Governor to thwart and check the action of the legislative body altogether. Now, I have not, for the last ten years, seen an executive that had the manliness, when two or three influential members of his body shake their locks at him, to give his sanction to a law against their wish. It is seldom that the interest of the country is thought as much of as the popularity of the man. It is giving to the Executive the power, practically to defeat the action of the Legislature, and to avoid responsibility. He may keep a bill in his pocket, and he may say "Oh I have been debating and reflecting upon it, and I cannot make up my mind," and make out of his very delay an appearance of great regard for the public interest. He was so fearful that his country might be injured by it that he could not think of retaining it without deliberating upon it for a great length of time. Well, sir, this is anti-republican. I never saw the time when

there was not older and better men in the Legislature than the Executive before the elevation of the greater of them in this State. I and others have met them in courts of justice, and upon the floor of the Legislature, and by no means the most prominent men on those theatres, and yet here you place upon the Legislature the responsibility of acting and having their acts placed upon the permanent record, and put it in the power of the Executive to defeat that action without being in the least degree responsible.

It is argued in favor of the section that it is intended to prevent the fraudulent action of members in holding back their measures until too late for the Executive to examine them and return them previous to the adjournment. Sir, if we suppose that the representatives hereafter are to be knaves, and the executive's business is to watch and restrain them; they should be dispensed with, and their functions vested in the Executive; they can be of no other use than to make trouble. Measures so withheld, and from such men, are unworthy of the sanction of the Executive as we may suppose, and must intend some wrong to the public. The hurry and confusion which prevails at the close of the Legislature has been heretofore a subject of complaint, and an excuse for Governors exercising the pocket veto; but it grew out of local legislation, a great mass of which was thrown upon the last days of the session.

I confess myself hostile to the veto power as heretofore exercised for party purposes, but that the Executive may act wisely upon some occasions, but that in a wrong spirit prevails. The fixed opinion that exists with me that the representatives of the people when they act under those forms that are prescribed by the Constitution itself. And with that kind of deliberation which it is necessary for them to observe in the enactment of laws. I would rather trust to their wisdom and discretion than to the discretion and wisdom of the Executive. This is the question: Are you safe with the enactment thus put forth by the representatives of the people—are you as safe with this as if you had this check upon the exercise of the legislative power? Sir, I am opposed to it. When you consider the restraints that you put upon legislation it is an important enlargement of the veto power? It will be in the power of the Executive at any time to defeat legislative action by merely keeping a bill in his pocket for more than five days.

Mr. BIDDLE. I am in favor of this amendment, or, at least, in favor of a provision similar to this in substance, and I desire to make a few remarks upon the question. The precise shape of the amendment does not suit me as well as if it were in other words, but I think the phraseology can be corrected by the committee on revision. Unfortunately the veto power has been a question between the politi-

cal parties of this government; I therefore wish to say in the beginning, that I speak for no political party, and for no man. None are bound by what I say but myself. Gentlemen may know my party predilections, but they have not learned them on this floor. They will not learn them on this floor.

The great fundamental idea in all the American Constitutions is, that the powers of government shall forever be kept apart, and exercised separately. This is the basis of the Constitution of the United States, and of every separate State. No gentleman on this floor will deny this proposition. And I have often thought that we are indebted to that one principle more than to any other, or perhaps to all others, for the freedom we enjoy as Americans.

We set out in our bill of rights by declaring that the powers of the government of Indiana shall be divided into three distinct departments, and each of them be confided to a separate magistracy. Those which are legislative to one; those which are judicial to another; and those which are executive to a third. And no person being of one of these departments, shall exercise any power which properly belongs to another.

Now, Mr. President, I desire briefly to examine these powers separately, and then their true relation to each other. We settled in the beginning that the legislative authority of this State shall be vested in the General Assembly, which shall consist in a Senate and House of Representatives. Let me remark in passing, that the Governor finds no place in this provision—the duties and powers of the Executive are in no manner connected with it. Nor is there here any trace of judicial power. What is the legislative power? It is that power by and through which a State makes its laws. In a free country like our own, law is but the formal expression of the opinions, wants, desires, and wishes of the people. The people send up their representatives to make their laws in accordance with the will of their constituency.

The Legislature is the mouth-piece of the State, by which it expresses its voice. The better to regulate this power, it is divided into two Houses, each representing different divisions of a common constituency, and holding their offices by a different tenure as to time. This insures the true expression of the general voice, without regard to any particular time or locality. It also gives order and consistency to legislation. Each House is a check upon the other. The General Assembly has no other duty nor power, than to make laws. After a law has been enacted this department has no further power over the subject. It can neither adjudge the law, nor execute it, but must leave it upon the statute books, and for any function still remaining in the legislative power, there it would forever remain. All the power of this department here ends.

The judicial department is established in the following words: "The judicial power of this State, shall be vested in a Supreme Court, in circuit courts, and in such other inferior courts as the General Assembly may establish."

It will be observed that this confers no legislative nor executive power. The vast majority of laws are obeyed without calling upon any other department, but if a law is disobeyed, or is questioned as between citizen and citizen, it is brought before the judiciary for decision. The judicial department is that separate power through and by which a State expresses its judgments. It represents its moral sense, and sense of justice. It takes the law which is the general rule, to which it adjusts the individual case. When this department has rendered its judgment upon a law, its power ceases. The judiciary stands between the other two departments, and is perfectly harmless towards the rights of the people. It must take its rule from the Legislature, and leave to the executive the power to carry into effect its own judgments. It has no patronage to dispense, and no power, and no motive to abuse its trust. There is not one instance in the history of the past, wherein the liberties of the people were overthrown, or materially injured, by this department. I would not be understood as saying there never was a corrupt judge, but I will say that for one corrupt judge, there have been one thousand corrupt kings and ministers; or those who wield the executive power; and I lay it down as a proposition which none will controvert, that as our judiciary in the United States and in the separate States is organized, there is no danger of the integrity of the State, or the liberty of the citizen.

It is provided that the executive power shall be vested in a Governor. And in this we find no legislative nor judicial power. It is simply the power to execute the laws—not to make them—not to adjudge them. As before remarked, almost all the laws are carried into effect without calling upon either of the other departments. A large number are executed by the Governor, without their having been questioned before the judiciary, and when they are thus questioned, the executive carries into effect the judgment rendered. Most judgments are executed, however, without calling upon executive aid. This power is the hand of the State, and dispenses its favors and its patronage, and executes its sovereign will. The other two departments act always upon general rules; the Legislature cannot make a law to favor one man and oppress another, nor can the judiciary lay down a rule that does not operate on all alike. Not so with the Executive. It chooses its favorite agents, and refuses patronage to its opponents. It sits and works in secret, its opinions are disclosed to none, whilst the other two powers act and pronounce their opinions and judgments before the world. Unlike the others,

there is no power beyond it to give it check. Of all the powers in a free government, the Executive should be the best defined, and the most restricted. Al history shows us that the Executive continually encroaches upon the other departments, and destroys the true balance of government. It is the serpent of free governments. All these powers have their common standard—the Constitution. By this they are guided and kept within their respective bounds. We have thus examined these separate powers—their relation to each other—and the relation of all to the Constitution—the manner in which they check and correct each other—and they lead us forcibly to this conclusion, that that is the best government whose Legislature makes the laws, and nothing more—whose Judiciary decides the laws, and nothing more—and whose Executive enforces those laws—as thus made, and thus decided—and nothing more. We have thus examined *all* the powers of Government, which, together, represent its entire sovereignty, and where do we find a legitimate place for the veto? Nowhere, Mr. President, nowhere. It is an unnatural plant to free soil. It was transplanted to America from a crown, and far better does it become a monarchy; but even there it has died out. It is not indigenous to American soil, and I trust its last root may be extirpated.

Let us now, Mr. President, examine the veto power. What is it? Whence came it? Sir, it is a part of the old curse which God in his displeasure, laid upon the Israelites, when he granted them a king. From that day until comparatively modern times, there is scarcely a trace of the true division of the powers of government. The earlier governments were all despotic. They contained but one power, and that was the executive, or rather the executive contained all the other powers. The power which made the law, decided it and executed it, and that law was the mere arbitrary caprice of a despot. From time to time, and often by the sword, the other powers were gradually won from this department, until in some of the American States, we have approached to something like a true balance. And I wish to say now, that I speak of the veto only as applied to States. There may be reasons to support the veto power in a confederated government like our Union—that question is not now before us—but I deny that it has any legitimate place in a State government. It is a part of the legislative power still left in the executive—for it is a legislative power, let gentlemen deny it as they will. It is claimed to be a legislative power by the eminent writers and politicians who support the veto. That which prevents or delays legislation, is a legislative power; it would be illogical to call it otherwise. The veto is a power for freemen yet to overcome before they perfect the work of liberty.

In all those governments where the three

fundamental powers are divided, well defined, and exercised by distinct functionaries, there is a high degree of liberty though a monarch may sit upon the throne. England is a fit example. And in a government where these departments are confused or confounded, and exercised by a single functionary—be it composed of one or many—there is no security for freedom. The Grecian democracies here offer us an example. The Greeks were a people fit for liberty, but they could not secure it. It was theirs to-day and gone to-morrow. If they had had a well organized judiciary, they would never have banished their benefactors. Aristides then need not have written the ticket of his own ostracism upon the shell, merely because the people were wearied by hearing him called "THE JUST." The nations of the East, were despotisms—they knew nothing of the divisions of political power. It was all executive—all despotic. The Assyrian Empire shows us no trace of the just balance of power, and we find scarcely any in the history of the Medes and Persians. In some periods of Rome, we see something of it, but not well defined. Tarquin destroyed nearly all the Senators, and made his own laws. He never consulted the judges in making his decisions. At length he usurped the entire power of the people, and made laws directly against their will, adjudged and executed them till, in the forcible language of Montesquieu, "the people recollected they were the proper legislators, and there was an end of Tarquin." The power next fell into the hands of the Decemvirs, and they neither assembled the Senate nor people. Ten men wielded the legislative, executive, and judicial power of Rome. Trajan was a noble prince, and respected the just forms of government. It is true that he punished the primitive christians, but he did it against his own will, and in obedience to a law which the Senate had decreed and the people confirmed. The turmoils and revolutions of France have been mainly owing, in my humble judgment, to the unbalanced and irregular action of political power, and not to the unfitness of the French people for freedom. But our most instructive lesson is drawn from England. The Heptarchy was united under Egbert. It was ruled a long time merely by the king. In process of time, the princes and nobles gained power in the State, and laid the foundation of what is now the House of Lords. This power at length became too strong for the pleasure of the crown, then it was that Edward First, summoned the Knights and Esquires of the principal towns to consult upon the interests of the realm. This grace finally grew into matter of right, and from it we now see the House of Commons—the great bulwark of English liberty. The kings became wearied of dispensing justice in person, and granted the power to the judges, till they gradually became independent of the crown. Now we

see in England the powers of government well balanced, and a high security for freedom. And this veto power, which some gentlemen think so necessary to the government of freemen, has there become a mere obsolete prerogative of that bauble—the crown. It has not been exercised since the revolution of 1688, and the use of it at this day, would cost the ministry its place in twenty-four hours. Yet what the British subjects will not bear, gentlemen on this floor think good enough for the free citizens of Indiana.

The veto is an anomaly in a free government, and ought not to find a place in an American State. Take for example the two-thirds veto, as reported by the committee on the legislative department. It gives the Governor a negative on one-third of the legislative power. It disfranchises 330,000 people in the State of Indiana. But gentlemen will say, this is only a majority veto. If it had been only that in effect, I should not have troubled the Convention with any remarks. For the last five days of the session—those important days, when all the labor of the Legislature has become matured for action—during which nearly all the important laws pass—it is an absolute veto. This is worse, sir, than the two-thirds veto. If the Governor chooses, he may stop the wheels of Government. Sir, I would give no man such a power. Now what are the arguments that have been offered in support of the veto?

1. That it is a conservative power. So is a monarchy or despotism, conservative. That is answer enough to that argument. The people, sir, are conservative. They abide the law, and will even bear much wrong, for a time, from their favorites. But they want no veto—they will not support it. Themselves are the only true basis of government.

2. That it will prevent hasty and unconstitutional legislation. Sir, it will prevent all legislation. And shall the Governor say that certain legislation is hasty? No, sir. He ought to be no part of the legislative power, as I have shown. That duty belongs to the people's representatives. Shall the Governor say that a law is unconstitutional? No, sir. That is a judicial question, and we have a department expressly to decide it. No one will contend that the Executive has any judicial power. Then there is no argument in the position.

3. That the Governor is the only representative of the whole people. This is untrue in point of fact. The Governor is no more the representative of the whole people, than the General Assembly, or the Supreme Court. The Governor, it is true, represents the whole people in the executive department, so does the General Assembly, in the legislative department, and so does the Supreme Court in the judicial department. Neither one of these powers, separately, represent the entire sovereignty; but the three, combined and balanced, truly repre-

sent the whole sovereign power. The Governor should have no more right to interfere with the Legislature, than he has to dictate decisions to the Supreme Court—or, than the Legislature has to execute a law—or, than the Supreme Court has to veto the Legislature. The one is no more erroneous, nor inconsistent than the other. These powers, in the language of that Constitution which we are handling so roughly, must forever be kept separate, and exercised independently of each other.

4. But it is said that the veto only *defers* or *delays* legislation. It would be sufficiently bad for that alone, if it had no other objection. But it does not defer a question upon equal terms.

The people may vote up a law as often as they like, the Governor is still there to veto it down. The terms are unequal. In the two-thirds veto it requires two to overcome one; in the one before us there is no remedy whatever, during the last five—the most important—days of the session. This argument is mere mockery. Let us examine it. Shall a representative return to his constituents and say, "I knew your will, but I did it not. You cannot feel the wants of your own hearts, nor the shackles on your free limbs; I must feel these things for you. Wait two years and perhaps then I will obey you."

When an injured citizen comes into court and demands justice—the common right of all men, even our enemies—shall the Judge say to him, "Sir, you are hasty; true you are entitled to your suit, you have been injured, but it is not my pleasure now to grant you justice. Wait two years, then come again, and if you are not wholly crushed by the delay and wrong, it may be that out of my grace, I may listen to your complaint!" Would a free people endure this? Never! never! Now I desire gentlemen to point out the difference in principle between such conduct in a Judge, and in a representative, and the same conduct in a Governor. By every veto he says to a free people "you are mistaken, your representatives know not your interests, your wishes and your needs. You are incapable of self government. It is only your Governor who can think for your heads and feel for your hearts. Wait two years, and perhaps I may not then veto the same laws, and perhaps I may; I still have the power." Sir, shall a free people practically—if not in words, yet in deeds—be told these things? Yet honorable gentleman are seeking to incorporate this provision in the fundamental law which is to bind millions of people. Pause. Pass this section and you will lay your Legislature at the feet of your Executive. Your Governor will be the great power of the State. Committees must wait upon him. He will condescendingly listen, and then dictate the laws of the people. Add to this kingly prerogative the pardoning power, and you complete the work. He will then have a negative on both of the other powers of the

State, and will wield the government at his pleasure. Are gentlemen prepared for this step?

Mr. PETTIT. I had not designed to take part in the debate on the executive department of the State Government. I find myself reluctantly drawn into it, however, by the remarks of the gentleman last up, to whom it always gives me great pleasure to listen. He has taken a well-known ground in reference to this subject. The gentleman told us that he would not announce to us what his political affinities or tendencies were. Sir, there was no necessity that he should. Actions always speak louder than words. The gentleman could not have addressed the Convention for five minutes, without announcing to us, in very intelligible language, towards which side of the political questions of the day, he leans. There was no necessity that he should have done with his speech what an unskillful painter has to do with his painting, that it may be understood; that is, to write the name of the object depicted underneath it. There was no necessity for pointing out that which developed itself so plainly in the whole tenor of his remarks. His arguments as plainly demonstrate what the character of his animal is, as if the name were written. Sir, we have all heard this long argument, over and over again, in reference to the dangerous tendency of the veto power. To the proposition that there is danger to be apprehended from it, I have never yielded my assent, nor, with all the examination that I have given to the subject, have I been able to find, in the veto power, any such dangerous tendency.

A VOICE. "You happen to be on the side of the veto."

Mr. PETTIT. But, sir, you are to look at its practical effects. You are to look at it practically, and not theoretically. What has been the practical result of its exercise in Indiana, or under the General Government? The gentleman says, if you would have liberty, you must not have a controlling power in the Executive. Let me say to the Convention, that its exercise never was dangerous to liberty, but, in my opinion, always preservative of it.

But where has the veto power been found practically useful? It has been in relation to questions of finance, both in the General Government, and in the State Government. It has been found useful in guarding against waste and partiality, alike injurious to both.

Sir, I will not detain the Convention with a long homily on the principle of the veto—of its action in the State or General Governments. I will venture to say, however, that neither the gentleman from Cass, nor any other, can point to any instance of its exercise, since the first veto of Washington, that has operated injuriously. On the contrary, they have been productive of good. Who is there now, who does not agree, that the vetoes of John Tyler were

correct? [A voice—"I do not."] Ah, I heard the gentleman going it, in 1840, loud and long, for "Tippecanoe and Tyler too." [A voice—"You bought him up."] I only reply, that he was purchasable stuff, as might be expected, elected as he was.

Now I repeat, that in all the vetoes that have been given, in the General Government, their operation has been wholesome. They have been the salvation of the Government. Where would be the safety, in this mighty Confederacy, against the combinations of the larger States, to swallow up the smaller—to roll the wheels of the car of Juggernaut over the smaller States? But when or where has there been an exercise of the veto power, that failed to meet the approbation of the people of this Union? None, from first to last. But to come down to where we are acting, in our own small sphere. Shall we prohibit, to the Executive of Indiana, this little control over ill-advised legislation? It is not an absolute control. It is not a veto that requires more votes to pass the measure after the veto, than it did at first. It requires but a majority. But why is it that the Governor, when asked to sign a bill, should not have this power? The Governor, having in view the interest of all the people of Indiana, should have the power to say: "You must have my reasoning, before you pass the bill. Not that it shall take one more of your body to pass the law." Shall he not have the poor privilege of saying: "You shall listen to my reasoning before you proceed to pass the law?" That is all that it is proposed to enable the Governor to do. Do gentlemen recollect cases that have occurred within this State, where the exercise of the veto power would have been highly beneficial? I have no hesitation in saying, that if it had been enforced oftener, and more effectually, the State would have been better off by thousands of dollars. Has there been a veto that has been complained of by the people? Not one. The Governor feels the responsibility which rests upon him, when he vetoes a bill. He is no more likely to abuse the power entrusted to him, than the Legislature. I should be glad if, on every important question, the Governor's reasoning could be spread before the Legislature.

The gentleman from Cass institutes a comparison between the exercise of the veto power, as it exists in this country, with the veto of ancient times, in the Roman republic. Why, sir, there is no similarity. To be sure, for a series of years, the tribunes of the people vetoed the act of the Senate. But could the Senate, by a bare majority, pass those acts again? No, sir. The veto, or forbid, of the tribunes, prohibited the passage of the law.

It can do no harm to require a second consideration of a measure, to which the Governor finds reason to object. It is said that the business of the last hours of the session, thrown

upon the hands of the Governor, *en masse*, should become void, if he does not send it back. I think it should not. I think that the Legislature should not allow themselves, by any means, whether proper or improper, to delay the business until within five days of the end of the session, for the express purpose of burdening the Governor unnecessarily. They ought to get through, and send all bills to the Governor, as fast as they can.

In all instances, then, I say I would prefer that the advice and counsel of the Governor should be heard upon the passage of all bills. You do require of him to communicate to the Legislature, information of the state of the Commonwealth, and information as to those matters which interest the people of the State; in other words, the reasons that exist for pursuing a certain course of conduct, or for adopting certain measures; and when he vetoes a bill, it is no more than a repetition of that which it is his duty to do at the commencement of the session. But the Legislature brings up a new subject, which had not entered his mind, and I say he ought to have the power to lay before the Legislature his reasons, and to require that they shall re-consider what is done. I should be glad if the veto power were made stronger than in the section before us; but in this qualified and limited form, I am not willing to part with it.

Sir, this section will need a trifling amendment, and I think by inserting "or joint resolution," after the word "bill," where it occurs in the section, we will dispense with the necessity of engrossing the succeeding section. The first section provides for bills, the next for joint resolutions. It appears to me that there is no necessity for two sections, but that both may be incorporated in one.

Mr. OWEN. I differ radically and in principle from the gentleman from Wayne (Mr. Rariden) and the gentleman from Cass, (Mr. Biddle,) in regard to this matter. I believe the veto to be (in the true sense of the term, not in the fashionable sense,) a conservative power. I believe it to be a power that is, and has proved itself, highly beneficial to the people.

The gentleman from Cass has said that it is a remnant of kingly power. Sir, in what land, in what age had it birth? In Rome, during her republican days. The Plebeian tribune sat outside the door of the Roman Senate, revised the edicts of that body; and when he found anything which he deemed unjust or oppressive, then, speaking in the name of the people and in their behalf, he pronounced the word *Veto*!—I forbid it! The origin of the veto power, then, instead of being properly traceable back to a kingly source, is democratic.

Mr. BIDDLE. I did not assert that it was a kingly power, as springing from kings. My idea was this: that in despotic governments the entire power resides with the king—with the

despot—who embodies all the authority of the State—swallows up not only the executive power, but the legislative and judicial—and that governments have become more popularized by taking power from the executive, and giving a proper balance to the judicial and legislative power. Edward First, being restrained by the nobility, summoned the knights and esquires of the principal boroughs, which was the beginning of the House of Commons—now the bulwark of British liberty. And until quite recently the judges were dependant upon the crown. The first step toward judicial freedom was to put the judges beyond the reach of the king. But while the judges were dependant upon the crown they were an essential part of the kingly power.

Now what I stated was, that in a despotic government all power is in the executive. The phrase originated in Rome when it was a republic, if you please, but it was, nevertheless, an attribute of kingly power.

Mr. OWEN. The gentleman is quite right in saying that in a despotic government the power is in the hands of an individual. But there is an essential difference between a creative and a restrictive power. The power of which we are now speaking, is restrictive only. It is a provision of which the effect is, to hold back, to prevent action. The gentleman has spoken of it as a legislative power. There is no legislative feature about it. It cannot create a law; it cannot create any part of a law; not a section; not a word. When the Legislature—as they sometimes do—hastily pass laws, it declares that the Governor shall have a right to say: "Gentlemen, I ask you to re-consider the matter. I think you have passed the law hastily. I think you did not well consider this argument or that." He has a right to lay the reasons for his dissent before them, and if the Legislature, after having heard what he has to say, still determine to adhere to their original decision, they have the power to re-enact the law, and put it in operation over the veto of the Governor.

The gentleman from Cass (Mr. Biddle) has referred to England; and he has told you that the sovereign now on the throne of Great Britain dare not veto a law passed by Parliament; for if she did so, a revolution would ensue. He reminds us that though in theory the veto is her prerogative, in practice it is not. That is true. It has degenerated into an empty form. Sir, I recollect an anecdote told of some Spanish monarch who had been spending a fatiguing levee, receiving his courtiers and others, and who, in the evening, quite wearied out, exclaimed to his favorite minister: "How tiresome these ceremonies are!" The minister was more plain-spoken than favorites commonly are. "Sire," was his reply, "your Majesty forgets that you are yourself but a ceremony." So in regard to this veto power in England. Queen Victoria

is only a ceremony. The Parliament of England is omnipotent. There is neither Constitution nor veto to restrict its legislative power.

Mr. RARIDEN. Will the gentleman allow me to interrupt him a moment?

Mr. OWEN. Certainly.

Mr. RARIDEN. It strikes me that the gentleman from Tippecanoe and the gentleman from Posey, take a wrong view of the matter. If the Governor returns a bill with his objections, it is all right enough. But it is to the non-action of the Executive that I object.

Mr. OWEN. The gentleman will recollect that my friend from Cass (Mr. Biddle) took the broadest ground against the veto power, in principle, and to him I am now replying.

The republican plant withers and dies in a monarchical soil. There, where the National Legislature is omnipotent, the veto has become a dead letter. In the English form of government, it is not the theory that Parliament should be restrained. But it is our theory, that a National Legislature or a State Legislature shall be. The business this Convention is engaged in, is the restricting of a State Legislature. They never undertake such a business in England.

Sir, when the Governor takes the responsibility of interposing an objection to the passage of a law, he assumes a grave responsibility; such an one, I venture to say, as no man, filling the office, will ever incur, except under a stern sense of duty.

The gentleman from Tippecanoe has well said, that we should not look to theory, but to practice. As we advance in life, we feel, more and more, how much safer a guide practice is, than theory. He has truly reminded us, that the effect of the veto has ever been salutary. He might have added, that the action of the veto has always been endorsed by the people. Measures have been put down by vetoes; Presidents never. No important measure, vetoed by a President of the United States, has ever afterwards received the approval of the people, or been resuscitated by them. On the contrary, the people have, in every case, endorsed the action of the President. Is it possible that you can have a stronger argument than this, in favor of the wholesome influence of this Constitutional check?

A word as to the argument of the gentleman from Wayne. I am ready to vote for a clause in the Constitution, that no new bill shall be introduced during the last three days of the session. I believe this will be a salutary provision. I believe, that more harm is done during the last few days of a session, than in all the preceding weeks. Perhaps this may go far to remove the objections of the gentleman from Wayne.

I rose, however, not so much to speak of minor details, as to express my unwavering conviction, that there is not, in our political sys-

tem, an element of greater safety, one more truly conservative, than this veto power. I should be sorry to see any thing that has worked so well, erased from the Constitution; nor do I believe, for a moment, that a majority of this Convention will strike it out.

Mr. RARIDEN. If no one else desires to speak upon the subject, I wish to reply briefly to the remarks of the gentleman from Posey, and the gentleman from Tippecanoe.

It does strike me that these gentlemen have avoided debating the question that is immediately before us. It is not the veto power, in the ordinary acceptation of the term, that I object to. What I oppose is the pocket veto. I do not wish to deprive the Executive of the right to assign his reasons for being opposed to the passage of a bill, or to prevent him from calling on the legislative body to exercise a sober second thought. I am not opposed to that. I rather like it, because it compromises the Executive. But when gentlemen tell me that this is a conservative power, and that benefits have resulted to the people from the exercise of that power, such an argument against popular government to say that as the people have been saved from the acts of their representatives in various ways, through the exercise of the veto power by the Executive, you might as well dispense with the popular branch of the government, and get clear of the danger forever.

Gentlemen say that the veto power has always been a conservative power, for the people always saved them from their own folly. Well, he may be right; I will not contend the matter now, but I must confess it contrary to my notions of popular freedom. But I will call the attention of the Convention to the manner in which the gentleman avoids the question. I do not propose to prevent the Governor from reaching his veto and saying it shall not be a law until the Legislature goes over it again, re-thinks upon it, and again acts. But it is the pocket veto that I am at war with. A measure may be fully matured, it may pass from House to House, and have the sanction of every member, still when it comes within a few days of the adjournment the Executive can put the bill in his pocket, and there it may remain for two years, beyond the power of legislation. And they call this conservative power! That is what I am opposed to, and what I trust no free people will ever submit to again.

The effect of my amendment, is to let the responsibility stare the Executive in the face. When a measure has been matured, and passed through all the forms of legislation, and sent to him for approval, let him understand that the measures, however fatal to the interests of the country, shall be a law, unless he acts upon it. His non-action shall confirm the action of the members. Let him act and approve, or assign his reasons against it; it shall be a law. What I object to, is the provision which makes the

non-action of the Executive destroy the action of the Legislature. If he have such a power, nine times out of ten it will be exercised in that form, not as a conservative power but for the purpose of promoting party ends. Why do the gentlemen not discuss this point? Why do they not tell us what beneficial results the community experienced from the exercise of the pocket veto? Let them tell us, then, on the subject, and no longer cant about what it has saved to the country.

My proposition is, that if the Governor does not return the bill, with his objections to it, in time for the two Houses of the General Assembly to act upon it, it shall be a law notwithstanding the veto. That is what I am aiming at. I am not hostile, nor am I friendly to the veto power. I do not believe that safety consists in the exercise of that power by the Executive, in this form, who is never selected by the people on account of the confidence they have in him, but because he happens to be a prominent party man. I do not say this in reference to our present Executive. I regretted to hear the gentleman from Tippecanoe say that the gentleman from Cass was right. Now is he willing to make that issue? Is he willing to put it upon party grounds? To maintain that it is an element, a principle of the party to which he belongs, that he has no confidence in the people?

The Constitution requires that bills shall be read three times, and the vote shall be recorded on the journal; yet gentlemen say there must still be a supervisory power lodged in the Executive, to say whether it shall be a law or not. In regard to the principle of calling the attention of the Legislature to the same subject, I have no kind of objection; none at all. And if he can induce a majority to abandon the measure let it be so, but let him not put a bill in his pocket and cause the people to be deprived of its benefits for two years, merely to avoid the responsibility of acting. That is the principle I am contending against, and gentlemen avoid the question. They tell me what the veto has been in past times, but they do not tell me the effect of putting it out of the power of the Legislature to re-pass a bill that has been vetoed by the pocket power. It is a power that is calculated to thwart legislation, always when consummated late in the session.

My amendment does not strike out or limit the veto power proper. It is to abolish the improper and cowardly exercise of it. Why did not the gentlemen come out and tell us the benefit of that? They, unquestionably, avoided it. When they tell me that it is a conservative power, they tell me that they have more confidence in the Executive than they have in the popular branch of the government. Sir, I do not believe a word of it, and I certainly shall resist it. The popular branch may do wrong by mistake, but not by design; but our Execu-

tive may act upon calculation, and advice of interested friends.

On motion by Mr. SMITH of Ripley,
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the section in relation to the veto power of the Governor.

Mr. SMITH of Scott. Is it in order to amend the section?

The PRESIDENT. There is an amendment pending.

Mr. SMITH of Scott. I wish to amend by striking out the word "majority" and inserting "three-fifths," so that it will require a vote of three-fifths of the members to pass a law over the veto of the Governor, instead of a majority of all the members elected.

Mr. SMITH of Ripley. I believe that I am entitled to the floor.

The PRESIDENT. That is true. The gentleman from Ripley moved the adjournment; he is therefore entitled to the floor.

Mr. SMITH of Scott said he hoped the gentleman would yield him the floor for a moment, for a brief explanation.

Mr. SMITH of Ripley. I will give way to the gentleman with pleasure.

Mr. SMITH of Scott then proceeded to make some remarks in support of his amendment. He remarked that it seemed not only extraordinary, but absurd, to see gentlemen contending for the veto power of the old Constitution, which was by no means adapted to the power to pass laws, as now amended. Under the old Constitution, two-thirds of all the members elected constituted a quorum to do business, and a majority of the quorum was sufficient to pass a law. When a bill under the old Constitution was vetoed, it required a majority of all the members elected to pass it over the veto, which, in nearly every instance, would be an increase of the number first passing it. But, continued Mr. S., we have provided that a majority of all the members elected to both Houses shall be required to vote for a bill in order to pass it. Where, then, is the propriety of having any veto at all, if the same power may pass the bill a second time? Why subject the Governor to the trouble of writing out his objections and returning the bill, if the same number of members can pass it? And although it is true that, under the new Constitution, all corporations will be formed under general laws, yet is it not certain that combinations of interests will take place, for the purpose of framing such general laws so as to secure to the corporations the greatest possible privileges and immunities? The veto power has done much good heretofore, and should be continued; and if we have increased the number necessary to pass a law, in the same proportion should we extend the force and power of the veto; and

this, by my amendment, is proposed to be done, not to the extent of the Constitution of the General Government, or of many of the States, but only to three-fifths of all the members elected.

Mr. SMITH of Ripley. I moved the adjournment, sir, with the view of claiming the floor and saying something upon this question; but I believe the patience of the Convention is pretty well exhausted, and I feel no disposition to occupy the time further. I will move, therefore, that the amendment proposed by the gentleman from Wayne, and the amendment proposed by the gentleman from Scott, be laid upon the table.

A division of the question was called for, and the question being first on laying on the table the amendment, it was decided in the affirmative.

The question then being on laying the amendment on the table,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 71, nays 28—as follows:

YEAS.—Messrs. Anthony, Bascom, Beach, Bicknell, Blythe, Borden, Bracken, Bryant, Butler, Carr, Chandler, Chapman, Clark of Tippecanoe, Crumbacker, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hardin, Helmer, Huff, Johnson, Kent, Kendall of Wabash, Kinley, March, Mather, McClelland, McFarland, Miller of Clinton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Niles, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Taylor, Trimble, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—71.

NAYS.—Messrs. Ballingall, Biddle, Bourne, Clements, Colfax, Davis of Parke, Dunn of Jefferson, Frisbie, Gregg, Hawkins, Hitt, Howe, Kelso, Kilgore, Maguire, May, Miller of Fulton, Milligan, Morgan, Mowrer, Murray, Nave, Newman, Prather, Rariden, Thomas, Todd, and Watts—28.

Mr. PETTIT. It appears to me that this section, and the one immediately following it, should be incorporated together. I move to insert the words "joint resolution" after the word "bill," wherever it occurs in this section.

Mr. MORRISON of Marion. A single word of explanation, sir, which, perhaps, is due from me as chairman of the committee; and I hope it will not be supposed that I am desirous of engrossing the time of the Convention with explanations. There is a distinction to be made between a resolution and a law.

[Mr. MORRISON proceeded to explain the difference between a joint resolution and a bill, and the consequent necessity, according to his

view of the matter, for a separate section in relation to each.]

Mr. PETTIT. The gentleman certainly need make no apology for addressing the Convention. It is his especial province, or duty, I think, to explain and enforce the views of the committee. Nor have I any desire to embarrass the gentleman. In looking at the two sections it occurred to me that they might be incorporated into one.

One word as to the difference between a joint resolution and a law. I have heard a great many undertake to define the difference, but never heard it satisfactorily explained. I recollect that I heard John Quincy Adams say once, in the Congress of the United States, that money could not be appropriated by a joint resolution, and that it was wanting, therefore, in one of the requisites of a law. It did not cover so much ground as a law. But I say, so far as relates to the ground that a joint resolution may cover, it is a law of the land to all intents and purposes. Whatever is passed by the General Assembly and approved by the Governor is a law. The term law is, therefore, as applicable to a joint resolution as it is to a bill. If they have power to pass a joint resolution, they have power to give it the force and effect of law. I think the section could be made more harmonious, shorter, and better, by uniting them. But if the Convention think differently, I will not insist upon it.

The question was taken on the amendment of the gentleman from Tippecanoe, and it was decided in the negative.

Mr. KILGORE moved to amend the section by providing that it shall be the duty of the Governor to sign bills and return the same immediately to the House in which they originated.

Mr. BASCOM moved that the amendment be laid upon the table.

The yeas and nays were demanded, and they were ordered, and being taken, were—yeas 99, nays 12—as follows:

YEAS.—Messrs. Anthony, Bascom, Beach, Bicknell, Borden, Bracken, Bryant, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Clements, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Garvin, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hamilton, Harbolt, Hardin, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Sherrod, Sims,

Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—99.

YAYS.—Messrs. Allen, Ballingall, Biddle, Blythe, Bourne, Colfax, Frisbie, Hawkins, Kilgore, McClelland, Prather, and Rariden—12.

MR. RARIDEN renewed his motion to amend by striking out the word "not."

He remarked that he was not going to inflict another speech on the Convention. He simply desired to state the effect of the amendment. It was, that, if the Governor did not return a bill that had been sent to him for his signature, before the adjournment of the Legislature, it should then become a law.

He demanded the yeas and nays upon the adoption of his amendment.

The yeas and nays were not ordered.

MR. HARDIN moved the previous question.

The previous question was seconded, and the main question ordered to be now put.

The question being on the amendment of the gentleman from Wayne,

The amendment was, without a division, rejected.

The section was then ordered to be engrossed for a third reading.

The section in relation to joint resolutions, concerning which the same provision is made as in respect to bills, having been read a second time, was ordered to be engrossed for a third reading.

The section in relation to the seal of the State, was read a second time, and ordered to be engrossed.

MR. SMILEY moved an additional section providing that contested elections for Governor and Lieut. Governor shall be determined by the two Houses of the General Assembly as may be directed by law.

The question being taken on the amendment, it was decided in the affirmative.

So the amendment was adopted, and the section was ordered to be engrossed for a third reading.

MR. CRUMBACKER offered an additional section, providing that no bill shall be introduced into either House of the General Assembly within five days of the final adjournment &c.

MR. GRAHAM of Warrick moved to strike out "five" and insert "three."

MR. RARIDEN. I fear, sir, that some difficulty may grow out of such a provision. We have adopted a provision to be inserted in the Constitution, and a very proper one it is, that the titles of all laws shall indicate the substance of such laws. This prohibition upon the introduction of bills will prevent the possibility of either House taking up any thing that may have been forgotten or overlooked, and acting upon it at a late period of the session. I never yet seen a legislative body that did not,

in the last days of the session, collect up a great many things which had been overlooked, not through any design to keep them back, but in consequence of members being otherwise occupied during the whole session.

If we insert such a prohibition as this, it will occasion many important matters to be omitted. I am for keeping the matter open. I would rather see such a provision as this adopted, viz.: "that no matter shall be finally acted upon;" that is, that a final vote shall not be taken within a certain time of the final adjournment, than to say that no new matter shall be introduced.

MR. KELSO moved to amend the amendment so as to provide that the Legislature may, by a majority of two-thirds, pass any law within the last three days of the session.

MR. EDMONSTON. It seems to me, sir, that such a provision will not accomplish the object which the gentleman from Switzerland has in view. The amendment he proposes is, that the General Assembly may pass any law by a majority of two-thirds, on the last days of the session. This does not remedy the evil.

MR. KELSO. I will change the amendment so as to make it read "introduce and pass."

MR. DUNN of Jefferson. I am afraid we are carrying our restrictions upon the action of the Legislature too far. It may be proper to prescribe some such rule as that proposed by the gentleman from Lake.

"That the General Assembly should refrain from introducing any new matter within the last few days of the session; but they should have power to act upon that which may have been previously introduced. It might become necessary to remedy some defect in a bill that had been passed in a previous part of the session. It seems to me that we can as well trust this whole matter to the wisdom of the Legislature without any Constitutional provision. I therefore, move to lay the whole subject on the table.

The motion was agreed to, and the section and amendments were laid upon the table.

MR. MORRISON of Marion from the committee on the executive department reported the section in relation to empowering the Governor to fill vacancies.

The section was ordered to be engrossed for a third reading.

The section which provides that all commissions shall be in the name and by the authority of the State of Indiana, was read a second time, and ordered to be engrossed for a third reading.

MR. NEWMAN in pursuance of notice previously given, proposed to amend the standing rules by providing that additional sections may be moved, but that the same shall not be considered until the sections contained in the report of the committee shall have been gone through with.

Mr. READ of Monroe moved to amend by striking out the latter part of the proposed amendment. It seemed to him, he said, that great inconvenience might arise from not being allowed to offer an additional section, and have the same considered in connection with that portion of the report to which it referred, while the sections reported were still before the Convention.

Mr. NEWMAN. The object that I have in view is this: Hitherto, when reports from standing committees have been under consideration, we have got along with a great deal of harmony and rapidity so long as we have confined ourselves to the sections reported. But when considering one section, if a gentleman proposes an additional section, introducing new matter, it almost invariably gives rise to animated and extended debate, and has the appearance, at least, if it be not so in reality, of creating some degree of confusion. Debate will necessarily spring up when new matter is introduced, and I propose that such new matters shall lie upon the table until the Convention shall have gone through with the report of the committee, and that such sections as any gentleman may propose shall then be taken up and considered. If such additional section have no immediate connection with the last section reported by the committee, or, if they would more appropriately come in at another place, the committee on revision can easily arrange that matter.

I admit that sometimes sections should be altered, but the mischief to be remedied is, that the introduction of new matter while considering the report of the committee, tends to distract the attention of members, and occasions a great deal of unnecessary debate.

Mr. READ of Monroe. Let us consider this matter practically. The report of the committee being under consideration, a gentleman wishes to introduce an amendment by adding a section, while the attention of members is directed to that particular part of the report to which the additional section is applicable, rather than wait until the whole report is gone through with. It seems to me that every member ought to have the power to offer an additional section at the place where it properly belongs, otherwise I am satisfied great inconvenience will result.

The question was taken on the amendment to the amendment, and it was decided in the negative.

The question being on the amendment to the rules, proposed by the gentleman from Wayne,

Mr. WALPOLE moved that it be laid on the table.

The motion was not agreed to.

Mr. WALPOLE. One word before the question is put upon the adoption of this amendment. Gentlemen who represent committees may be well enough satisfied with what they themselves propose, but I am not willing that

their reports shall be conclusive against all the other members of the Convention. There are twenty-one gentlemen here who are chairmen of committees; they may report what they choose, but here are one hundred and twenty-nine other gentlemen, all of whom should have the privilege of proposing additional provisions. I hope the matter will remain open, that gentlemen will have an opportunity of presenting their propositions, and of having them acted on by the Convention.

The PRESIDENT. The Chair would remark that the proposition to amend the rules does not preclude gentlemen from proposing amendments to sections.

Mr. WALPOLE. I am aware of that, but the gentleman's object is to prevent new sections from being considered until the report of the committee shall have been gone through with. What is the effect of this? Those who are satisfied with the sections as reported, call the previous question, and cut off all amendments. For these reasons I object to the proposed amendment of the rules.

Mr. BORDEN. It appears now to be quite evident, that, in consequence of our departure from the usual course of proceeding, which is to refer the reports of the committees to the committee of the whole, and to consider them there, we have involved ourselves in some degree of embarrassment. Now, if any member desires to add an additional section in a particular part of the report of a committee, how is he to accomplish his object? Must he wait until the whole report is gone through—until the House should have become impatient, and refuse to listen to any new proposition? There are many things that have been overlooked by your committees. This has resulted from the improper distribution of the Constitution among the committees. I trust the proposition of the gentleman from Wayne will be rejected.

Mr. DOBSON. I think we have got along very well under the rule as it is. A member may now offer amendments to any section; but it will tend to embarrass us and retard our progress, if it be provided that propositions to amend shall be postponed until we reach the end of the article. There will then be nothing to amend. I think it is much better that we should have the privilege of amending as we go along; while the subject is fresh in the minds of gentlemen. That, in my judgment, is the proper time for making amendments. Much more confusion and delay will be produced if amendments are offered at an inappropriate time.

Mr. KELSO said, he was satisfied that an amendment to the existing rule was necessary, but he was not satisfied that the amendment now proposed was the right one. He thought it would be better to lay this proposition on the table, with a view of calling it up after the subject had been a little more maturely reflected upon.

Mr. NEWMAN said, that gentlemen who opposed the amendment which he had offered, might be better parliamentarians than he was, but it did seem to him that the objections that had been urged against its adoption—viz: that the previous question would be called if amendments were deferred until the report had been gone through with, and that they would thus be cut off, was altogether fallacious. Because, unless an additional section were to be proposed, there would be nothing upon which the previous question could operate.

It appears to me, continued Mr. N., that it is vastly preferable to go on concurring in the printed report until it is gone through with, and then gentlemen who have propositions to offer may bring them forward when the attention of the Convention is not directed to any other point.

Mr. SMITH of Ripley proposed to amend by providing that new sections may be proposed to an article after it has been gone through with.

He had but a single remark to make. It would be recollected by all gentlemen, he said, that they had repeatedly voted down propositions when the question was upon their engrossment, and had, on the following day, reconsidered the vote, and the same ground had been gone over a second time. It was for the purpose of avoiding this delay that he had offered the amendment.

Mr. NAVE said, he was in favor of the proposition of the gentleman from Wayne, for the following reason: As the rule had heretofore existed the gentleman had had an opportunity of proposing different sections to articles as the Convention was considering them; and he had frequently seen additional sections proposed that were absolutely necessary to be incorporated in the organic law of the State, and they were propositions that had been for more than two months before some one or other of the standing committees, and had not been reported on by them.

That had been the case, he said, with a proposition that was acted upon to-day; and perhaps because gentlemen had not the capacity to comprehend it—he could conceive of no other reason—it went to the table without deliberation. If the chairmen of committees had the power to treat important propositions in this way, the rules ought to be changed. The motion to lay upon the table appears to be the first motion in order here, without giving the mover of the proposition an opportunity to explain its object. As this seemed to be the prevailing practice, he was in favor of making it uniform by adopting the proposed amendment, so that all propositions to amend should be postponed until the report of the committee had been gone through with.

Mr. READ of Monroe said, he thought the Convention ought well to consider before they

adopted the amendment of the gentleman from Wayne. If such a rule were adopted, they would have just such a farce enacted after the article had been gone through with as they always had on resolution day, and gentlemen would not have the privilege of introducing sections at the proper time. It would be an unfortunate decision, he thought, if the Convention were to decide on adopting such a rule.

Mr. COOKERLY moved that the proposition of the gentleman from Wayne be laid upon the table.

The motion was agreed to, and the proposed amendment was accordingly laid upon the table.

The section which provides that all elections shall be held biennially on the first Tuesday in October, was read a second time.

Mr. PRATHER moved to strike out the word "biennially," and insert the word "annually."

Mr. KELSO moved to amend the amendment by striking out the word "first," and inserting the word "second," so as to make the time of holding elections the second Tuesday in October instead of the first.

The question was taken on the amendment proposed by the gentleman from Switzerland, and it was, upon a division—ayes 50, noes 36—adopted.

The question being on the amendment of the gentleman from Jennings (Mr. Prather) as amended,

The yeas and nays were demanded, and they were ordered.

Mr. PETTIT said, he could not well see how annual elections could be made consistent with the determination that the Convention had arrived at, in regard to the sessions of the Legislature, which were directed to be held in future biennially. It was also provided in another section which had been adopted by the Convention, that the Governor should hold his office for four years, and the Lieutenant Governor for the same length of time. They had also determined that State Senators should be elected for four years. He could not very well see how elections could be held annually, when the term of office of no officers was less than two years, and when most of them were to be elected for four years. He could not see how it was that their elections could recur annually. He could not see what necessity or propriety there was in inserting such a provision as this, inasmuch as there were no officers to be annually elected.

Mr. WOLFE said, it appeared to him that the gentleman from Tippecanoe was mistaken in regard to this matter. The county officers—clerk, auditor, recorder, &c., were to hold their offices for two years it was true, but the arrangement was to be this, that they should go out of office in alternate years. It would be

necessary, therefore, that there should be an election every year, in order to supply the places of those whose term of office expired within the year. Again, when a vacancy occurred by death or resignation, were they going to leave the office unfilled for two years? It appeared to him that elections ought to be held annually.

Mr. KELSO coincided in opinion with the gentleman from Sullivan. In case of a vacancy by death or resignation, there should be a power somewhere to fill such vacancy. But it was not anticipated that the appointment to fill the vacancy should extend beyond the original term. The people should have an opportunity annually to fill all vacancies that might occur.

Mr. PETTIT said, he thought it would be better to compromise this matter, and it might very easily be done by merely striking out the word "biennially," and allowing the election to take place whenever there might be a necessity for it.

Mr. READ of Monroe. It is an old saying—as old, I believe, as English freedom—that where annual elections end, there liberty is at an end. I want an annual expression of the sentiments of the people in reference to political subjects, and I think that in regard to the term of office of public officers and consequently the recurrence of elections, the joints ought to be so broken—to borrow a phrase that will be understood by all—that the term of office of all officers shall not end at the same time. I hope that the amendment will prevail, and that there will be annual elections for officers whose term of office may expire with the year, so that there may be a frequent expression of public sentiment.

Mr. COOKERLY. I would like to know how the gentleman is going to carry out his design, since it is provided that the county officers shall hold their offices for two years.

Mr. READ of Monroe. It may be done in this way. The clerk of a county may be elected one year, the auditor the next, and so on alternately.

Mr. COOKERLY. How can that possibly be, when we have already provided that they shall be elected at a specified time, and be elected for two years? What offices would there be for the people to elect in the alternate years? The members of the General Assembly are to be elected biennially; and the county officers are to be elected at the same time, and for the same period. Does the gentleman propose to reverse what we have already done? I have seen indications of a disposition, on the part of some gentlemen, to infringe upon the determination that the Convention has arrived at. If they want to reverse the action of the Convention, and have annual elections, let them say so.

Mr. MAGUIRE. The Convention has already determined that county officers, now in

office shall not be removed when the new Constitution goes into effect, but shall continue in office until the expiration of the term for which they were elected. This being the case, one will go out of office one year, another the next so that there must necessarily be elections held every year, to fill the offices that become vacant during the year. You will never have all your county officers elected at one particular time. This was the argument used by the gentleman from Hancock—and it was a forcible argument—in favor of turning out those officers.

In one year there will be an election for county auditor and recorder, perhaps, and in another year an election for clerk, sheriff, and other officers. This, it seems to me, is a sufficient answer to the argument of the gentleman from Tippecanoe.

Mr. BORDEN said that, in his view of the matter, it would not be material when the term of office expired. The officers might be elected with a view to the time when the offices should become vacant. [A voice—"That is the idea."] It seemed to him that, having provided that those officers should hold their offices for two and four years, there was no necessity for annual elections.

Mr. GRAHAM of Warrick. It had been argued by some gentlemen, that all officers should serve an equal number of years, so as to have uniformity. If this were the determination, he could see no necessity for opening the polls throughout the whole State, when it was only requisite to fill a vacancy in one county. According to the manner in which they had regulated the tenure of office, it would be quite sufficient that an election should be held once in two years.

Mr. BASCOM said he could not exactly understand the process of reasoning, by which some gentlemen arrived at their conclusions. In the county that he represented, unless annual elections were provided for, they would be under the necessity of electing officers to fill some of the county offices, one year ahead. He was in favor of having annual elections provided for, and of having the term of office of the different officers expire at different times. There would thus be occasion for annual elections, and he thought it was proper that elections should be held annually.

Mr. PRATHER said he would accept the amendment of the gentleman from Tippecanoe, if it were in order for him to do so.

The PRESIDENT. The Convention has acted upon the amendment of the gentleman from Jennings. It is not within his power now to modify it.

Mr. RITCHEY said he had taken ground last summer against the change that was proposed to be made in regard to the holding of elections. He was opposed to the provision in the new Constitution, for having biennial ses-

sions of the Legislature, and the strongest objection to it in his mind was the fact, that it would necessarily carry with it the provision that elections should be held only once in two years. He believed that the body politic would lose that interest in its own affairs, that they ought to have, by holding the elections at remote periods. He believed that the term of office ought to be so arranged as to keep up the system of annual elections. He did not like the idea of electing a man one or two years before his term of office commenced. He hoped the amendment of the gentleman from Jennings would prevail, and that we should still have annual elections. He was convinced that no difficulty could grow out of it, if they arranged the time of election of the different officers at the commencement, so as to have the term of service of each commence at a different period from the other. And as to the officers of state, he would much prefer that their term of office should not terminate at the same period, so that there should not be at any time an entirely new set of either state or county officers placed in office, as would be the case if they adhered to the terms of the original section, and provided merely that the elections should be held biennially. It would be much better to have their terms of service to commence at different periods.

Mr. DOBSON said that he foresaw the difficulty there would be in arranging this matter, when it was first proposed that there should be biennial instead of annual sessions of the Legislature. What was it that they had already provided? It was that there should be elected, in each county, a clerk, auditor, sheriff, &c., at the time and place of holding the election for members of the General Assembly. And a little further on, it was provided, that a Governor shall be elected at the time and place of holding the election for members of the General Assembly, and if two or more candidates should have an equal number of votes, the General Assembly was to decide who should fill the office, &c. In undertaking to break joints, gentlemen were very likely to break things all to pieces. A little further on, it was provided that, in the case of the election of Governor, the votes shall be returned to the General Assembly. But under the new arrangement, they would have to wait two years, before a single step could be taken. If they were to determine, as had been proposed, that the Governor should hold his office four years, members of the General Assembly two years, sheriffs, coroners, and other county officers two years, he would ask what officers they were going to elect at their annual elections? It certainly appeared to him to be quite unnecessary to put the people to the expense of meeting once a year, and holding an election, to elect nobody. There might be special elections in particular counties, but there was no necessity for a gen-

eral election every year. It would not work well. If they are to elect a Governor at any other time than when the members of the General Assembly were elected, how was he to be sworn in? He would have to wait until the Legislature came together. He was opposed to the whole thing. If he were permitted to have his way, however, he would have elections every year, and have the Legislature meet every year. There were about 180,000 voters in the State, and if gentlemen would take the trouble to estimate the expense of holding a general election, they would find that it amounted to a very considerable sum. Fifty cents a day, cash, for the loss of time, besides a great many other losses—wear and tear of conscience, &c.—would be but a moderate computation. When vacancies occurred, it was right to hold elections to fill them; but there was certainly no necessity for the people of the whole State to be drawn from their occupations, and to come up to the polls to fire blank cartridges, when there was no game to be shot at.

Mr. KELSO said he would try to put the proposition in a shape that he thought would be acceptable to the Convention. The amendment of the gentleman from Jennings was to strike out the word "biennial" and insert the word "annual." He would move to amend the gentleman's amendment, by striking out that part of it which required the insertion of the word "annual," so as to leave it in general terms. Now, sir, said Mr. K., one word in reference to this matter. The gentleman from Owen has drawn an unfortunate comparison. He has taken the Governor and traveled through with him; he likes to be in company with great men. Sir, we have provided that when the office of Governor becomes vacant the Lieutenant Governor shall step in and fill the office, so that provision is made that the office shall continue filled, up to the time of the general election. There is no difficulty, then, about that. But suppose a Secretary of State should be elected and within the first six months should leave the State, resign his office, or die; there must be a power somewhere, to fill the vacancy. It is provided that the Governor, or the person filling the office of Governor, shall fill vacancies during the recess of the General Assembly; but it is not contemplated that there shall be such appointment to fill a vacancy for a year and a half. Now by striking out the word "annual" and leaving it to the Legislature to authorize elections when necessary, they will make provision for the filling of vacancies without going to the Governor for a special writ of election.

Mr. TAYLOR said he desired to throw out a few suggestions for the consideration of the Convention in regard to this matter. He had lived for twenty years, he said, in a neighboring State where they had biennial elections and biennial sessions of the Legislature, and he had

never seen any confusion growing out of this system. He thought the section was a good one, and that any amendment would only produce confusion. Now it is known to every politician, continued Mr. T., if not to the whole people, that at all general elections, when your Governor is to be elected, and members of the Legislature, and justices of the peace, and other officers, you get a fair and full vote of the people; but when you divide up the elections, electing half your officers at one time and half at another, you destroy half of the zeal and alacrity with which voters come forward, and you divide the political power of the country. A man will say, "My friends are in office, I feel no interest in the election that is about to take place, I will not give myself the trouble to attend." It is much better, in my opinion, that the people once in two years should assemble and choose their officers; and so long as you have only biennial sessions of the Legislature there can be no necessity for annual elections. I have seen the system in operation, as I have said, for twenty years. It is true the Governor is at all times authorized to order special elections, but no man ever sees a full vote given under such circumstances.

Whenever a full vote is given at an election, the best men will be elected; and in addition to all this, it will be putting the people to a good deal of trouble if elections are to be held in this manner. The people will not know who are to be elected. They will come up to election supposing that the same men whom they had elected twelve months before, are to be re-elected. I think it will be better to leave the section as it stands.

Mr. LOCKHART. Is it in order to move to amend the original section?

The PRESIDENT. It is not in order.

Mr. NEWMAN. Is it not in order to move to strike out and insert?

The PRESIDENT. That motion cannot be entertained until the motion that is now pending is disposed of.

Mr. NEWMAN. My purpose is to amend the section so that the general election shall be held on the first Tuesday in September, and my object is to leave the question open, so that the Legislature may act as their sense of duty may prompt them. The reason why I fix the first Tuesday in September is this: it is about the division between harvest and seed time, and will consequently interfere less with the industrial pursuits of the country.

Mr. MILLER of Fulton moved the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being on the amendment to the amendment, it was not agreed to.

The question then being on the amendment proposed by the gentleman from Jennings, to

strike out the word "biennial" and insert the word "annual,"

It was, by yeas 62, noes not counted, decided in the affirmative.

Mr. NEWMAN then moved his amendment, to strike out a portion of the section and insert "the elections shall be held on the first Tuesday in September."

The question being taken upon the amendment, it was rejected.

The section was then engrossed for a third reading.

Mr. PETTIT. As the next subject that will come up is the malicious [militia] question, and as we are now all in very good humor, I think we had better defer that subject. [A laugh.] I therefore move that the Convention adjourn.

The Convention refused to adjourn.

The article reported from the committee on the militia was then taken up, for a second reading.

The PRESIDENT. Will the Convention consider the sections separately or collectively?

SEVERAL MEMBERS. "Collectively."

The question being put, the Convention decided that the question should be taken on the sections collectively.

Mr. DUNN of Jefferson moved to strike out all of the article except the following: "That the militia of the State shall consist of all free and able bodied male persons, negroes excepted, between the age of eighteen and forty-five, to be organized under provisions of law."

It seems to me, said Mr. D., that this is all that need be said on the subject of the militia. It is altogether unnecessary for us to designate here, how colonels shall be elected—how we shall obtain our arms; and all the other minor arrangements. It is only necessary that we should establish general principles by declaring of whom the militia shall consist.

Mr. BASCOM. I have an amendment to offer.

The PRESIDENT. What does the gentleman propose to amend?

Mr. BASCOM. I propose to add the following:

The PRESIDENT. To what does the gentleman propose to add it?

Mr. BASCOM. To what is left of the section.

The PRESIDENT. The question will first be on the motion of the gentleman from Jefferson.

Mr. MARCH moved to amend the amendment of the gentleman from Jefferson, by adding, that persons conscientiously opposed to bearing arms, shall be exempt from serving in the militia, on such conditions as shall be prescribed by law.

Mr. BORDEN. It occurs to me that some provision of the kind ought to be inserted.

Mr. MARCH. The old Constitution contains a provision of this kind, and I think it

ought to be inserted in the new. The class of persons referred to is a very numerous class, and if a provision of this kind be not introduced in the Constitution, it will be very distasteful to them. Inasmuch as they have been accustomed to the exemption, they expect to be still permitted to enjoy it.

The amendment was adopted.

The question being on the amendment as amended,

Mr. MILROY said he hoped that the motion to strike out would not prevail. The article had been prepared with some care. It proposed a system that was somewhat new, but wherever it had been tried, it had been found to work well. It proposed to abolish the system of forcing men to muster, and to substitute the volunteer system in lieu of it. Under the provisions contained in this article, continued Mr. M., no person is forced to drill; but it provides for the organization of volunteer companies for the purpose of perfecting themselves in military discipline. I believe that such a system is in conformity with the wishes of the people of the State. Every gentleman is aware that in the war with Mexico, the volunteer principle worked better than any other that could be adopted. There is no better system in the world. Under that system the country can raise at any time a million of troops, whereas if you leave the matter to the Legislature, you will have no militia at all.

The article also provides that the militia shall be enumerated for the purpose of procuring the quota of arms to which the State is entitled. There is nothing compulsory about it. I hope the Convention will give the matter that deliberation to which its importance entitles it.

Mr. COOKERLY. As this is an important question, in order that we may have an opportunity to consider it, I move that the Convention adjourn.

The Convention refused to adjourn.

Mr. PETTIT. I am free to admit, that I know little or nothing about military affairs. My friend on my left (Mr. Milroy) is well versed in its theory and practice; and I shall be inclined to defer greatly to his opinions. But it appears to me that we need not put a long article in the Constitution in reference to this subject. There certainly can be no great necessity for it. I am for giving it a fair and full consideration however, and in order that it may be further examined and discussed at the proper time, I move that for the present the article and pending amendment be laid upon the table.

The motion was not agreed to.

The question being upon the amendment of the gentleman from Jefferson,

Mr. MURRAY. I should be sorry to see the article stricken out. The old militia system has been nearly abandoned everywhere, and it appears to me that there can be no bet-

ter system adopted in its place than the one here proposed. It compels no one to serve against his will, and provides that a few volunteer companies may be formed, thus securing to the country a class of troops that may be serviceable in case of an emergency. It will also induce the instructing of the officers of those companies in military duty, thus laying the foundation of a system to be hereafter built upon and improved. I hope the section will not be stricken out.

Mr. FARROW said he had bestowed a good deal of attention upon this subject. He had examined the militia laws of several of the States, as well as their Constitutional provisions upon the subject of the militia, and he had failed to discover a system in operation anywhere that was, in his judgment, so objectionable as the system here proposed. These provisions were altogether of a novel character, and he was of the opinion that it would not be found to work well.

There was one very great absurdity to which he would direct the attention of the Convention for a moment. It was here proposed that there should be three companies formed to be denominated active militia, the officers of which companies were to be commissioned for three years. This was the first time that he had ever known, in the organization of the militia of any State, the number of years prescribed for the continuance of the commissions of the officers.

Now, sir, continued Mr. F., I give it as my decided judgment, that under this provision, if you place it in the Constitution, you will not be able to create one solitary volunteer company in the State. I apprehend, sir, there are few men in the State who would accept a commission and prepare himself to fulfill the duties appertaining to an officer for the sake of holding a commission for the short space of three years.

I think all that is necessary to be done in regard to this matter, is that which has been suggested by the gentleman from Jefferson. It is notoriously true, that it must always remain a subject of legislation. It belongs more appropriately to the Legislature than to the Constitution, as we all know. At present there is no necessity for any active operations on the part of the militia of the State, and past experience has demonstrated that it makes but little difference whether the militia have any previous training or not. All that they may have learned in that way has to be unlearned when they are called into service. I hope that we shall not encumber the Constitution that we are about forming with any provision on the subject beyond a mere recognition of the militia.

Mr. SPANN said, that as one of the members of the committee from which this article had been reported, it might be proper for him to say, that while he had no desire to place before

the Convention a lengthy article, he, nevertheless, desired that it should correspond somewhat with the article in the old Constitution, and at the same time introduce such an improvement as would make it more acceptable to the Convention and to the people of the State. If it were true, as gentlemen had asserted, that the chivalry of the country was always reliable when an emergency arose, without any previous preparation, it would be well enough to pass the subject by. But gentlemen seemed to rely upon future legislation for almost every thing.

I shall not, continued Mr. S., oppose any change in either the language or substance of the report that gentlemen may desire to make, so that they will allow it to contain something as a basis for future legislation; and by means of which we may draw from the General Government the arms to which the militia of the State are entitled, and provide for the preservation of those arms, &c. It appears to me that the system here proposed would have a salutary effect in encouraging the young men of the State to form volunteer companies, and to prepare themselves by training for military duty.

But that certain religious denominations—persons professing to have conscientious scruples against bearing arms shall be exempt—is a thing that I see no occasion for. I am opposed to any special exemptions. I am for placing all upon an equality. If we exempt one person we may be called upon to exempt another. Every person should be held liable to perform military duty when the exigencies of the State require such service, or else to pay an equivalent. I care very little about the wording of the article, but I hope it will not be stricken out altogether.

On motion by Mr. CLARK of Tippecanoe, The Convention adjourned.

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SATURDAY, DEC. 28, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

The journal of yesterday was read and approved.

CORRECTION.

Mr. MAGUIRE. I rise to call the attention of the Convention and of the Reporter to a material error which occurs in the published report of the proceedings of Friday morning, December 13. It is stated by the Reporter that Mr. Kelso moved to re-commit the 18th section of the article on the Legislative Department, with instructions to strike out that part of the section which requires two-thirds of each House of the General Assembly to pass a bill over the veto of the Governor, and insert a

majority of both Houses, and I am represented as voting against the motion. The motion made by Mr. Kelso on that morning, against which I voted, had reference to another and a different section. The report represents me as voting on the veto question directly against my own sentiments. There are many questions about which I have doubts, but this is not one of them, for there is no question presented to this Convention in relation to which my mind is more fully settled than this one concerning the veto power of the Governor. I am in favor of the qualified veto as provided in the old Constitution, and as it was settled yesterday by a majority of this Convention, and I am opposed to any increase of the power of the Executive on that subject. If I had obtained the opportunity which I desired yesterday to give my views on this subject, I should not have troubled the Convention with this explanation, but inasmuch as I was denied that opportunity by the call of the previous question at the instance of the gentleman from Johnson, (Mr. Hardin,) there was no mode left by which I could place myself right on the record but to make the explanation here; for the permission to do so I return my thanks to the Convention.

FINAL ADJOURNMENT.

Mr. BORDEN. I hold in my hand a resolution which I desire to present, but I have understood from a previous decision of the Chair that a resolution proposing to adjourn on the 15th of January, has been already indefinitely postponed, and the Convention cannot again entertain a resolution upon the subject of a final adjournment, until the vote upon the question of indefinite postponement of the resolution already offered on the subject, be re-considered. I therefore hope that some one who voted in the majority will now move a re-consideration of the vote indefinitely postponing the resolution which proposed to adjourn, so that I may be enabled to present a proposition upon the subject.

Mr. BASCOM rising, Mr. BORDEN gave way, when,

Mr. BASCOM moved to re-consider the vote.

Mr. BORDEN. The resolution I desire to submit sir, in case the motion to re-consider, made by the gentleman from Wells, (Mr. Bascom,) shall prevail, provides that the Convention shall adjourn finally, upon the 1st day of February next.

I am fully satisfied, sir, that if we will meet at 8 o'clock in the morning of each day, and instead of taking up the time by motion after motion to adjourn before it is necessary, and adopt a standing rule to take a recess at noon, without a motion to adjourn, and then after that noon recess, work steadily until it is dark, we can easily get through with our business by the 1st of February. It appears to me we should en-



deavor to economize our time and avoid making motions to adjourn before the proper time arrives.

During the last two or three weeks, gentlemen must surely have remembered that we have adjourned sometimes a-half or three quarters of an hour, and in one or two instances, an hour before dark; or at any rate, we have adjourned so early that I have had considerable time to sit in my room and read before dark. We have hired this room at the public expense; it can be splendidly lighted up at night, and in my opinion, we could spend the time between seven and nine o'clock at night, in transacting the business of the people, and I see no reason why we should not do it.

I trust, therefore, that the motion of the gentleman from Wells will prevail, and that we will now determine upon the day on which we will finally adjourn. If we will find that day of adjournment, then every member will put forth an exertion to work up to the time, and in my opinion, it will have a tendency to shorten our sessions some two or three weeks.

Mr. KELSO. It is a direct slander upon this body, even to insinuate that it has not worked ardently, especially during the last four or five days. At the very time, sir, when we have really got into the work, we are pestered with motions to adjourn at a given period. As regards the statement of the gentleman that we adjourn before dark, I have only to say that I have sat in this body when it did not adjourn until it was so dark where I sat, that I could not see to read, so that the gentleman from Allen must have gone out of doors to see to read on those occasions. I do not believe sir, that this Convention is disposed to trammel itself with any resolution of this kind.

I maintain that we have always been industrious in the way we have thought best. We have assembled here to transact important business. We have convened to reason together and discuss the propriety of certain amendments to the Constitution; and it is not to be expected that we will hurry over our important business in order to get through with it by a certain day, thereby jeopardizing the interests of the people in presenting them with an immature and injudicious form of government. I trust that the Convention will refuse to re-consider this vote, and then if there comes a time when we fail to perform our duty and become lax in our mode of transacting business, such a motion can be brought forward to admonish us of our duty.

Mr. BORDEN. I desire to say a few words before the question is put, in reply to the remarks of the gentleman from Switzerland (Mr. Kelso). I am not, sir, in the habit of speaking disrespectfully to any man or body of men, as the gentleman intimates I have done, in the position I have taken upon this question of adjournment. I do not know but that all of us are more or less to blame for protracting the sessions of this Convention, and therefore it was

the farthest from my intention to throw blame upon any one in particular, nor did I design to speak disrespectfully of the body itself; consequently I think it very wrong to charge me with any such intention. My action upon this subject has not been the result of a deliberate purpose to injure the Convention in public estimation, or the work which may be the result of its labors, in the good opinion of the people; on the contrary, it is based wholly on the wishes expressed or implied of those I represent on this floor. There is, sir, a general complaint not only in my own district, but if I may be allowed to infer from what I have seen in the papers, and upon what has been stated by gentlemen who have been home recently to their constituents and returned, there is much dissatisfaction throughout the State, at the tardiness of our proceedings. They believe this Convention is extending its sessions to too great a length in consequence of the introduction of subjects wholly foreign to the object for which it was convened.

I do think, sir, that we ought to proceed with the business before us, and with much greater dispatch, but I have no hope of seeing this object accomplished, unless we now fix upon an early day for final adjournment.

Mr. BASCOM. I did not make this motion for the purpose of exciting debate, and thereby taking up the time of the Convention. I will therefore withdraw the motion to re-consider.

The discussion here ended.

#### SUPPORT OF ORPHANS.

Mr. FOSTER offered a resolution of inquiry, as to the expediency of inserting a provision in the Constitution, in aid of the support of destitute orphan children.

Mr. F. said. I do not pretend to the pater-nity of this resolution; it was suggested to me by a benevolent gentleman this morning, who occupies a high position in society. I think, sir, that a provision of this kind should be included among those that are enacted with reference to other benevolent institutions. We can easily decide as to the mode of educating these children and the propriety of giving them some mechanical employment hereafter. I think it is a subject worthy of the consideration of the Convention.

The resolution was adopted.

#### LICENSE.

Mr. ROBINSON offered the following resolution:

*Resolved*, That a select committee, to consist of seven members, be appointed by the president, whose duty it shall be to report a section for the new Constitution in substance as follows:

SECTION 8.—The General Assembly shall not pass or continue in force any law authorizing the grant of any license or permit for the sale of any ardent spirits or intoxicating liquor.

Mr. R. said: Under the five minute rule I can but barely allude to the subject embraced in this resolution. I have offered it for the purpose at the proper time of bringing the Convention to a direct vote upon it. It would, perhaps, be out of place for me here to talk about the evils of intemperance; but I think I may be permitted to say that I do not think any delegate on this floor can offer any reasonable objection to the section contemplated by the resolution being incorporated in the Constitution. This section, sir, leaves the question, of vending ardent spirits an open question to be governed in future by whatever may be the public feeling and sentiment of the community. I would remark further here that there is an enterprize now going on in the country, and admired I believe by every gentleman on this floor—an enterprize that promises at no very distant day to effect a wholesome reform in the business growing out of the sale of ardent spirits. These individuals who are engaged in this reformation are anxious, and the people generally are anxious—and petition after petition has been presented to this body to that effect—that we should erase such provisions from the Constitution as will give license to the traffic in ardent spirits so that that question may be left open to be settled by the voice of public sentiment in the future. I desire then a direct vote upon the passage of the resolution, and upon the question of the passage of the resolution. If I can get friends enough to second the call I shall demand the yeas and nays.

The resolution lies over under the rule.

#### TIPPECANOE BATTLE GROUND.

Mr. GREGG offered the following resolution, to-wit:

*Resolved*, That the committee on "public institutions of the State" inquire into the expediency of inserting in the new Constitution a section providing for the erection of a suitable monument on the Tippecanoe battle-ground, to commemorate the valor of those who fought, and perpetuate the memory of those who fell upon that bloody battle-field.

Mr. G. said: I do not know, Mr. President, that this is a question which comes properly within the purview of our duties, powers, and responsibilities as a constitutional convention. Indeed, sir, I am apt to believe that it is one which belongs more especially to the legislative department of our government. But, however this may be, I am well satisfied that it is one of those great and peculiar questions of the day, which overleaps all mere conventional rules, and addresses itself at once to the patriotic emotions and sympathies of every American heart, and especially of every citizen of Indiana, whether by birth or adoption.

It will be recollected, sir, that on last Saturday a resolution was introduced by the gentleman from Tippecanoe, (Mr. Pettit,) and which

was unanimously adopted by this Convention, directing the committee on the public institutions of the State to inquire into the expediency of providing in the Constitution for the permanent inclosure of the Tippecanoe battle-ground, donated to the State by Gen. John Tipton.

Now, sir, while I concur most fully in the object and design of that resolution—while I would afford the most ample protection, from rude disturbance, to those sacred relics of the dead that slumber there—while I would preserve from waste the shrubbery and forest trees that cast their cooling shadows o'er their graves—I would desire to go one step farther towards carrying out the laudable design of Gen. Tipton in making the grant, as well as the avowed object of the Legislature in accepting it, by providing also for the erection of a suitable monument to perpetuate the memory of those sainted heroes who laid down their lives for their country on that ever memorable battle-field.

Sir, I subscribe most cordially to the sentiment, "that, wherever a drop of blood has fallen for freedom, that spot should remain forever sacred." Let us not then forget to cherish the hallowed places we hold in our midst—places that are yet covered with the fresh laurels that immortalize them. Let us keep them forever green, by planting them with the undying verdure of a grateful remembrance, and bedewed with the tears of a nation's gratitude. To this end I desire to see the most efficient measures adopted for the preservation of all that pertains to the Tippecanoe battle-ground. To this end I desire to see a monument erected upon that consecrated spot, that shall be alike honorable to the dead, and creditable to the living. Sincerely do I hope that we may all cheerfully join in the accomplishment of so desirable an object.

And here, Mr. President, I hope I may be pardoned for alluding in this connection to an article which I find in a late number of the Madison Courier, and which was written by a gentleman who, by the courtesy of this body, holds a seat upon this floor as a regular reporter of our proceedings. I mean the gentleman who sits there (pointing to Mr. Bolton). And I assure the Convention, in all sincerity, that, although I felt indignant at first at the unjust imputation, I refer to it now more in sorrow than in anger—sorrow, that any gentleman who loves his country, and reveres the memory of the honored dead, should so far forget himself as to endeavor to draw political capital from such a source as this. Why, I would as soon think of desecrating the grave of my grandmother, to despoil her of her winding sheet, as to cause the dust of those slaughtered heroes to minister to such an unholy purpose.

Mr. HOVEY. I rise to a question of order. I desire to know whether it is in order for the



gentleman to refer to an article in a newspaper, or to read the same in debate.

The PRESIDENT. The gentleman from Jefferson cannot proceed to read the article without leave of the Convention.

Mr. GREGG. Then I ask leave of the Convention to read the following extract from the article alluded to for the better understanding of this subject.

Leave was granted, and Mr. GREGG proceeded to read the following:

"Mr. Pettit offered a resolution, as to the expediency of a provision in the Constitution, providing for an inclosure around the Tippecanoe battle-ground; which was adopted.

I hope this measure will prevail. I passed over this battle-field a few months since, and found the fence broken down and the cattle and other animals passing over the graves of the heroes who now sleep their last sleep on that consecrated spot. Several of the old forest trees have recently been cut down; and, as there is no one to look after it, others will be destroyed. Gen. Tipton would not sell, but donated the ground to the State, on the condition that it should be inclosed, which was complied with by the erection of a temporary board fence, which has now gone to decay, and the graves and ground are open to the commons. *The whigs have no more political objects to accomplish, and have left it a deserted waste.* There was democratic blood shed on that battle-field, and I hope the democratic majority in the Convention will not fail to back Mr. Pettit in his laudable efforts to comply, at least, with the agreement entered into with Gen. Tipton, who is no longer living to enforce it."

Before the reading was entirely through the Chair announced that the gentleman's time was up.

Mr. GREGG. I regret that this inexorable rule prevents me from concluding the few remarks I had intended to make on this subject. I take my seat.

Mr. BASCOM moved to lay the resolution on the table.

Upon this motion the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 16, nays 95:

YEAS.—Messrs. Ballingall, Bascom, Bracken, Butler, Chandler, Davis of Vermillion, Fisher, Gordon, Hardin, Hitt, Hovey, McClelland, Milligan, Moore, Smith of Scott, and Wiley—16.

NAYS.—Messrs. Allen, Anthony, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bryant, Carr, Carter, Chapman, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hogin, Howe, Huff, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire,

March, Mather, May, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Sherrod, Sims, Smiley, Sneok, Smith of Ripley, Spann, Steele, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wheeler, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—95.

So the resolution was laid upon the table.

Mr. PEPPER of Ohio moved to amend the resolution by inserting the following words: "by inviting donations."

Mr. GREGG. I will accept the amendment.

The PRESIDENT. The gentleman cannot accept the amendment. The resolution is no longer under his control.

The question being put, the amendment was agreed to.

Mr. LOCKHART moved to amend the resolution by adding the following: "and also to inquire into the expediency of erecting a monument at the capital of the State, to the memory of the gallant volunteers who fell in Mexico."

The amendment was agreed to.

The question being on the adoption of the resolutions, as amended,

Mr. OWEN. I have not risen for the purpose of saying a word in regard to the expediency or non-expediency of incorporating this matter into the Constitution; but I think, sir, that when a personal attack is made by a member of this Convention upon an individual who has not the privilege of replying, it may not be improper that some one who has that privilege should say a word in reference to it.

If there is an individual on this floor, who has realized the fable of the mountain in labor bringing forth a mouse, it is the gentleman from Jefferson. I submit to every member of this body if the whole course of that gentleman, except so far as the single question of the admission of negroes is concerned, has not consisted in a series of attacks, first upon our Stenographer, and now upon the correspondent of a newspaper.

Sir, I believe this Convention will do me the justice to say that no man is less disposed to make political capital out of such a subject as that which is now before us, than I am. Yet it will not suffer denial that there was a time when it was considered almost like a pilgrimage to Mecca to visit the battle-ground where so many of our fellow-citizens yielded up their lives in defense of their country.

The battle-ground was naturally better cared for then. Yet that spot belongs to no party; it is the battle-ground where men stood up as Americans, not as partisans; and its protection and inclosure ought to be cared for by the State.

The gentleman has seized upon this occasion to make one of his customary assaults upon the democratic party. This ebullition of feeling was elicited, it seems, by a communication which appeared in one of the newspapers. A strange matter to introduce here! Are we to spend our time in deciding the accuracy of every report of our proceedings which every days mail carries east or west, north or south, to the remotest corners of the State? We shall have a pretty task upon our hands; and may sit here till mid-summer, ere we complete it.

Let us suffer the correspondents of the press to relate matters in their own way; if for no other reason, because they have no voice here. I was early taught to believe, and have never forgot the lesson, that it is unmanly and derogatory to the character of a gentleman, to attack, under any circumstances, a defenseless man.

Mr. SMITH of Ripley. This is all very irrelevant to the question before the Convention, and, sir, in my view of the matter, it is very much out of place, at a time when we are considering of the propriety of erecting, upon the battle-field of Tippecanoe, a monument to the memory of those who fell on that field. Sir, it requires no monument of marble, to perpetuate the memory of those who fought at Tippecanoe. Their monument exists in the hearts of their countrymen. You need erect no monument to the soldiers who fell upon the battle-fields of Mexico. You need rear no huge column of granite or marble. Such things perish; but the memory of brave deeds never perishes. Go to the city of Washington, and look at the monument that has been there erected to the memory of those who fell at Tripoli. See the mouldering condition in which it now is, whilst the memory of their deeds is fresh in the minds of Americans. Who is there that would fail to be convinced that they need no monument erected by human hands. Their deeds have erected for them a monument more durable than brass. *Erexerunt monumentum aere perennius.*

Sir, Buncombe enough has been made out of this matter. It was introduced in that spirit originally, I have no doubt, and the proposition has been renewed this morning, in the same spirit. The gentleman says we fought upon the battle-field of Tippecanoe, for freedom. That is partially true, but it would be nearer to the exact truth to say, that we fought in defense of our homes and in defense of our property. The foe that we had to contend against was the savage of the forest. Why should you erect a monument there? There are many other battle-fields besides that of Tippecanoe. The State is dotted all over with them. If we undertake to erect monuments upon fields that have been made glorious by the blood of heroes, we must look to other fields, as well as the field of Tippecanoe.

Mr. President, the suggestion that has been made is a good one, that we should call upon the people of the State of Indiana to inclose this battle-field, and to build a monument there. And, sir, they will contribute liberally for a purpose like this, whether it be in reference to the battle-field of Tippecanoe, or to any other.

Mr. DUNN of Jefferson. I can appeal with confidence to the members of this Convention to sustain me in the assertion, that I have never, in this Convention, either directly or indirectly, referred to any subject, or made any remarks calculated to excite party feelings. Nor should I depart from my course, on this occasion, but for the remarks made by the gentleman from Posey, (Mr. Owen,) in censure of my friend and colleague from Jefferson (Mr. Gregg). I do not feel disposed to leave my friend under the imputation of having made a cowardly attack upon a gentleman who has not the privilege of reply. I do not arise to apologize for the remarks of Mr. Gregg; but to justify them. When a man, by the courtesy of this body, occupies a seat in this Hall, as a reporter, he is bound, as a gentleman, to pay a decent respect to the feelings of every member of this Convention; and when he can so far forget himself as to violate propriety in this respect, he deserves to be publicly rebuked for his misconduct. The member feeling himself aggrieved by the communications of a privileged reporter, is not to be driven to the necessity of redressing his grievances through the columns of the newspapers, but the custom is, publicly to notice the offensive statements, in the body of which he is a member, as has been done on this occasion. And if the offense is an aggravated one, the usual custom is to deprive the offender of the privilege of a seat as a reporter. This has been repeatedly done in Congress, and in other deliberative bodies. My colleague has not thought proper to give so much consequence to the offending reporter, in this instance, as to move his expulsion, but has contented himself with a public denunciation, on this floor, of the offensive article. Let me direct the attention of the Convention to that part of the reporter's article, to which my colleague has taken exception. It is as follows: "The whigs have no more political objects to accomplish, and have left it (the Tippecanoe battle-ground) a deserted waste. There was democratic blood shed on that battle-field, and I hope the democratic majority in this Convention will not fail to back Mr. Pettit in his laudable efforts to comply, at least, with the agreement entered into with General Tipton, who is no longer living to enforce it." The imputation is, that whatever interest the whigs may have heretofore manifested in having that battle-ground properly inclosed, was merely to make political capital out of a pretended respect for the resting-place of the heroic dead who lie buried there, and having failed to accomplish that object, they have



left the battle-ground a deserted waste. Who does not know that this charge is without foundation? It has never occurred to me to inquire whether the whigs or the democrats first caused that ground to be inclosed. I doubt not it was by the united votes of both parties, and from the most patriotic motives. But I know one thing, that is, that all the branches of our State Government, for the last several years, have been in the possession of the democratic party, and that if any party is responsible for this neglect, it cannot be the whig party. The reporter calls upon the democratic majority in this body to come to the aid of Mr. Pettit; as though any person, either whig or democrat, had made any opposition to the resolution offered by Mr. Pettit. Mr. Pettit's resolution is too much in harmony with the patriotic feelings of every citizen of this State, to excite opposition in any quarter. No Honorable member of this Convention would, upon this floor, have uttered the sentiments contained in that article, or if he had done so, his remarks would have been received with manifest disapprobation by this body. But when a gentleman who, by your courtesy, occupies a seat as a reporter in this Hall, publishes to the world such sentiments—insulting, not only to the whigs of this body, but to all the whigs in the State—and he is publicly rebuked for the slander in this Hall, by a member of this body, that member is charged with the cowardice of attacking a man who has not the privilege to reply! That reporter has ample opportunity for replying. He daily uses the columns of two of the most extensively circulated papers in the State. Their columns will afford him ample opportunities for defending himself from all attacks that may be made upon him here. Let him observe that regard for the truth, which every gentleman should observe, and he will have no occasion to defend himself from another such attack, either here or elsewhere.

Mr. CARTER. I am somewhat surprised that on to-day, for almost the first time since the commencement of this session, the fire-brand of party has been thrown into this Convention.

And here let me remark, in the outset, that the gentleman from Jefferson, (Mr. Gregg,) has been the first and last man who has made party strife in this Convention; and, sir, if party is to be the real principle of action in this Convention, the gentleman is in a miserable minority, and I certainly think that it would be prudent, on his part, to keep cool. I am a member of the party which the gentleman so strongly opposes, and the honesty of its actions, and the purity of its principles shall not be attacked in my presence, and I remain silent; while at the same time, I stand ready to denounce any man who will attempt to bring party strife into our deliberations, when, with but one or two exceptions, the name of party has been unknown. So far as the

question which is more properly before us, is concerned, I will say that I can see no use in adopting any of these resolutions or amendments. They embody purely legislative matter. I would like to see monuments erected, not only to the heroes of Tippecanoe, but to those who fought in Mexico and elsewhere. Sir, I revere the memory of those who were "baptized in fire and blood," upon the heights of Monterey, and the plains of Buena Vista; I cherish, too, the memory of those who bled in the defense of our State, while we were in our cradles. Sir, as has justly been remarked, all those heroes have their monuments, not on the battle-field, or the streets of Indianapolis, but on the hearts of every citizen of the State of Indiana, and of every patriot of a grateful nation of millions of freemen. History and a nation's gratitude, are their monuments, which neither time nor the elements can destroy, which are co-existent with the idea of our nationality, and our freedom.

Why is it that such a proposition as this is sought to be made a part of the organic law of the State? Is the erection of a monument a principle to be ingrafted into a Constitution? If so, to what part of the organic law does it belong—the legislative, judiciary, or executive? I can see in it no restriction on legislation; nothing to secure the speedy execution of justice, or the faithful execution of the laws. Surely the Legislature has the power of erecting these monuments, if we should "forever hold our peace." Then what is this proposition for?

A VOICE. It is for Buncombe.

Mr. CARTER. Yes, sir, it is for Buncombe and the securing of a few votes, not forgetting, however, the chance to make an attack on the Reporter of the Sentinel. In that attack, I wanted to see a fair fight, and would much prefer to have seen the gentleman from Jefferson, (Mr. Gregg,) meet his opponent on equal terms through the columns of the newspapers, than insist on his right to speak here, where the Reporter has not the power to reply.

So far as the Reporter is concerned, I know nothing of him, except the knowledge I have gained by my stay here. I have found him a gentleman in every sense of the term; and, so far, he has said nothing that would have a tendency to produce dissension, or party feelings in this Convention. The Sentinel, as well as the Journal, have defended the Convention throughout, and I am very sorry to see any attempt to draw party lines.

I hope that these resolutions, and all similar ones, may be informally laid on the table.

Mr. PETTIT. I have not risen to debate the question, but merely to do justice to a gentleman on this floor, in reference to the subject matter of the resolution which I introduced a few days ago. I never desire to appear in borrowed clothes. It is due to a gentleman, who represents the county of Warren, to say that

the idea that was embraced in the resolution that I offered was not mine, but that it originated in the head and the heart of as pure a man, and as modest a man, too, as any in this assembly. He, not being the representative of the county of Tippecanoe, and not wishing, perhaps, to take away from the representative of that county the privilege of moving in the matter, stated to me one day that he had a vivid recollection that that ground had been donated to the State upon the express condition that it should be inclosed and kept sacred to the memory of those who sleep there. The gentleman to whom I refer is Mr. Bryant. He called my attention to it in this way: He said, you are a delegate from the county of Tippecanoe, and your constituents are the more immediate guardians of that battle-ground. He then suggested that I should present a resolution upon the subject. It was at his instance that I did so. It was the promptings of his head and heart. It is a matter worthy of the gentleman, and he is worthy of the occasion. Sir, I have been informed that Gen. Tipton was applied to to know upon what terms he would surrender the property to the State; and to the application of the Governor he returned for answer that he would make it a free gift to the State, provided the State would keep it inclosed. I learned this from the gentleman from Ohio, and I am glad to see that he is now in his seat. He told me that he was the bearer of the letter to Gen. Tipton, and of the General's reply; and that his recollection was plain and vivid, that the condition upon which the transfer was made, was that of perpetual inclosure, and nothing else. I said that the committee would easily be able to find the deed of transfer, and if they found that such was the condition, good faith required—the credit of the State demanded—that we should comply with it, and that we should not trust the matter to the carelessness of the Legislature, but make it a permanent provision in the Constitution, and let it stand out to the living masses that Indiana has not been recreant to her undertakings and obligations.

Sir, I have said this much in regard to the introduction of the subject; and it was merely for the purpose of placing the credit where it properly belongs. It belongs to the gentleman from Warren, and I am willing that he shall enjoy it.

Mr. PEPPER of Ohio. My name having been referred to in connection with the subject of the Tippecanoe battle-ground, I esteem it a pleasure on this occasion, to state my recollection in regard to it, and to remind the gentleman from Tippecanoe (Mr. Pettit) that I told him he ought to introduce this proposition, because he was the delegate from the county, within whose limits this battle was fought; and that if he did not, I most assuredly would.

Mr. PETTIT. Upon reflection I believe the gentleman from Ohio (Mr. Pepper) did first speak about it, but I get my book evidence from the gentleman from Warren (Mr. Bryant).

Mr. PEPPER. My recollection of the circumstance connected with the inclosure of this battle-ground is this: In the year 1829, about the time when I went to reside in the Indian country, I met Gen. Tipton at Indianapolis. The General informed me that a few evenings before he left Logansport and traveled, all night in order to get to Crawfordsville, and bid for the tract of land. He declared to me then that he purposed giving the ground to the State, if it would inclose it, and take care of it. Some years afterwards, I was the bearer of a communication between Governor Noble and General Tipton, and an arrangement was agreed to, by the Governor, which was submitted to my notice. It was an entire acquiescence with the proposal of the General, providing the Legislature concurred in it. I know, sir, from frequent visits to the place, that it is now in a very dilapidated and neglected condition.

The conditions in the deed were that the ground should be kept decently inclosed. I have no idea that any member here contemplated making political capital out of the introduction of this measure. I think it is unjust to attribute any influence of this kind to members. I am sure from the conversations I have had with the gentleman from Tippecanoe and the gentleman from Warren that they had no such views; nor would I, even if such motive had been charged upon them, have allowed myself to be deterred from doing what I considered to be my duty. And as the Legislature has hitherto neglected to do its duty by fulfilling its contract, I can see no impropriety in providing for it in the Constitution.

Mr. SCOTT moved that the resolution and amendments be referred to the committee on Public institutions.

The resolution was agreed to.

#### ORDERS OF THE DAY.

Mr. HUFF offered the following resolution: *Resolved*, That the Convention will now take up the orders of the day.

The resolution was adopted.

The twenty-first section of Report No. 17, making provision with reference to the filling of vacancies in office, by the Governor during the recess of the General Assembly, was then taken up and read a third time and passed.

#### THE VETO POWER.

The twenty-second section of Report No. 17, referring mainly to the exercise of the veto power, was then taken up and read a third time.

Mr. THORNTON moved to re-commit the section with the following instructions: strike out the word "five," in the 107th line and insert the word "three;" and at the end of the section



insert the following: "But the power by this section conferred upon the executive to return a bill with his objections shall be confined to matters only involving the Constitutionality of the same."

Mr. T. said, when this subject was up on yesterday I had the misfortune not to be present, and when the vote was taken upon it I did not have the opportunity of recording my vote.

Now, sir, I am not one of those who would ask the Convention to give me permission to place my vote on the journal, unless I had attended to my duty. Circumstances, however, not within my control, obliged me to be absent on yesterday when the vote was taken upon this subject; still I will not trouble the Convention by asking this privilege. I do not feel disposed to repudiate the veto power entirely, but I must say that I entertain no great predilection in favor of that power, but look upon it as a relic of old British tyranny. I view it as a power emanating from a source for which I have no particular regard, and I think that, generally, it has been productive of more harm than good. I admit that under the old state of affairs, when there was a great deal more of local and hasty legislation than there is likely to be under our new Constitution, the exercise of the veto power has had a salutary tendency; but at the present time, when a system of general and uniform legislation is about being adopted, under the many and wholesome guards and restrictions we have or are about to interpose, around the process of future legislation. I do not see how any particular necessity for the exercise of this power can arise. I think then, sir, that this section is fraught with mischief. I understand that by it the Governor may, if he chooses so to do, pocket every bill passed within five days before the termination of the session. This is too great a power to be given to any one man. I am willing to see him have a *qualified* veto, and would be disposed to confer on him the right to return a bill, with his objections, provided they were confined to the constitutionality of the proposed measure, but I have great and insuperable objections to his interposing his veto upon any measure, merely upon grounds of expediency *alone*. I cannot but think that when any proposition has received the sanction of the immediate representatives of the people, who, coming fresh from among them, are presumed to be charged with their instructions and wishes, and enjoying their confidence, that it ought not to be outweighed or nullified by the arbitrary fiat of a single individual; and more especially when it is remembered that no law *can* be hereafter passed but by the vote of a majority of the members elect to the Legislature, and *that* confined to general subjects of legislation and gravely and formally expressed by ayes and noes, entered at length upon the journal. I believe that the exercise of the veto power, if thus guarded, might be

productive of no mischievous results; but, on the contrary, might have a good effect. If we restrict the right of the Executive to withhold a bill or resolution to *three* days instead of *five*, as provided in the section under consideration it would not be so very objectionable; still it would be leaving in his hands an extraordinary power, which would be liable to great abuse.

In the Constitution of Kentucky it is provided that bills remaining in the hands of the Executive ten days, unless returned within three days of the succeeding session, shall become laws. We cannot have that advantage here, because of biennial sessions; and if the Governor pockets bills within five days preceding the end of one session, they remain there for two years. This, sir, I can never consent to, and I earnestly call upon the members of this Convention to remedy this evil before it is too late.

I know a great deal has been said about the salutary exercise of the veto power in eighteen hundred and forty. Now, sir, I do not desire to call up reminiscences of *that* period; I wish to act with reference to the *present*, and for the future to guard the exercise of this power so that it may not be used unwisely and unjustly upon posterity. Out of some thirty-one States in this Union, there are some eight or nine have omitted to adopt the principle of this section, or any veto whatever; and we find among them the old mother of States, Virginia. Without reference, however, to the action of other States, I desire to see the power rightly restricted in our own State. I was sorry to see the odious name of John Tyler invoked, by the Honorable member from Tippecanoe, when replying to my friend from Cass—a name which, when pronounced, only excites feelings of unutterable scorn and contempt from every honorable man, let him belong to whatever party he may. I trust the section will be re-committed, with the instructions I have proposed.

Mr. READ of Monroe. I hope the section may not be re-committed, with instructions as proposed by the gentleman from Floyd.

The great vice of republics, of all popular governments, is excessive legislation. This is an evil which has afflicted our State, and all the States. It has cried aloud for correction. The new Constitutions have provided various means for the prevention of hasty, injudicious, fraudulent, or unconstitutional legislation. This has been one of the great objects of constitutional reform. A single bad law may, in mere money, cost the people of the State more than many sessions of the Legislature. Dearly has this State paid for improvident legislation.

We have adopted, by a vote of this Convention, several most salutary restrictions. I trust we shall not remove any of those wise and prudent safeguards found in the old Constitution; among which, as I hold, is the modified veto power (if indeed it deserves this name)

which may be exercised by the Governor. We have already voted that every bill must, in order to become a law, receive a majority of the votes of all the members of both Houses. We have voted that the names of all members voting for or against any bill, shall be entered upon the journals. We can have no more laws which nobody ever voted for. Let us now vote to retain that power which the Governor has of recalling the attention of the Legislature to oversights, or wrong acts of legislation, and of making a review, with new lights before them, necessary to the final passage of a law. This is the extent of the power, nothing more. It is a power which has been less abused to mischievous ends, than any other found in the now existing Constitution. It is a restraining power only. It is a shield, and not a sword.

The gentleman has referred to the Constitutions of other States in which this power is not found, and among others to that of Ohio. Let me remind the Convention that it is proposed to introduce this very power into the new Constitution of that State, and that the mover of the proposition in the Ohio Convention was Samson Mason, a gentleman of eminent ability as a close thinker, known to many members on this floor, and whose party predilections surely would not incline him to the measure upon party grounds.

I trust, sir, that while our elder sister is adopting this provision which she has not heretofore had, we shall not reject it, when it is commended to us by our own experience.

MR. BORDEN. I am entirely satisfied with the veto power as it exists in the present Constitution, and I do not believe that it can be modified much for the better. I am opposed to the proposition as it has been reported by the committee, because it extends the veto power too much. While there is great propriety in requiring two-thirds of each House of Congress to pass a bill over the President's veto, owing to the great extent of the United States and its diversified interests, I have thought that unless a measure could receive the sanction of the President, or if it was opposed to his opinions and yet should receive the vote of two-thirds of each House of Congress, it should not become a law. But the same rule should not apply to the States. I do not concur with those who wish to abolish the veto power entirely in our State, but wish to retain it in the modified form in which it exists in the present Constitution of the State.

Another reason why I oppose the section as reported by the committee is, that we have extended the term of the Governor to four years. Now if we allow him the veto in the manner proposed in the present section; and especially if we authorize him to take a bill he might disapprove of and hold it over, and the Constitution should not require him to return it to the Legislature, it would extend the veto power

very much in our State. If the Governor was to be elected every second year, there would be a restriction upon the undue exercise of this power; for if he vetoed a bill approved of by the people, he would stand a chance of not being elected again. I think, on the whole, sir, that we ought to retain the veto power as it exists in the old Constitution.

MR. HOWE moved to amend the instructions so that they should read "strike out the present section, and insert the twenty-second section of article four, of the present Constitution."

MR. H. said, I object to the present section, sir. The section in the old Constitution upon the same subject, does not meet altogether with my acceptance, but of the two the old one I think is vastly preferable.

This section we are now considering, confers too much power upon the Governor in one particular, and in another particular not enough. It will answer very well for a season of peaceful legislation, but let times of difficulty arise, and it will not answer; and it is our duty—the duty of all true statesmen—to provide for all contingencies in the organic law. This provision of allowing the majority of the Legislature to set aside the veto of the Governor, is but a mockery of itself, if real danger to the Constitution arise. In that point of view the power of the Governor amounts to nothing; but there is one clause of the section that confers upon him almost tyrannical power, for it enables him to set aside at his will, without the responsibility of a veto, or even the expression of an opinion, the will of the people as expressed through their legislators. If a bill is sent to the Governor which does not meet his approbation, and remains in his hands by reason of the general adjournment, by what test will you determine whether the failure to return the bill is the result of want of time for its examination, or a private or Constitutional, or other objection. Morally speaking then the section is contradictory, by conferring an implied and marked tyrannical power in one particular, and conferring upon him the pageant—the mere semblance of power in another.

MR. EDMONSTON. I can see no propriety in the further continuance of this debate, after all that has been said in regard to it. I therefore call for the previous question.

The call having been seconded by the Convention, and the main question ordered to be put—the question was first taken upon the amendment offered by the gentleman from Lagrange (Mr. Howe) to the instructions.

Upon this question the yeas and nays were demanded, and ordered, and the Secretary reported the following result—yeas 68, nays 44:

YEAS.—MESSRS. Allen, Badger, Ballingall, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bryant, Chapman, Clements, Colfax, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Elliott, Foster, Frisbie,



Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Kelso, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Moore, Morgan, Mowrer, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Robinson, Sims, Steele, Tannehill, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Work, Wunderlich, and Zenor—68.

**YAYS.**—Messrs. Anthony, Bascom, Bracken, Butler, Carr, Chandler, Clark of Tippecanoe, Crumbacker, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Garvin, Gootee, Gordon, Graham of Miami, Hardin, Johnson, Kent, McFarland, Miller of Clinton, Milroy, Morrison of Marion, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ritchey, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Taylor, Wheeler, Wiley, Wolfe, Yocum, and Mr. President—44.

So the amendment to the instructions was adopted.

The question then being on the motion of the gentleman from Floyd, (Mr. Thornton,) to re-commit with the instructions,

The yeas and nays were demanded, and ordered, and the Secretary reported the following result—yeas 34, nays 75:

**YEAS.**—Messrs. Ballingall, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bryant, Colfax, Maguire, Mather, Morgan, Murray, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Rariden, Robinson, Steele, Thomas, Thornton, Todd, Walpole, Watts, Work, Wunderlich, and Zenor—34.

**NAYS.**—Messrs. Allen, Anthony, Badger, Bascom, Bracken, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Clements, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Haddon, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hitt, Howe, Huff, Johnson, Kelso, Kinley, Lockhart, March, May, McClelland, McFarland, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Marion, Mowrer, Niles, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Ritchey, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tannehill, Taylor, Trimble, Wheeler, Wiley, Wolfe, Yocum, and Mr. President—75.

So the motion to re-commit, with instructions, as amended, did not prevail.

Mr. DUNN of Jefferson moved to re-consider the vote on the previous question, but upon a division—ayes 36, noes 40—the motion was not agreed to.

The PRESIDENT. The question, now is, Shall the section pass?

Upon this question the yeas and nays were

demanded, and ordered, and the Secretary reported the following result—yeas 55, nays 56:

**YEAS.**—Messrs. Bascom, Bracken, Butler, Carr, Carter, Cookerly, Crumbacker, Davis of Vermillion, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Harbolt, Hardin, Helmer, Johnson, Kent, Lockhart, McClelland, McFarland, Miller of Gibson, Milroy, Morrison of Marion, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ritchey, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tannehill, Taylor, Trimble, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—55.

**NAYS.**—Messrs. Allen, Badger, Ballingall, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bryant, Chandler, Chapman, Clark of Tippecanoe, Clements, Colfax, Davis of Parke, Dick, Dunn of Jefferson, Elliott, Frisbie, Gregg, Hall, Hamilton, Hawkins, Hitt, Hogin, Howe, Huff, Kelso, Kinley, Maguire, March, Mather, May, Miller of Clinton, Miller of Fulton, Milligan, Moore, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Robinson, Steele, Thomas, Thornton, Todd, Walpole, Watts, Work, and Wunderlich—55.

So the section did not pass.

On motion of Mr. KELSO, the Convention adjourned.

#### AFTERNOON SESSION.

The first thing in order being the section which requires resolutions to be presented to the Governor for his signature, &c., on its third reading,

Mr. THORNTON remarked that the section containing the same provision in regard to bills, having failed upon its passage, it would be unnecessary to adopt this one. He would move, therefore, that it be laid upon the table.

Mr. MORRISON of Marion requested the gentleman from Floyd to withdraw his motion for a moment.

Mr. THORNTON withdrew the motion.

Mr. MORRISON remarked that it was not to be presumed that the Convention would omit to supply some section to take the place of that which had been rejected prescribing the manner in which bills shall be treated after having passed both Houses of the General Assembly. He thought, therefore, that instead of laying this upon the table, the Convention ought to adopt it.

Mr. KELSO. The more I reflect upon this matter, the more certain I am that the word "joint" ought to be prefixed to the word "resolution." As the section reads at present, it is, "all resolutions to which the concurrence of both Houses is necessary," &c. Now let me put a simple instance, and if it be found that we have been for three or four years past

in the constant habit of violating the Constitution, it is no reason why we should place the Legislature under the necessity of doing so again. Now suppose that the two Houses of the General Assembly wish to fix the time for going into the election of an United States Senator—I ask you whether there is any necessity for submitting such a resolution to the Governor? But under this clause will it not be obligatory upon the Legislature to send up such a resolution to be signed by the Governor?

It seems to me that there can be no impropriety in saying “joint resolution.” For the purpose of testing the sense of the Convention I will move that the section be re-committed for the purpose of inserting the word “joint.”

A VOICE. Let it be inserted by common consent.

Mr. KELSO. Well, by consent, then.

The word “joint” was inserted by unanimous consent.

Mr. HOVEY. A “joint resolution” cannot be such without the concurrence of both Houses. I think that the section as now amended contains several words entirely unnecessary. I move to strike out the words: “to which the concurrence of both Houses may be necessary.”

The PRESIDENT. The gentleman’s object can only be attained by a re-commitment of the section.

Mr. FOSTER moved that the section be re-committed with instructions to strike out the latter part of the section and insert the twenty-second section of the fourth article of the old Constitution, so as to make the section include a provision in regard to the presentation of bills for the Governor’s signature, &c.

The question being taken on the motion to re-commit, it was agreed to.

Mr. MORRISON of Marion inquired whether it would be in order to add anything to the section after it had been reported back?

The PRESIDENT replied that the report of the committee might be concurred in with amendments.

Mr. NEWMAN moved further to instruct the committee to amend the section by adding that the Governor shall have the privilege of signing bills (presented to him during the last five days of the session) within thirty days after the adjournment, and that he shall file such bills in the office of the Secretary of State.

Mr. NEWMAN said, that his object in offering this amendment was this: It had been doubted whether, under the old Constitution, if the Governor signed a bill in the vacation or recess of the General Assembly, it would be a law. The purpose of presenting the bills five days before the adjournment, was, that he might have time to examine them, and to determine whether he would approve and sign them, or not. But if there was not sufficient time for this purpose, before the adjournment, he proposed that he

should have thirty days longer. It appeared to him that it would be well to add such a provision.

Mr. SMITH of Scott, moved to amend the instructions, so as to provide that it should require a three-fifths vote to overrule a veto, instead of a vote of a majority.

Mr. KELSO. I move that the amendment be laid upon the table.

Mr. SMITH. I do not yield the floor. I wish to call attention to the change in our system that has been made by the action of the Convention. Under the system that is now proposed, a majority may pass a bill over the veto of the Governor. Of what use will it be then to require him to return a bill with his objections? It will be of no use whatever; because a majority may again pass the bill, so that the old system of log-rolling, or combinations, will not be prevented; and it will be altogether in vain for the Governor to assign his reasons against the passage of any bill.

Mr. KELSO said, it appeared to him that it would be improper to require a larger number than a majority to pass a bill that had been objected to by the Governor. If gentlemen will refer to the journals of 1846, they will find the Governor had vetoed six bills—and that five of those vetoes had been sustained by overwhelming majorities by the body which had before passed the bill, the sixth bill was passed over the veto and perhaps very properly.

Now, sir, the Legislature assembles, and they deliberate and pass measures through both Houses by a majority, consisting of 51 in one House, and 26 in the other, and they are sent to the Governor, he examines them carefully, and if he believes that they are either unconstitutional or detrimental to the interests of the State, he returns them with his objections; they then pass a review before each branch. They have the advantage of the reasons assigned by the Governor; they have the imperfections of the bill pointed out, and if after that, in the judgment of a majority of each branch, it is deemed worthy to be passed, it becomes a law. I ask you, if that is not sufficient? But the plan that is here proposed, gives power to the Governor to permit the bill to be passed, or not, just as he pleases.

Gentlemen talk about combinations. All combinations are dishonorable to some extent. But let me tell you, sir, though a man may be clothed with the chief authority in the State, it is easier to corrupt one man, than it is to corrupt an hundred. I say the danger is in putting too much power in the hands of one man. I hope that the word majority will be permitted to remain.

Mr. COLFAX said, he would like to have an expression from the Chair, as to whether this motion was in order. The only question now before the Convention, was, according to his view of the matter, upon the additional instruc-



tions, moved by the gentleman from Wayne. The motion of the gentleman from Scott, was to amend the section which has already been referred to the committee, and which was not now before the Convention.

The PRESIDENT remarked that he did not consider it the province of the Chair, under the circumstances, to decide the amendment to be out of order. A legislative body, or a Convention might adopt an amendment to instructions to a committee, although the amendment and the additional instructions might be contradictory and incongruous. The Chair had no control over it—it was a matter for the body to determine. After they had given one set of instructions, they might, if they pleased, give contradictory instructions. It was a matter for them to judge, and not for the Chair.

Mr. RITCHIEY. I would be glad to have the instructions go to the committee as moved by the gentleman from Scott; and in reply to the gentleman from St. Joseph, I would say that it appears to me that there is nothing incompatible in the two propositions.

I have always been in favor of that provision in the Constitution of the United States which gives the President the veto power. I believe, as was stated yesterday by two distinguished gentlemen on the democratic side, that the measure is conservative—that the power is a salutary one—and I am glad that the present incumbent of the Presidential Chair endorses that sentiment. And, sir, I object to the proposition as contained in the report of the committee, because it does not give the same power to the Governor to veto bills under the new Constitution that he had under the old. Under the old Constitution, a bill might pass by any number of votes, so that they were a majority of those present. Important bills were often passed by twenty or thirty votes. Well, sir, when a bill was sent to the Governor and returned with his objections, then it required a majority of all the members elected to pass it over the veto. I will venture to say that, by far the greater number of all the bills that have been returned with objections by the Governor, were passed in the first instance by less than a majority of both Houses; and if the section under consideration gave the same powers, I would be satisfied with it. Sir, the proposition of the gentleman from Scott is a remarkable one. He proposes that it shall require three-fifths of both Houses to overrule the objections of the Governor. Three-fifths would be only sixty in one House, and thirty in the other. Well, sir, I believe it is right that, when the Governor has presented his objections, it should require a larger vote to pass the bill than it did upon its previous passage. It is said that the mere statement of his objections is sufficient; but, sir, the objections of the Governor may have been known to both Houses before the passage of the bill; they may have gone against his known

wishes and opinions in regard to the measure. He is bound to recommend the passage of such measures as he may think salutary, at the opening of the session; and the Legislature may adopt a directly contrary course of legislation from that recommended by him. Well, then, if you permit the Legislature to overrule the Governor's objections by the same vote by which the bill was passed, it is a perfect farce to require him to assign objections. You might as well not have any objections stated by the Governor, if you allow the bill to be passed by the same number of votes. Sir, I hope the instructions moved by the gentleman from Scott will be adopted, and that the committee will report in accordance with such instructions.

Mr. FOSTER. I hope the instructions will not pass. In avoiding Scylla, we should be careful not to fall into Charybdis. Some gentlemen oppose the veto power altogether; others wish to carry it to extremes; and some are for requiring a vote of three-fifths to overrule the veto. For my own part, I think the medium is the proper course. The course that was adopted by the framers of the old Constitution is the best, and it is the one which meets my decided approbation. Now, some gentlemen who object to the veto power tell you it is the "one man power," but they forget that it is in the power of this one individual, a judge, to veto the action of two co-ordinate branches of the Government. In this case, the General Assembly may pass a law, and the Governor may veto it. The General Assembly has the power, nevertheless, to carry that law into execution by the will of a mere majority of both Houses. But, sir, a bill may pass both Houses, and it may receive the signature of the Governor; yet it may be set aside by a Circuit Judge, or by a Judge of the Supreme Court. Well, if there is an objection on one hand to giving the Governor power to veto an act of the General Assembly, when his veto comes in conflict with only one branch of the Government, how much greater power does the judge possess, when he, by his own individual will, may set aside the action of two co-ordinate branches of the Government. So much, then, for those who oppose the veto power altogether. I recollect, during the campaign of 1840, and since, the course pursued by a certain party in regard to this matter. They abandoned the State Bank, and almost entirely abandoned the idea of a Protective Tariff: but they still cling, with the tenacity of death, to that idea of theirs, that there should be no veto power. They tell us that it is aristocratic, and that they want to see everything conducted upon democratic principles.

The fact of the matter is they want to steal our thunder. [A laugh.]

Now, as I observed at the outset we ought not to go to extremes. In avoiding one extreme we should be careful not to fall into an-

other; therefore, the medium that has been proposed by adopting the section of the old Constitution in reference to this subject ought to meet the approbation of the Convention, as it will assuredly meet the approbation of our constituents.

One word while I am up in regard to a collateral subject, because I seldom get the floor. It is said that complaints are coming up from the people because we have continued in session so long. I hear a different tale from my part of the State, brought by a member of the Legislature. The people of my county say, what you do, do well. But we have gentlemen on this floor continually presenting resolutions for adjournment, and those very gentlemen have leave of absence about every week. The gentleman from Wayne has had leave of absence three times to my certain knowledge, and it is just such men as these who are continually talking about the waste of time, while they leave to a few of us who remain at our places here all the labor.

Mr. BASCOM moved that the instructions, and the amendment to the instructions, be laid upon the table.

The yeas and nays were demanded and they were ordered.

Mr. SMITH of Scott called for a division of the question.

The question being first on laying the amendment proposed by the gentleman from Scott on the table,

The yeas and nays were taken, with the following result—yeas 82, nays 29:

YEAS.—Messrs. Allen, Badger, Ballingall, Bascom, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Aryant, Butler, Carter, Clark of Tippecanoe, Clements, Colfax, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hovey, Howe, Huff, Kelso, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, Mathis, May, Miller of Fulton, Milligan, Morgan, Mowrer, Murray, Nave, Newman, Niles, Notsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Tannehill, Thomas, Thornton, Todd, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—82.

NAYS.—Messrs. Bracken, Carr, Chandler, Chapman, Cookerly, Crumbacker, Davis of Vermillion, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Gootee, Graham of Warrick, Hardin, Hitt, Johnson, McClelland, McFarland, Milroy, Moore, Ritchey, Shoup, Smith of Scott, Taylor, Trimble, Wallace, Wiley, and Mr. President—29.

So the amendment was not laid on the table. The question then being on laying the in-

structions proposed by the gentleman from Wayne, on the table.

The yeas and nays were demanded and they were ordered, and being taken were—yeas 62, nays 47—as follows:

AYES.—Messrs. Anthony, Badger, Bascom, Borden, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Hovey, Huff, Kendall of Wabash, Lockhart, March, May, McFarland, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Pepper of Ohio, Pettit, Read of Clark, Ritchey, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tannehill, Taylor, Thomas, Trimble, Walpole, Wiley, Wolfe, Work, Yocum, Zenor, and Mr. President—62.

NAYS.—Messrs. Allen, Ballingall, Beach, Bicknell, Blythe, Bourne, Bracken, Bryant, Clements, Colfax, Cookerly, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Gootee, Gregg, Hamilton, Hardin, Hawkins, Helmer, Hitt, Howe, Johnson, Kelso, Kinley, Maguire, Mather, Mathis, McClelland, Morgan, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Monroe, Robinson, Sims, Steele, Thornton, Todd, Wallace, Watts, and Wunderlich—47.

So the instructions were laid upon the table.

Mr. RARIDEN. I wish further to amend the instructions.

The PRESIDENT. There are no instructions pending.

Mr. RARIDEN. Then I will move additional instructions. I wish to instruct the committee to amend the section so that bills not returned by the Governor to the Legislature, during its session, shall become laws.

The whole objects of the instructions and amendments that I have moved during the last two or three days, in reference to this subject, has been to force the executive to act upon the bills presented to him before the adjournment of the Legislature. I hate skulking. I have been aiming at the pocket veto. I have no wish to impair the veto proper; what I desire is to force the Governor to exercise it in the face of the representatives of the people. Every gentleman can understand the question readily, and I hope the committee will decide upon it discreetly.

Mr. FARROW moved that the instructions be laid upon the table.

The motion was upon a division—ayes 91, nays 28, decided in the affirmative.

So the instructions were laid upon the table.

Mr. MARCH moved further to instruct the committee, to amend by providing that no new bill shall be introduced in either house of the General Assembly, within three days of the final adjournment.



Pending the question upon the adoption of these instructions,

On motion by Mr. KELSO,  
The Convention adjourned.

MONDAY, DEC. 30, 1850.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. FLETCHER.

The journal of yesterday was read and approved.

There being no reports from committees,

The Convention resumed the consideration of the orders of the day, the pending question being the motion of the gentleman from Delaware, (Mr. March,) to instruct the committee on the executive department, to which had been referred the section in relation to the veto power of the Governor, to amend the section, by adding a provision, to the effect that no new bill shall be introduced in either body of the General Assembly, within three days of the final adjournment.

The question being on the adoption of the instructions, it was, on a division, by ayes 25, noes 26, decided in the negative.

Mr. HOVEY moved a call of the Convention.

The motion was, upon a division, ayes 33, noes 35, not agreed to.

The section relating to a seal of the State, was read a third time and passed.

The section which declares that all commissions shall be in the name of the State of Indiana, &c., was read a third time and passed.

The section in relation to contested elections for Governor and Lieutenant Governor, was read a third time and passed.

The section which provides that the general elections shall be held on the second Tuesday in October, was taken up on its third reading.

Mr. PEPPER of Ohio moved that it be re-committed with instructions to strike out "October" and insert "August."

I desire, said Mr. PEPPER, to call the attention of the Convention to what I believe all who have any knowledge of the section of the country in which I reside, will admit to be a fact. In that region of country, which lies within twenty miles of the Ohio river, the Miami, and the Wabash, there is, and will be, at about the time designated in the section, for the holding of the elections, at least one quarter of our most intelligent and enterprising voters engaged in trade on the river. Now if it be the wish of gentlemen to deprive this portion of our fellow citizens of the privilege of exercising the right of suffrage, unless at the sacrifice of their business, they will adhere to the section as it stands. For myself, I prefer that the election should be held on the second Tuesday in August, because that will afford sufficient time to the agricultural portion of community to complete their har-

vest. The first Monday in August has been found to be too early. I think that the second will be better. And with respect to the accommodation of the candidates in canvassing their respective counties, I think the time that I propose will suit them very well. I think in respect to that portion of country, at least, it will be better that the election should be held on the second Tuesday in August, than in October.

Mr. SMITH of Scott. Mr. President, when I reported this section, the biennial system, which we have since adopted, was pending before the Convention, as also the tenure of office. It was thought that all offices would expire upon the adoption of the new Constitution. But these questions are now settled. Our Legislatures are to be biennial, but, according to the principle now settled, as to the tenure of office, our offices will not all expire at the same time. Consequently, I am satisfied with the action of the Convention, in striking out the word "biennially," which will leave it annually. But, sir, I am opposed to the motion of the gentleman from Ohio, (Mr. Pepper,) to recommit with instructions to strike out the word "October" and insert "August." It is well known to all farmers, that there could not be a more inconvenient day in the year, for attending elections, than the first Monday or Tuesday in August. Farmers are in the hurry of harvest, and a day lost at that time is of more consequence to them than four days in October. As to the arguments of gentlemen, that many persons in counties bordering on the Ohio river, are absent in October, I have but little to say; but this I will say, that, although a few along the Ohio river may be absent, at that season, yet this will not afford a sufficient reason for continuing our elections in August, as heretofore. Why, sir, they have forgotten that our railroads will give the interior of the State access to the Ohio river, and persons in the interior will be as likely to be absent, as those in counties bordering on the river. But, sir, all this is certainly not a sufficient reason for referring the section with the instructions proposed. I hope, therefore, the section will pass in its present shape.

Mr. PEPPER of Crawford. I hope the section will be re-committed, with the instructions offered by the gentleman from Ohio (Mr. Pepper). His reasons are good, and should prevail. This section was ordered to be engrossed late on last Friday evening, amidst much confusion, and at a time when the Convention was too impatient to listen to amendments. It is admitted by gentlemen who favor the section in its present form, that August is as leisure a time as any for holding annual elections, but they say that at the time candidates are canvassing for office it is a busy season, and the people cannot turn out to hear them.

It is true that July, the month generally spent in electioneering, is a busy season, but it should

be resolute that we are not making a constitution for the candidates merely, but for the whole people.

The gentleman from Scott (Mr. Smith) says that the great mass of the voters can more conveniently attend the polls in October than at any time earlier in the season. In this, I think, he is mistaken. The farmers, as a general thing, are more busily engaged in the early part of October than at any time in August.

Sir, the mere *time lost* in going to an election is not so important as gentlemen seem to think; on the contrary, I aver, it is time well spent.

The people are too watchful of their political rights, have too deep a regard for good government and the prosperity of their country, not to be willing to spend a day in each year, at any season, and think it no waste of time. Indeed, sir, there can be but little hope for the country when the people cease to take an interest in important general elections, when they will not go to the polls except on some holiday, or at some particular time when there is "nothing else to do." There is no duty so cheerfully and universally discharged as that of voting; it is no secondary privilege, and fix the day of election when you will, those in reach of the polls will attend. And, while gentlemen are fixing election day at a season of general leisure, to accommodate those who cannot vote if there is any other duty to perform, they should be careful that they do not virtually disfranchise another portion of our citizens.

There are thirteen counties bordering on the Ohio river, and from my knowledge of the citizens who live in those counties, there will be, on the second Tuesday in October of each year, the day now fixed for holding elections, from fifteen hundred to two thousand worthy and intelligent voters necessarily absent on the river, who are always at home during the month of August and the early part of September. These men constitute a portion of our most valuable and enterprising citizens—traders, mechanics, and farmers, engaged in buying and shipping produce and other commodities, thereby furnishing a ready cash market for all the surplus of a large portion of the State. It is certainly not desirable to deprive this portion of our citizens from voting, or which is the same thing, by fixing the annual elections at a time when they, and all others engaged in these pursuits, must necessarily be absent from the State.

I can see no good reason in changing the old Constitution in this particular; it has been cheerfully acquiesced in, and the people do not now demand a change. Kentucky, in amending her Constitution, did not change the time of holding her elections. But, if we must have a change merely for the sake of *change*, and it can be for no other purpose, I prefer having elections earlier in the season than the second Tuesday in October, for the reason that while it can make no essential difference to those who stay at home

pretty much all the time, it will be of great importance to those persons whose business, of necessity, calls them away at that particular time. I shall, therefore, vote to re-commit the section, with the instructions offered by the gentleman from Ohio.

Mr. MATHER moved to amend the instructions by striking out the second Tuesday in August, and inserting the Tuesday succeeding the first Monday in November.

Mr. M. said: I have a single remark to make in reference to this matter. If the section be re-committed and amended according to the instructions which I have proposed, the general election will take place on the same day on which the Presidential election is held, and thus we shall save to the citizens of the State one day at least, once in four years.

This subject, unlike most other matters which has or will occupy the attention of this Convention, presents no great principle to guide or control our action in the premises. It is a mere question of expediency and convenience to the people; and the great mass of the people of this State being farmers, it appears to me that if we agree upon a day which will be acceptable to that portion of our citizens, we have done the best that can be done in this matter.

It may be objected that the day I have indicated is at too late a period of the year, but I think if gentlemen will look back for a few years past, and recollect the kind of weather we have had at that time of the year, they will agree with me that it has been as pleasant and agreeable weather for all purposes of this kind, as at any other period of the year. This is, to my mind, not a sufficient objection. We find in other States, even those situated in a more northern latitude, that this is the day that has been fixed for their general elections, and so far as I have known, they have never experienced any inconvenience from it.

Mr. WATTS. My views accord with those of my friend from Ohio, and I am in favor of the proposed instructions. I belong, sir, to the farming interest, and I am of the opinion that there is no time in the year that will suit that interest so well as about the second Monday in August. The farmers seldom get entirely through with their harvest by the first Monday in August. And I am inclined to think that there is no time that would suit the candidates so well as at about the close of harvest. They will then, on riding through the country, find the people collected together, and it affords them a fine opportunity to pass eulogiums upon industry, and to talk of the importance of the agricultural interest, and to tell the people how much they would like to be farmers, and all that kind of thing.

This arrangement of the time then, will be a convenience to the candidates, as well as to the people themselves. As to the time proposed by the gentleman from Ohio, I am quite satis-



ded that if the election should be held at that period of the year, there would not be more than one-third of the whole strength of the popular vote brought out at the polls. A great portion of the citizens of the State would be unable to attend. I am of opinion that there is no time so suitable as when the farmers have just got through a hard summer's work. They are generally disposed then to have a kind of frolic. It is a time that will suit my portion of the State, at all events, better than any other, and I am fully persuaded that it will meet the wishes of the great majority of the people of the whole State.

Mr. OWEN. I am sorry to be obliged to differ with the gentleman from Ohio in regard to this matter. I live in what may be called, emphatically, a river county; bounded on one side by the Wabash, and on the other by the Ohio river. I have had frequent conversations in regard to this very subject, with the people of my county, and I can say that I know they are in favor of having the elections in October. The gentleman from Dearborn talks about the glorious privilege of finding the people in the harvest field. Now I have had the privilege of speaking to the people from the stump at such times. I can assure the gentleman that from the experience I have had in regard to this matter, I am convinced that you will have two men in October attending the elections, for every one that will attend in August.

Mr. KELSO. Unless my colleague—for I have the honor to represent in part the county of Ohio in connection with the county of Switzerland—unless my colleague will consent to amend his instructions so as to provide that the elections shall be holden later than the second Monday in August, I shall be compelled to vote against re-committing the section. I have talked the matter over with the people of my county, and there is not a single individual, I believe, who is not in favor of having the election holden in October; and they have as good opportunities of knowing what the interests of the people of the State are in this respect as we have. It is true there could hardly be a time selected that would suit every man, but I am convinced that it would be very inconvenient for a large portion of the citizens of the State to have the elections holden in August.

Mr. RITCHEY said he had always felt a great interest, as he supposed every member of the Convention did, in the subject of elections; and it had been his business, as a practising physician for years, to visit a great number of people throughout the county in which he resided. He had found, in the case of those who were sick, that they had manifested a great deal of interest in the elections; and, as a medical man, he could bear testimony to the impropriety of having the elections holden in August or September. It was a well known fact that in Indiana there is every year a sickly season,

from July to the latter part of September, and if the elections were to be holden either in August or September, thousands of voters would be deprived of the privilege of exercising the right of suffrage; and those engaged in trade along the Ohio river, would also be prevented from attending the elections, which would not be the case if the elections were holden in October. He hoped that the motion would not prevail.

Mr. READ of Clark said he was satisfied that there was not a member of the Convention who had not made up his mind in reference to this subject. It had been talked of ever since the commencement of the session; and, indeed, it had been talked of amongst the people for years past. As far as he was concerned, he was in favor of the change proposed by the gentleman from Ohio, and as he believed that every member was prepared to vote, he would move the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on the amendment proposed by the gentleman from Elkhart, to strike out "the second Tuesday in August" and insert "the Tuesday succeeding the first Monday in November," it was decided in the negative.

The question recurring on the re-commitment of the section, with the instructions proposed by the gentleman from Ohio, to strike out "October" and insert "August."

The yeas and nays were demanded, and they were ordered; and being taken, were—yeas 10, nays 99—as follows:

YEAS.—Messrs. Beard, Johnson, Kinley, Newman, Pepper of Ohio, Pepper of Crawford, Rariden, Read of Clark, Ristine, and Watts—10.

NAYS.—Messrs. Allen, Anthony, Badger, Bal-ingall, Bascom, Beach, Bicknell, Biddle, Blythe, Bourne, Bracken, Bright, Bryant, Butler, Carr, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermilion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Frisbie, Garvin, Goote, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Har-bolt, Hawkins, Helmer, Hitt, Hugin, Hovey, Howe, Huff, Kelso, Kendall of Wabash, Kil-gore, Lockhart, Maguire, March, Mather, Ma-thias, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Mowrer, Murray, Nave, Niles, Owen, Pettit, Prather, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—99.

So the section was not re-committed.

The question being, Shall the section pass? the rule which requires the yeas and nays to be taken was suspended, and the section was passed by consent, and referred to the committee on revision.

The Convention then resumed the consideration of the article on the subject of the militia, the pending question being on the motion to strike out all the article except so much as declares that the Legislature shall have power to organize the militia.

Mr. NAVE said that he desired an opportunity to address some remarks to the Convention in reference to the entire article, but in consequence of bad health he was not prepared to do so at this time. He would move, therefore, that it be laid upon the table for the present.

The question was taken on the motion to lay the question on the table; and, upon a division—ayes 37, noes 39—it was decided in the negative.

Mr. PEPPER, of Ohio, said that as he had the honor to be placed at the head of the committee on the militia, he was desirous of having an opportunity to say a few words in reference to the report that had been made by the committee, before it was acted upon by the Convention, especially as there seemed to be a disposition to demolish the whole system, without giving it a moments consideration. He had endeavored to get the floor for this purpose on Saturday, but having failed to do so, he wished to address a few remarks to the Convention at this time.

Mr. President, it has occurred to me, continued Mr. P., that there has been an attempt to treat the subject embraced in this report in a spirit of derision. Now, sir, I remember very well—in fact I shall never forget, the derision with which the cornstalk militia has been treated heretofore. I hope never again to see the cornstalk militia organized. But, sir, an article carefully drawn up has been presented for the consideration of this Convention, considerable time and attention has been bestowed upon it. We have had the benefit of the experience and skill of the gentleman from Carroll, (Mr. Milroy,) who has received a regular military education, and who has had more experience in actual service—he is in fact, entitled to the credit of having framed the article that has been laid before the Convention, and it had received the unanimous approbation of the committee. I had hoped, sir, and I still hope that before that article is set aside, and that too without being examined, and without any reason being assigned—I say I hope that the Convention before they summarily dispose of the article will afford an opportunity to the friends of the system to say a word in its favor.

Now I do not know but that the gentleman from Jefferson who addressed the Convention on Saturday—and he will permit me to say that the spirit of derision seemed to be manifest in

his remarks—I say I do not know but that the gentleman is skilled in military affairs. He may also have received a military education; he may also be capable of instructing this Convention, and the gentlemen composing the committee. It is known to the Convention, however, that the committee is composed partly of gentlemen who were officers in the late war with Mexico.

Now, sir, if gentlemen can show that there is any provision in the article that has been reported by the committee, that is dangerous to the liberties of the country, or calculated to prevent the efficient organization of such portion of the militia of the State, as will be sufficient for the service of the country in time of war, I hope they will show it.

This system proposes two things, which I think it would be desirable that gentlemen should maturely consider. First, it proposes to require the performance of no military service in the time of peace, by any one who does not voluntarily enter into the service. And it proposes to exempt those who have conscientious scruples against bearing arms.

In the next place it proposes to organize a body of volunteers, such as have been useful and efficient in all the wars in which the country has been engaged, from the time of achieving our national independence, to the present moment. A better, a braver, a more intrepid corps of troops, have never presented themselves for service, than such as have been organized, in the several States, from among the militia, and those who voluntarily engaged in the service of the country.

Well, sir, these are the things that the plan proposed by the committee will accomplish. It will, in the next place, excuse every one who does not voluntarily enter into the military service, in time of peace, and it will enable such as are willing to volunteer, to meet together to drill, and to prepare for active and efficient service, when called on, by the country, to render such service.

Mr. President, it has been said, and I believe it has been the common sentiment of the whole country, ever since the declaration of our independence—ever since the organization of the government of the United States—that the militia of the country are the bulwark of our liberties. I hope it has not fallen into such a state of derision and contempt as is indicated by the summary and cavalier manner in which the subject is treated, and by the laughs and jeers of some members of the Convention.

Why, sir, we have, for a long time, had peaceful relations with all governments. There has been no necessity, until the late Mexican war, for organizing the militia at all; and it has consequently fallen into disuse. The want of arms, in the first place, however, was the cause why the militia was not sufficiently



drilled at all times, and kept in a state of readiness for service.

Now, we have large expenditures made by the United States Government for the purpose of manufacturing arms. There are large supplies that are to be distributed in the several States every year. If the enumeration of our militia had been kept up and reported to the United States authorities, we should have secured our proportion of those arms; but such has not been the case. On the contrary, we have scarcely derived any benefit from that source. Although it is not important, in time of peace, that the organization of the militia should be very particularly attended to, or that drilling of the militia should be constantly practiced, yet it is necessary that we should be provided with the necessary implements of war, and that we should have a number of soldiers ready drilled and prepared for service, so that, together with those who volunteer their services, we should be prepared for any emergency. Well, sir, this system proposes a cheap mode of maintaining the militia force of the State, by the means of the assessors of the several counties, who are to report to the Clerk of the county, and he, in his turn, is to report to the Adjutant General. We shall thus be enabled to obtain the necessary quantity of arms. It provides, also, that a suitable place shall be provided at the seat of Government, where the arms shall be deposited and taken care of, so as to be ready for use whenever it may be necessary to use them. It imposes no expense on the country, except for these companies of volunteers that are provided for in the article, three only of which are authorized to be organized in each county. It seems to me that, if gentlemen will take the trouble to examine carefully the system that the committee has proposed, they will see an evident propriety in adopting it or something of a similar kind. I hope that gentlemen will not attempt to pull down the plan that is proposed, unless they can present a better one.

Mr. MURRAY. The history of the country shows that every few years—nay, almost every year—there are instances in the larger cities, and sometimes elsewhere, in which it becomes necessary to call military force to the aid of the civil Government; and the history of the past will probably be the history of the future. We cannot look forward and contemplate the long period for which this Constitution will probably last, without supposing that there will be outbreaks of the people which will require a resort to military force to restrain them and keep them in subjection—to put down mobs and riotous assemblages. It appears to me that the plan proposed by the committee is a very reasonable one; and, with a few amendments and alterations, I have no doubt it will furnish that protection which the country will need. And it seems to me that the miserable objection

of want of arms should not have so much importance attached to it. Under the old system, there was nothing to awaken the pride of those who constituted the militia, and there was nothing of practical utility accomplished. But, sir, if volunteer companies are authorized to be formed, they will take pains to become instructed in military tactics and in discipline, such as prevail in the regular army. It seems to me that we ought to adopt some such system as this, in order that we may have at all times a reliable means of defence, and a necessary force for preserving order in the country.

Mr. STEELE said he was opposed to the amendment; and the reason why he was opposed to it was this: The Convention ought to act consistently. They had approved and passed a section constituting the Governor of Indiana the Commander-in-Chief of the troops of the State, or rather of the militia of the State; and after having passed the section conferring that honor upon the Governor, the gentleman from Jefferson, with the aid of the gentleman from Allen and the gentleman from Delaware, was for striking out all that power which it was proposed the Governor should command; and those gentlemen were endeavoring to persuade the Convention that there would be ample provision made by the Legislature in reference to the subject of the militia. The Governor, then, with his command, was to be left to the mercy of the Indiana Legislature.

Sir, continued Mr. S., why not insert both provisions in the Constitution? If you insert one, why not insert the other? If you declare that the Governor shall be Commander-in-Chief of the militia, why not insert a provision in relation to the organization of the militia? Why should you leave their organization to the Legislature? If you leave the organization to the Legislature, you may as well leave it to them to declare who shall be the commander-in-Chief. One is just as reasonable as the other.

Now, sir, I have been truly diverted by the remarks that have been made by gentlemen, especially the gentleman from Allen. I am sorry he is not in his seat. [Cries of "go on," "give it to him."] I don't like to say anything about him in his absence. ["Never mind," "give it to him, any way."] I suppose he has been called away to attend to his official duties this morning, so I will lay him over until he comes back [laughter]. But I suppose I may be permitted, at least, to speak of the views of the committee who have made this report to the Convention. It is said by gentlemen who oppose the article that has been reported—although I have heard no opposition that is very formidable—but the principal objection there seems to be that the system is a novel one. Gentlemen say that such a system was never heard of before. I think I have heard of something similar to it. If gentlemen have not entirely forgotten the history of the country, they

will remember that one of the most prominent men, in the early days of the Republic—I mean Alexander Hamilton—made one of the most interesting reports that were ever made upon the subject; and to go still further back, we find that Gen. Knox made a report of a similar character, showing the expense as well as the inutility of having the whole militia of the country organized for service at the same time; and it cannot be forgotten that at a more recent period, Mr. Poinsett—in 1829, I think—made a report on the subject. The gentleman from Jefferson cannot have forgotten that report. I believe there was more Buncombe made out of it than out of any report that has ever been made before or since. The gentleman from Jefferson cannot have forgotten the manner in which it was used. Yes, sir, and I recollect perfectly well that on the occasion of the Presidential election, though I was a Harrison man and opposed to Mr. Van Buren, I took the trouble to send to the federal city and get from Mr. Smith the report of Gen. Knox, and also the report of Mr. Poinsett, in order to show the important improvements that were proposed to be made in the militia system under the administration of Mr. Van Buren, for whom I entertain the highest regard.

Now, sir, all this cannot be forgotten, yet gentlemen stand up here and pretend to say that the system reported by our committee is entirely new; that such a thing was never before heard of. I can assure gentlemen it is not. The idea of having an active and a sedentary militia is by no means a new one. It is a thing about which there has been much said in the State of Indiana. I hope the Convention will take up this report and consider it item by item. I am willing to admit that the article may be abbreviated; but as to the substance, the plan presented here is the one we ought to adopt. The Governor should be the Commander-in-Chief of the militia of the State, in the same manner as the President of the United States is the Commander-in-Chief of the army of the United States. And he must have it in his power to report upon the organization of the militia, not only for the protection of the State, but to draw the proportion of arms that properly belong to the State of Indiana. The plan proposed here, in the first place, shows you of whom the militia shall consist. And in the second place, it provides that there shall be volunteer companies organized for active service in case of emergency.

The gentleman from Jefferson finds fault with the report, because he says that he is opposed to a standing army. The report proposes no such thing. But there are some gentlemen who oppose everything except what they themselves introduce. It is provided, also, that those persons who have conscientious scruples against bearing arms, shall not be called for in time of peace. And it makes ample provision, so that the Leg-

islature may, if the country should be involved, call their companies of active militia immediately into service.

The gentleman from Cass, the other day, spoke of there being three departments of the government, and of three classes of functionaries. By whom are these departments of the government to be protected? It is the militia who are the bulwark of the country. It is the military force of the country that protects the civil government. Now, sir, if you strike out the article, and leave it to the Legislature to act upon the subject or not, as they please, you take away the very authority that your marshals, or that your sergeant-at arms, of this Hall, may have occasion to call upon if you should be invaded by a mob. If you strike this out, where is your civil authority? How will the execution of your laws be enforced? How will your courts be protected in the administration of justice? You cannot protect them. It is morally impossible to do it without the aid of a military force. That is the great safe-guard of the nation—the great bulwark of civil liberty. I hope that gentlemen will view the matter dispassionately; that they will take it under serious advisement, and that they will make such provision as will secure a proper organization of the militia.

Mr. SHOUP moved to amend the original section, so that there should be an enumeration every five years, instead of annually of the sedentary militia.

Mr. S. said, it appears to me that an annual enumeration of the militia is unnecessary. My amendment proposes that it be made once in five years, leaving the matter entirely with the Legislature to have it taken oftener, if they think it necessary.

Mr. DUNN of Jefferson. My object in making the motion to strike out all after the word "year," was to prevent the consumption of time in efforts to perfect the details of the section, which duty, I considered, belonged more appropriately to the Legislature. In making this motion, I meant no disrespect to the committee who reported the section; I did not even know, at the time I made the motion, who constituted the committee. All, it appeared to me, that was necessary to be done, was to declare in the Constitution who constituted the militia of the State, and then to leave it to the wisdom of the Legislature to pass such laws as they might think proper for the enumeration and discipline of the militia. I do not think it is our duty to enter into the details proposed in this article. I confess I am not a competent judge to say whether the system presented to our consideration is a good or a bad system. I have been upon the peace list all my life, and I trust to remain there the remainder of my days. Military men are better competent to decide as to the correctness of the details in this article, than I am; but I think the proper plan for their adjust-



ment is in the halls of legislation, rather than in this body. I trust we may be permitted to come to a vote, so as to ascertain the views of the Convention as to whether we shall now go into a discussion of all the details of this article, or whether we may not fix upon the principle and leave the details to the Legislature. If we go into the details, it will probably consume several days, whereas we can settle upon the principle in half an hour.

Mr. EDMONSTON. I am in favor, sir, of the amendment submitted by the gentleman from Franklin, (Mr. Shoup,) as I think an annual enumeration of the militia is unnecessary, leading to an expenditure totally uncalled for. Unless, however, the original section is modified, I cannot vote for it, even with the amendment of the gentleman from Franklin. In regard to the amendment of the gentleman from Jefferson, (Mr. Dunn,) I consider that he proposes to strike out too much: if he will modify his motion so as to strike out all after the first section, I will vote for it: if he does not so modify it, I shall be compelled to vote against it, and shall endeavor, at the earliest opportunity, to offer a motion to strike out all after the first section. I fully appreciate the motives of the committee in drawing up this article, but at the same time I think it is sufficient for us to establish the principle, leaving the details for the action of the Legislature.

Mr. MAGUIRE. It has been a desideratum for some years to find out some mode of enumerating the militia, without having them actually enrolled. This section proposes to supply that omission. I appreciate the motives of the committee in reporting the section, and I would gladly support it if I believed it would answer the purpose intended. But, sir, believing that it would be a failure, and that it would cause trouble for nothing, I desire to present the reasons upon which my opinion is based.

In 1842, the Legislature of Indiana passed the following joint resolution:

*"Be it resolved by the General Assembly of the State of Indiana, That the Adjutant General be, and he is hereby directed to report to the Department of War, as to the strength of the militia of this State, the number of taxable polls returned to the Auditor's office, for the year 1842."*

As Adjutant General of the State at that time, I forwarded this resolution, accompanied by such explanatory remarks as seemed proper, to the Secretary of War, and received from the Adjutant General of the United States the following reply:

WAR DEPARTMENT,  
ADJUTANT GENERAL'S OFFICE,  
Washington, June 12, 1843. }

SIR: Your letter of May 30, to the Secretary of War, reporting as the strength of the militia of the State of Indiana, "the number of taxable

polls returned to the Auditor's office, for the year 1842," pursuant to a resolution of the General Assembly, has been referred to this office.

This report of the "taxable polls," it appears, is designed to take the place of a return of the militia of the State, required by the act of Congress, approved March 2, 1803; and I regret to inform you that the information so communicated is not what the law contemplates, as you will readily perceive by a reference to its 1st section. The statute requires the Adjutant General of the militia to make a "Return of the militia of the State to which he belongs, with their arms, accoutrements, and ammunition, to the President of the United States, on or before the first Monday in January in each year." To produce uniformity in the "returns," a printed form was prescribed by authority of the Secretary of War, according to which, the strength of the militia is required to be reported. A supply of these blanks, (as heretofore,) is herewith enclosed for your future use. You will observe that it is not the number of taxable polls which is required, but the force actually "enrolled and organized into companies, battalions, regiments, brigades, and divisions," under the act approved May 8, 1792.

The distribution of arms under the act of April 23, 1808, can only be made according to the strength of the "effective militia," as exhibited in the last annual returns received at the War Department, agreeably to law. The quota for the State of Indiana for the present year, is based on the return for 1832, (the latest received,) which gives 51,052 men, being less than half of the "taxable polls," (107,876) which you state has been returned to the Auditor's office. You may readily perceive, therefore, how much it is to the interest of the States to make the required "returns" of the effective militia, &c.

I am, sir, very respectfully,

Your obedient servant,

R. JONES, Adj't Gen'l.  
D. MAGUIRE, Adj't Gen'l, Indiana Militia, Indianapolis, Ind.

Now, it seems to me, Mr. President, that, whether the return be made by the county assessor every year, or every five years, it will be unavailing for the purpose contemplated. My object in producing this correspondence was simply to show to the Convention, and to the committee on the militia, what sort of return the War Department regards as necessary to secure the quota of arms to the State.

Mr. SPANN. The main object, sir, which the committee who reported the present article had in view, was only to secure to the State of Indiana the arms to which she is entitled from time to time from the General Government. It is true the first section refers to the manner of organizing the militia, and to that section I have heard no objection. The main objection seems to be to the sections from the 4th to the 8th inclusive.

To the amendment of the gentleman from Franklin, (Mr. Shoup,) providing for an enumeration of the militia only once in five years, I have no particular objection; and such an enumeration will probably be sufficient, and I shall therefore make no opposition to it. If we do not make some provision for the organization of light companies in the State, we must abandon the idea of receiving arms from the General Government, and therefore I think this Convention should not hesitate to adopt some measures to effect that purpose. I have, sir, as much reliance upon the intelligence of the people's representatives in regard to this subject as any one can have, and I am willing to leave the mere details to the Legislature; but I would ask gentlemen to compare this article with the one in the old Constitution, and see the slight difference as regards its provisions. This is a much shorter article, and releases the people from anything like a tax upon their time and means. It merely proposes that the young men shall form themselves into light companies and equip themselves, and have certain exemptions—though that is not of much importance. I would here remark, in reference to one of the statements of the gentleman from Jefferson, (Mr. Dunn,) that he admits he knows little or nothing about the subject, and yet he makes a motion to strike out the principal portion of the article. He ought at least to have some acquaintance with a subject before he undertakes so unceremoniously to dispose of it. The sweeping amendment he proposes will take away the entire article with the exception of some four or five sections, which virtually destroys the whole matter. I must object to any such proposition.

Mr. WATTS. I have had some little experience with regard to this corn-stalk militia, as some gentlemen have termed it, and therefore have no hesitancy in expressing my views in regard to it. I believe that the whole of this article, except the first portion, is legislative in its character, and therefore should not be engrafted in the Constitution.

I do not believe, sir, that anything we can put upon paper will infuse a military spirit in the breast of the citizen soldier. You may write, and talk, and act as much as you please upon the subject of the militia, but unless the country is invaded you never can engender a military spirit at home. I saw an account of one of the most efficient officers engaged in the last war, who said he never mustered his men but twice—once he mustered them into service and once out of service. When asked what he did with his men upon going into an engagement, he said he just showed his boys the enemy and turned them loose. I have seen something, sir, of these independent organizations in time of peace; they grow up like mushrooms and die away in like manner; they do not effect anything. We

hardly ever see any of these independent military companies in time of war mustered into service. The army is officered and soldiered by the citizens of the country who love their country and who patriotically hasten to drive the enemy from our borders. I am in favor, sir, of retaining the first portion of the article having reference to the enumeration of the citizen soldiers of the State, so as to draw our quota of arms from the General Government, and then of leaving the details with the Legislature.

Mr. PEPPER of Ohio. Objection is made to the report of the committee because it is said it contains too much. This may be true, but the article in the old Constitution on this subject is much larger. There appears to be great propriety in what was said by the gentleman from Marion, (Mr. Maguire,) in respect to the necessity of organizing the militia so as to draw arms from the General Government, and also as to the best mode of preserving them, and there may be also some other alterations needed in this article, and as I believe, if the article is again re-committed, that the committee will be able to report a much more perfect article. If it be in order I propose that the article be re-committed for the purpose of making such modifications as may be deemed necessary.

The article was accordingly re-committed to the military committee.

#### FIREMAN'S FAIR.

Mr. BADGER. Before we proceed to the consideration of any further sections I desire to ask the attention of the Convention to a subject in which I think we are all interested. I desire, sir, to have the rules suspended in order to introduce a resolution referring to our occupancy of this Hall. I am informed, sir, that this Hall is proposed to be occupied to-night and to-morrow night, for the purpose of a fair; and that our tables and the papers on them have necessarily all to be upturned and mixed up together to carry out the design I have alluded to. Now, sir, the resolution I propose to offer if I can get the rules suspended for that purpose is as follows: "That the President of this Convention authorize the Secretary to confer with the officers of State at 1 o'clock to-day to ascertain the conditions of the contract made by them with Mr. Sheets in relation to the use of this Hall, and report to the Convention this afternoon."

The rules of the Convention were accordingly suspended.

Mr. KELSO. I do not think, sir, there can be any difficulty in understanding this matter. Sometime previous to the arrangements made by the officers of State with Mr. Sheets in regard to the occupancy of this Hall by the Convention, the friends of one of the fire companies of this city (Relief No. 1,) applied to Mr. Sheets for the use of the Hall on this and to-morrow evening, for the purpose of holding a



fair to raise a certain amount of money necessary to pay off a debt due for the fire engine. This fire engine is of course used for the protection of the public property of the State as well as the private property of individuals. The proposition of the friends of this company was accepted by Mr. Sheets, who informed them they could have the use of the Hall two evenings in a week at twenty-five dollars an evening. Thereupon notice was published in the papers several days in advance of our contract, that, this evening and to-morrow evening a fair would be held in this Hall, and all the members of the Convention had a full opportunity of knowing that the Hall was thus pre-engaged before they consented to the contract with Mr. Sheets. This fair has been mainly gotten up by the ladies, and the object of it I consider to be a very laudable one. I consider, sir, that it is as little as we can do to resign the Hall this afternoon and allow the ladies an opportunity of fixing up the Hall for the fair this evening; and this privilege will not be asked of us to-morrow afternoon. We can easily stow away our papers safely, and no great inconvenience can result from a temporary removal of our seats. I move now that the Convention adjourn until to-morrow morning.

At the request of several members, Mr. KELSO withdrew his motion.

Mr. BASCOM. I do hope that this Convention will not adopt the resolution just offered. If this fair is gotten up for a laudable object as the gentleman from Switzerland informs us it is—if a fire company is to be relieved by it, thereby protecting the public property of the State—if in short it is for the interest of the State of Indiana that the sum proposed to be raised by this fair should be raised, why not make application at once to the Legislature now in session for an appropriation for that object, and not come here and trouble a Convention convened solely to revise and amend the organic law of the land? Again, I would ask, if this is the only Hall that can be got for this purpose here? Are there not other spacious halls that may be procured for the purposes of this fair in this city? Say we adjourn over until to-morrow morning, there will then be a further loss of our time in waiting for the confusion in the Hall to subside, which will be necessarily attendant upon preparing it for our use. Can we, I would earnestly ask, do any good to ourselves, or those we represent, by this adjournment? Sir, I consider that the interests of my constituents are as dear to me as the interests of the citizens of Indianapolis; I shall, therefore, vote against this resolution.

Mr. BADGER. The gentleman from Wells (Mr. Bascom) mistakes the object of my resolution. It is this: to ascertain whether Mr. Sheets has a claim to this Hall during the evenings. If he has not retained the use of the Hall at night I maintain it is our duty to pre-

vent this fair from taking place; whereby for the sake of securing a couple of hundred dollars for a fire company in this city, the State is to be put to an expense of several hundred dollars. I am in favor of adopting the resolution, and of having the inquiry made; and if it is our right to use the Hall during the evening I shall go for maintaining it at all hazards, and shall refuse to adjourning over as suggested.

Mr. PEPPER of Ohio. I believe it will be wholly useless to refer this matter to the officers of the State, inasmuch as the Hall has been engaged for this and to-morrow evening. I have a paper now in my hand from the ladies who have gotten up this fair, stating the fact that they have contracted for the use of the Hall on Monday and Tuesday evenings of this week, and asking me to offer a resolution to adjourn over this afternoon until to-morrow, for the purpose of enabling them to prepare the Hall for the fair this evening.

The authority of this document I do not think any one can dispute, as it is not to be supposed that any gentleman will doubt the integrity of the ladies. I therefore move to amend the resolution of the gentleman from Putnam (Mr. Badger) by striking out all after the word "resolved," and inserting the following:

"Resolved, That when this Convention adjourn it adjourn until Tuesday morning, in order to allow the use of this Hall on Monday afternoon and evening to the ladies, for the purposes of the fireman's fair."

Mr. KILGORE. We have heard a great deal, sir, here and elsewhere, from gentleman, in regard to the expense the State will incur by the Convention adjourning over this afternoon. Gentlemen have said that it would be more economical at once for us to appropriate three hundred dollars and pay off the debt of this company, than to adjourn over. Now, sir, I have only to say that the Convention has no power to make any such appropriation, and if they had the power, I do not think they have the will. Now, sir, it is well known that the ladies who propose to hold this Fair have had a pre-engagement of this Hall for two evenings in this week, before we entered into the contract for it with Mr. Sheets. Now, I do not insist upon their right, but I appeal to the gallantry of the members of this Convention, and ask them to give the ladies the Hall this afternoon, in order that they may prepare it for their Fair. So far as any effort on the part of the ladies is concerned to get money out of the gentlemen at the Fair, I am prepared to defend them against any charge of espionage. All they do is to invite gentlemen to visit the Fair, and purchase the articles they have for sale; if gentlemen are disposed to come and purchase, they can do so; if not, they can stay away. There is no compulsion about the matter.

Mr. LOCKHART. I am opposed to this proposition of adjourning over until to-morrow

morning. I think we ought to keep on with our business; and I am, therefore, equally opposed to the resolution of inquiry offered by the gentleman from Putnam (Mr. Badger). I think that, without any serious inconvenience, we can adjourn at three o'clock, or a little after, and thus we will afford the ladies full opportunity to fix up the Hall for the Fair.

**Mr. RARIDEN.** I think, if gentlemen will consent to forego the gratification of making a speech or two on another day, we can easily give the ladies this afternoon, and lose no time in the transaction of our business either.

**Mr. MURRAY.** It is well known that the ladies made a contract for this Hall for two evenings, before the contract we entered into was made; and now they simply apply to us to extend the courtesy to them which is their due. They have planned their Fair upon a large scale; and I am informed that the only other Hall in this city suitable for a Fair—Concert Hall—has too narrow a staircase to allow their tables to ascend. I think, then, by way of compromise, that we should give them this afternoon to prepare for their evening's entertainment.

**Mr. WATTS.** I am not like my friend from Delaware (Mr. Kilgore,) or my friend from Ohio (Mr. Pepper,) much of a ladies' man. If I am rightly informed, the State of Indiana appropriated four hundred dollars towards the purchase of this fire engine last winter. It may be considered ungallant in me to refuse to allow my constituents to contribute of their money to protect the property of the citizens of this city; but, sir, I am compelled to take this position, and, under the circumstances, shall vote against the proposition to adjourn over.

**Mr. RITCHEY.** If, sir, upon looking at the terms of one contract for this Hall it is found that the ladies are entitled to the use of this Hall this afternoon and evening, and to-morrow evening, I am perfectly willing to give it to them. But if the ladies have not a prior claim to the Hall, I am for continuing our sessions. I do not desire, sir, to adjourn over any day, except Sunday, until we have completed our business. I desire, for one, to have a report from the officers of State as to the terms of our contract with Mr. Sheets.

**Mr. MOORE** moved to lay the resolution and pending amendment upon the table.

Upon this motion the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 48, nays 57:

**YEAS.**—Messrs. Bascom, Beard, Bicknell, Blythe, Butler, Chandler, Clark of Tippecanoe, Colfax, Crumbacker, Dick, Dobson, Edmonston, Fisher, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Harbolt, Helmer, Hitt, Hogin, Howe, Huff, Johnson, Kendall of Wabash, Lockhart, March, Mather, Mathis, Milligan, Moore, Morgan, Nave Newman, Ritchey, Shoup, Sims, Smiley, Smith of Ripley, Thom-

as, Trimby, Wetts, Wiley, Wolfe, Work, Wunderlich, and Yocum—48.

**NAYS.**—Messrs. Badger, Ballingall, Biddle, Bourne, Bracken, Bright, Bryant, Chapman, Clark of Hamilton, Clements, Cookerly, Davis of Parke, Dunn of Jefferson, Dunn of Perry, Elliott, Farrow, Foster, Frisbie, Gibson, Gregg, Hall, Hamilton, Hawkins, Hovey, Kelso, Kilgore, Kinley, Maguire, May, McClelland, McFarland, Miller of Gibson, Milroy, Mowrer, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Sherrod, Snook, Smith of Scott, Spann, Steele, Tannehill, Taylor, Thornton, Wallace, Wheeler, and Mr. President—57.

So the motion to lay upon the table did not prevail.

**Mr. MAGUIRE.** The statement made by the gentleman from Dearborn (Mr. Watts,) that the State has appropriated four hundred dollars towards the purchase of this fire engine, is incorrect. The State has never paid one cent towards the purchase of it; and it is the ladies alone who are now endeavoring to pay off the remaining portion of the debt incurred in its purchase.

**Mr. MAY.** I wish simply to remark to those gentlemen who are opposing the giving up of this Hall to the ladies this afternoon, that it is very evident to me that they are fooling away the time of the Convention by such opposition. I have lived long enough to know that when a woman sets her heart upon a thing she will get it. It is an old saying, and a true one of woman that

"When she will sho will, you may depend on't, And when she won't, she won't, and there's the end on't."

[Laughter.]

I advise gentlemen at once, without further delay, to come down from the position they occupy, for there is no hope for them. [Renewed laughter.]

**Mr. KELSO.** I believe, Mr. President, the question is upon striking out the resolution of the gentleman from Putnam (Mr. Badger,) and inserting the amendment offered as a substitute by my colleague.

**The PRESIDENT.** It is.

**Mr. CLARK of Tippecanoe.** I am satisfied that there is no use in holding out any longer. I therefore move that we adjourn until Tuesday morning.

Upon this motion, the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 53, nays 57:

**YEAS.**—Messrs. Biddle, Bourne, Bright, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Dunn, of Jefferson, Dunn of Perry, Elliott, Foster, Frisbie, Gibson, Gregg, Hall, Harbolt, Hovey, Kelso, Kent, Kilgore, Kinley, Maguire, May, McFarland, Miller of Gibson, Milroy, Mowrer,



Murray, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Sherrod, Spann, Steele, Tannehill, Taylor, Thornton, Wallace, Wheeler, Wiley, and Mr. President—53.

YAYS.—Messrs. Anthony, Badger, Ballingall, Bascom, Beach, Beard, Bicknell, Blythe, Borden, Bracken, Butler, Carter, Chandler, Colfax, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Edmonston, Farrow, Fisher, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hamilton, Helmer, Hitt, Hoggins, Howe, Huff, Johnson, Kendall of Wabash, Lockhart, March, Mathis, Mather, McClelland, Miller of Clinton, Miller of Fulton, Milligan, Moore, Morgan, Nave, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Thomas, Trimble, Watts, Wolfe, Work, Wunderlich, and Yocum—57.

So the Convention refused to adjourn.

Mr. PRATHER. I move that the Convention adjourn until to-morrow morning at half past 8 o'clock.

Mr. COOKERLY. I am in favor of the Convention adjourning until to-morrow morning. If we come here this afternoon, we shall consume our time to no purpose; there will be a constant effort made to effect an adjournment and we had better adjourn over at once, and settle the matter.

Upon the motion of the gentleman from Jennings (Mr. Prather) the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 55, nays 60:

YEAS.—Messrs. Biddle, Bourne, Bright, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Cookerly, Dunn of Jefferson, Dunn of Perry, Elliott, Foster, Frisbie, Gibson, Gregg, Hall, Harbolt, Hawkins, Hovey, Kelso, Kent, Kilgore, Kinley, Maguire, May, McFarland, Miller of Gibson, Milroy, Mowrer, Murray, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clarke, Read of Monroe, Ristine, Robinson, Shannon, Sherrod, Shoup, Spann, Steele, Tannehill, Taylor, Thornton, Wallace, Wheeler, and Mr. President—55.

NOES.—Messrs. Anthony, Badger, Ballingall, Bascom, Beach, Beard, Bicknell, Blythe, Borden, Bracken, Butler, Carter, Chandler, Colfax, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Edmonston, Farrow, Fisher, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hamilton, Hardin, Helmer, Hitt, Hoggins, Howe, Huff, Johnson, Kendall of Wabash, Lockhart, March, Mather, Mathis, McClelland, Miller of Clinton, Miller of Fulton, Milligan, Moore, Morgan, Nave, Ritchey, Schoynover, Sims, Smiley, Smith of Ripley, Smith of Scott, Thomas, Trimble, Watts, Wiley, Wolfe, Work, Wunderlich, and Yocum—60.

So the Convention refused to adjourn.

Mr. BASCOM. I move that the Convention adjourn until two o'clock, this afternoon.

Mr. PRATHER moved as an amendment to the motion of the gentleman from Wells, that the Convention adjourn until one quarter past eight o'clock to-morrow morning.

The PRESIDING OFFICER (Mr. Read of Clarke). The question will be first taken upon the amendment of the gentleman from Jennings (Mr. Prather).

Mr. BORDEN appealed from the decision of the Chair, contending that the question should be first taken on the motion to adjourn till two o'clock.

Mr. KELSO remarked that he thought it rather inconsistent, for the gentleman from Allen, after having been out until the present time, half past eleven o'clock, probably engaged in electioneering for appointment to the United States Senate, to come into the Hall and attempt to deny to the working men of the Convention the privilege of fulfilling an engagement which they were bound to carry out.

The appeal made by the gentleman from Allen (Mr. Borden) was not acted upon.

Much confusion prevailed in the Hall.

The question was then taken upon the amendment of the gentleman from Jennings, (Mr. Prather,) and

The yeas and nays were demanded, and ordered, and the Secretary reported the following result—yeas 54, nays 54:

YEAS.—Messrs. Anthony, Badger, Ballingall, Bascom, Beach, Bicknell, Blythe, Bracken, Butler, Carter, Chandler, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Edmonston, Farrow, Fisher, Gordon, Haddon, Hardin, Helmer, Hitt, Hoggins, Howe, Huff, Johnson, Kendall of Wabash, Kinley, Lockhart, March, Mather, Mathis, McClelland, Miller of Clinton, Milligan, Moore, Morgan, Nave, Newman, Pepper of Crawford, Rariden, Ritchey, Sims, Smiley, Smith of Ripley, Smith of Scott, Thomas, Trimble, Watts, Wiley, Work, Wunderlich, and Yocum—54.

NAYS.—Messrs. Biddle, Borden, Bourne, Bright, Bryant, Carr, Chapin, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Cookerly, Dunn of Jefferson, Dunn of Perry, Elliott, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Gregg, Hall, Hamilton, Harbolt, Hawkins, Hovey, Kelso, Kilgore, Maguire, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Mowrer, Murray, Niles, Pettit, Prather, Read of Clark, Read of Monroe, Robinson, Sherrod, Shoup, Snook, Spann, Steele, Tannehill, Taylor, Thornton, Wallace, Wheeler, Wolfe, and Mr. President—54.

So the amendment was not agreed to.

The question recurring upon the motion of the gentleman from Wells,

Mr. GIBSON moved, as an amendment, that the Convention adjourn until eight o'clock to-morrow morning.

The question being upon the amendment of the gentleman from Clark (Mr. Gibson),

The yeas and nays were demanded, and being ordered, the Secretary reported the following result—yeas 55, nays 48 :

YEAS.—Messrs. Biddle, Bourne, Bracken, Bright, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Cookerly, Dunn of Jefferson, Dunn of Perry, Elliott, Farrow, Foster, Frisbie, Garvin, Gibson, Gregg, Hall, Hamilton, Harbolt, Hawkins, Kelso, Kilgore, Kinley, Maguire, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Mowrer, Murray, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Sherrod, Shoup, Snook, Spann, Steele, Tannehill, Taylor, Thornton, Wallace, Wheeler, Wiley, and Mr. President—55.

NAYS.—Messrs. Badger, Ballingall, Bascom, Beach, Bicknell, Blythe, Bordon, Butler, Carter, Chandler, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Duzan, Edmonston, Fisher, Gootee, Gordon, Graham of Miami, Haddon, Hardin, Helmer, Hitt, Hogin, Howe, Huff, Johnson, Lockhart, March, Mather, Mathis, McClelland, Miller of Clinton, Milligan, Moore, Morgan, Nave, Ritchey, Sims, Smiley, Smith of Scott, Thomas, Trimble, Watts, Wolfe, Work, Wunderlich, and Yocum—48.

So the Convention adjourned until to-morrow (Tuesday) morning, 8 o'clock.

## TUESDAY, DEC. 31, 1850.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. FARROW, a Delegate.

### LEASE OF MASONIC HALL.

The consideration of the resolution offered by the gentleman from Putnam, (Mr. Badger), with the amendment of the gentleman from Ohio, (Mr. Pepper,) pending at the time of adjournment yesterday, was resumed.

The question being upon the adoption of the amendment offered by the gentleman from Ohio (Mr. Pepper),

Mr. SMITH of Scott. The resolution, sir, provides for an inquiry which I think ought to be made. If this Convention is to have possession of this Hall, so that it may carry on its business, I think it ought to know it; and if the Hall is to be let out from time to time, for other purposes, it is also well to know it. The terms of the contract made between the officers of State and Mr. Sheets, in regard to our occupancy of this Hall, should be clearly made known, so that we shall know what we are to depend upon, in future.

Mr. RITCHEY. If Mr. Sheets claims the privilege of letting out this Hall evenings, to whomsoever he chooses, I for one wish to know it. If we are to be deprived of the use of this Hall at the caprice of Mr. Sheets, I desire to know it, and I shall then be in favor of leaving this place, and going to Madison. If we are to be insulted for doing our duty to our constituents, in voting against any adjournment until the regular hour of adjourning, by any portion of the citizens of this place, as one of our number was, on yesterday, we should be informed of the fact, I am told that a gentleman, who voted as I did, on yesterday, against surrendering the use of this Hall, was disgraced publicly, by having his name appended to a calf's head, and the words "A candidate for the United States Senate," written under it. These things, sir, should not be done, and if the fact is ascertained, that we are to be subject to like insults in future, I myself will offer a resolution to adjourn this Convention to Madison.

Mr. SPANN. In my opinion, sir, the expression of sentiment evoked in this resolution, is entirely unnecessary. There has never a legislative assembly convened here, without something similar—motions like that offered yesterday, to adjourn, though for different objects, having been presented. But this case is one of a much stronger character, than any that is generally presented. The claim advanced on yesterday, was such as should not have been disregarded by this Convention. If Mr. Sheets conferred the right of renting, on two evenings in this week, on the persons whom he did confer it upon, it illy becomes us to contest that right, particularly when it is remembered that this engagement was made prior to the contract into which we have entered. Sir, it is beneath the dignity of this Convention, to quarrel about this matter. Yesterday we lost nearly the whole forenoon in a discussion upon this subject, when it might have been settled in a few moments, previous to the hour of adjournment at noon. This is the smallest matter in which we have yet been engaged; and it has resulted as all things do result, when there is but one true basis to go upon. If this Convention has made a bad bargain, we must abide by the consequences. I never voted to come here, and I do not think we should have done it; but this Convention has agreed to come here, and of course we should all stand by the agreement. I represent a constituency that can appreciate my votes, and therefore my action here, notwithstanding the opposition of gentlemen, will receive its just consideration at their hands. I trust that this resolution will not be adopted.

Mr. WOLFE. I hope, sir, that the resolution will be adopted. It is said by gentlemen, that this Hall was engaged, to-night and to-morrow evening, previously to the contract into which we entered with Mr. Sheets. Now, sir, if there was any such pre-engagement, we ought to have



known all about it. Time is money, sir, and therefore it is foolish for gentlemen to say that this is a trifling matter. Six or seven hundred dollars, gentlemen say, is too little to talk about, and that amount, sir, we lose by adjourning over one day. Now, sir, I will put my hand in my pocket, and pay my proportion towards paying off the amount intended to be raised by this fair, rather than that we should be further disturbed in our business. Time is money, sir, and it is life; and we ought not so to act, as to uselessly expend both. If we are not willing to adopt this resolution, let us appoint a committee to find out the terms of the contract which we have entered into, in regard to this Hall, so that we may come to some satisfactory adjustment of the matter.

Mr. HAMILTON desired to express his disapprobation of the insult that had been offered to his colleague on yesterday, for doing that only which he thought to be his duty to do. Such conduct should be frowned down by the Convention, no matter by whom perpetrated. He would move the previous question.

The previous question having been seconded by the Convention, and the main question ordered to be put,

The question was first put upon the amendment of the gentleman from Ohio, (Mr. Pepper,) and it was not agreed to.

The question then recurring upon the adoption of the original resolution, the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 32, nays 4:

YEAS.—Messrs. Badger, Ballingall, Bascom, Beach, Beard, Berry, Bicknell, Blythe, Bourne, Bracken, Bright, Bryant, Butler, Carr, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Conduit, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hoggins, Hovey, Huff, Johnson, Kent, Kendall of Wabash, Kiniey, Lockhart, Maguire, Mather, Mathis, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morgan, Nave, Owen, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Thomas, Trimble, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—92.

NAYS.—Messrs. Rariden, Spann, Steele, and Thornton—4.

So the resolution was adopted.

#### PROTEST.

Mr. EDMONSTON presented a protest, signed by himself and several other delegates,

against the action of the majority of the Convention in adjourning over from twelve o'clock on yesterday until eight o'clock this morning, alleging that it was for no other benefit than to give the members an opportunity to revel and frolic at the expense of the State.

Mr. FOSTER remarked that, in his opinion, this protest was not couched in respectful language to the majority of the Convention, and therefore it should not be entered upon the journal. And he would further observe, that it came with a very ill grace from members who had been in the habit of absenting themselves from the sittings of the Convention. It appeared to him somewhat ungracious, to say the least, that gentlemen who, like the member from Dubois and the gentleman from Johnson, were in the habit of going home and staying for days, should come forward and undertake to blame the hard-working members of the Convention for adjourning over a half a day. He viewed a protest of this kind in no other light than a protest for buncombe. He had not been in the Hall in the evening as a visit; he had devoted the spare time to study; and this fact he could prove, if it were necessary. He did not wish to occupy the time of the Convention further upon the subject, but desired that the yeas and nays might be taken upon the question of the reception of the protest, as he did not wish it to appear upon the journal. He did not know exactly what was parliamentary usage with reference to a protest of this kind, he would therefore appeal to the Chair for information.

The PRESIDENT stated that individual members had a right to protest against the action of a majority, still they were bound to couch that protest in respectful language, so as not to place the majority in a false position. If members considered they were placed in a false light, they had a right to make a motion to reject the protest.

Mr. BORDEN desired to make a brief explanation in regard to his absence from the Hall a short time yesterday morning. The gentleman from Switzerland (Mr. Kelso) on yesterday had called the attention of the Convention to his being absent, charging him with spending his time in electioneering for the office of United States Senator. Now he had only to say in reply, that what he had done on yesterday was simply what he considered to be his duty to do. He had went, on yesterday morning, to the Hall of the House of Representatives, not with a view of electioneering but at the request of the Auditor of State, who desired him to swear in the members, the judge who was expected to swear them in, not having arrived. He had discharged the duty, which the Auditor had the right to demand at his hands, and should do it again if requested.

He had only one remark further to make, and that was this: in opposing the motion to yield

the occupancy of the Hall, he had only done what he thought his duty to his constituents required him to do, and no threats, insults, or abuse, could or would debar him from the performance of what he considered to be his duty.

Mr. EDMONSTON remarked that he was sorry to see the gentleman from Monroe (Mr. Foster) take the position he had in regard to this protest. He could not but think, however, that a tender point was touched by it, otherwise so much complaint would not have been made in regard to it. The adjournment was evidently affording an opportunity for members to enjoy themselves as they pleased; those who were opposed to wasting time in that manner could, of course, refrain from fun and frolic, but the natural inference was if members voted for the adjournment that they were in favor of spending one-half of the day in amusement. Against such a course of procedure he must protest, in behalf of the constituency he represented. If it had been left with his constituency to settle the hubbub that had occurred on yesterday, and to have dispersed the mob that for a season occupied the Hall, they would have very soon sent them to their homes, to attend to their home duties. The majority, at first, was opposed to adjourning at the public expense, and he would inquire if the minority were to hang on to the majority and worry them into acquiescence and not expect to reap the benefit of their misconduct at the hands of the people? If this was the way the Convention was to proceed, he hoped to God the people would be informed of it.

Forty, and even fifty thousand dollars, would not liquidate the expenses of this Convention, and he would ask where this money was to come from? From the toiling masses, of course. The farmer at his plough, and his wife and children at the loom; the mechanic in his workshop and the trader in his store, all had to bear their proportion of the expense they were incurring; and was it just, was it honest, to increase that expense unnecessarily? It was not; and so long as God gave him health and strength he should declare the truth to the people and his constituents, without fear of reproach from any gentleman there or elsewhere.

Mr. COOKERLY said he had a word or two to say on this subject. He objected to the language of the protest, because it was not couched in becoming or gentlemanly language. And who, he would inquire, was the gentleman who got up and talked about his patriotism, his great love for the people, and great contempt for mobs, and love of order? He would have gentlemen look back for a few days, and bear in mind the conduct of the gentleman from Dubois, (Mr. Edmonston,) and see whether he had ever been concerned in a mob, as the gentleman termed it. Perhaps the gentleman had forgotten his action as a leader of a mob who endeavored to thwart the will of a majority of

this Convention, who desired to sit on Christmas day. But times had changed now. He loved the dear people! He loved their treasury! He had opposed the motion to adjourn on yesterday, and characterized the proceedings of a majority as those of a mob, when only a few days since he had been the leader of a mob upon the question of adjourning over Christmas day. And he was not satisfied then with creating a disturbance in the Convention upon the subject, but he crawled up sneakingly into the gallery of their former place of meeting and threw a chair down, in order to create confusion in the Convention while the motion was pending to adjourn over, so as to have it carried. He (Mr. C.) would appeal to the members of the Convention, and to the free-men of Indiana, if such buncombe speeches and such a buncombe protest did not come with a bad grace from the gentleman from Dubois, in view of the course he had hitherto pursued in regard to the adjournment over Christmas.

Mr. EDMONSTON inquired what the gentleman from Vigo was doing at that time?

Mr. COOKERLY replied that he was in his place, orderly, and desirous of going on with their business. The gentleman from Dubois had been mainly instrumental in causing a loss to the State by adjourning over Christmas day of some six hundred dollars; and now he came forward to oppose a justifiable expenditure of some two hundred and fifty dollars. In the protest which he (Mr. E.) had presented, he would not come out openly, and declare that the members had wasted their time in frolicking on yesterday afternoon; but couched its language in so artful a manner, as that the inference would be unmistakable. He Mr. C. desired that the facts should go to the people, in connection with all this protest, and he did not fear the result. How did the matter stand? The ladies who had gotten up this fair, had entered into a contract with Mr. Sheets for the Hall before the Convention had contracted with that gentleman, and yet they had generously come to them and said if you will adjourn and give us this Hall a half a day in order to prepare for our evenings entertainment, we will be content, we will ask no further delay of your business on our account. Was not this action proper and just on the part of the Convention—that of adjourning half a day only? He would ask the gentleman from Dubois, and those who voted with him, what the Convention would have gained by it if they had assembled here on yesterday afternoon—whether there was the slightest prospect of anything being done, if they had assembled together?

Mr. EDMONSTON said if the people had sent up a set of delegates determined to do nothing, or who could not do any thing, it was time that they knew it.

Mr. COOKERLY stated it was time also that the people should know that there were



delegates here continually running home, and at the same time pocketing their three dollars a day, like the gentleman from Dubois. And again laying aside all ideas of justice and liberality, how could they as men having hearts refuse the trifling boon asked of them when surrounded by the fairer, better part of creation. [Laughter and applause.]

He hoped that this protest would be rejected as it was not true or respectful in its relation of facts. He would not have objected to it if it had simply set forth that it considered the action of the majority wrong, and had stated facts as they really were, but he must object to its present recital.

Mr. OWEN. We have much business before us; and I am sure there is not a gentleman on this floor who does not desire to see it speedily and faithfully performed. But it is sufficiently evident, that if bad feelings are engendered between members, it will be neither well done nor quickly done. If there be, therefore, one matter in regard to which we ought to be guarded, it is that no personal feelings of hostility should be encouraged or permitted among us. But if crimination and recrimination are indulged, what but feelings of personal and perhaps of settled enmity are the natural result?

If it be not the intention of the gentlemen, who now seek to have this protest spread upon the journal to impute to the majority, in regard to their action yesterday, evil motive and wilful neglect of duty; such at least, is the inference that will inevitably be drawn from their language.

Private judgement is the right of every man. But a minority has no right, under color of protest, to assume, on the journal a state of facts, injurious by their inference to the character of the majority, while no opportunity is afforded the majority either to explain or to justify. To suffer this would be to establish a precedent unjust in itself, and mischievous in the consequences likely to follow it.

I must vote, then, against the protest, if it be pressed in its present form. Let its signers protest if they see fit, against all adjournments. Let them declare, that in their opinion, every single day during the holiday season—Christmas and New-years-day included—ought to have been occupied, from morning to night in session. They are welcome to do this, for me, I do not indeed see the propriety of protesting in any such case. Some relaxation during this period of holidays is customary. The people all over the land take it. Nor do I believe that in the end, it retards business. The attempt to break in on such a custom often does more harm than good. Witness the scene on Christmas morning, not very reputable certainly, affording proof sufficient that it is idle to combat in a public body, a state of feeling demanding a customary holiday. I feel that I have labored here, day by day, (not going home as some

of the gentlemen did,) as assiduously as any one whose name stands to that protest. And personally I care nothing at all, whether or not we sit every day through the entire holidays. It suits me quite as well to work here as to be elsewhere. What I do object to is, that time should be consumed and ill blood engendered by a charge of dereliction of duty not merited; and by a protest disrespectful in its terms, unparliamentary in its imputation of motive; and which, unless its authors consent to erase the expressions offensive to the majority, I shall certainly vote to reject.

Mr. MURRAY said that he had voted with the majority on yesterday for an adjournment on principle. There was, sir, continued Mr. M., an obligation resting upon the Convention, arising from the pre-engagement of this hall by the ladies, which as a matter of justice and of courtesy demanded that we should give them the hall on yesterday afternoon. If we had went on with our regular business until noon on yesterday, and then adjourned over, we would have saved nearly half a day which was consumed in unnecessary discussion of this subject. I was surprised to see those who claimed to be the conservators of time, engaged in protracting the debate when it was evident that the result would not be affected and that the Convention would adjourn over. I move, sir, that the protest be rejected.

Mr. RITCHIE. I am one of the signers of this protest. I signed it without reading it over very carefully, and if it conveys an unmerited rebuke upon all those who voted in favor of adjournment, it goes further than I intended. I am willing to say just what the protest said in regard to some gentlemen on this floor, and I am not afraid to say the same here or elsewhere, personally to their faces. I know there were gentlemen who voted from pure and honorable motives for adjournment. Many gentlemen, no doubt, worked themselves up into such a state of feeling that they thought it was the wiser course to pursue to adjourn; others, however, voted to adjourn, from no such motives. I was sorry to see cause for this opinion, especially, in the action of the gentleman from Switzerland, who was not particularly guarded in his allusions to the action of gentlemen who saw fit to oppose the motion to adjourn.

The gentleman from Monroe says that I have enjoyed holidays at home, when he, and others have been here constantly at work. Now, sir, the brief period that I was absent I was with my family, and I am a little surprised that any gentleman, that has so much gallantry as to vote for adjourning the Convention, at an expense of six hundred dollars, in order to give time for amusement, has not been gallant enough in twelve long weeks to go home and see his wife, although she lives only about forty miles distant. I have a beautiful young wife who lives only twenty miles distant, and I think I might

well be charged with a want of gallantry did I not go home and see her occasionally. [Laughter and applause.] And I would simply remark to this Convention, that I regard that lovely wife above all the other ladies of Indianapolis. [Renewed laughter and applause.]

I prefer, sir, that this protest should be so corrected as to strike out the language that is offensive to a certain number of gentlemen who voted for adjournment. I hope then, sir, that this will be the end of the matter, and it will not be made a bone of contention any further.

Mr. KELSO. I feel bound, sir, to say a few words inasmuch as I have been basely misrepresented; yet I would make that charge as modestly as I well can, and therefore, I will say that I have been grossly misrepresented, perhaps, inadvertently. [Laughter.] Now, sir, for what I have said on this subject, I am responsible here and elsewhere. What I said, I said purposely, and for this reason. When my friend from Allen (Mr. Borden) got up on yesterday apparently somewhat excited. I do not blame him at all—as the State was about to lose a half a day of our services, the gentleman's of course, included.—

Mr. BORDEN. It was upon the point of order that I was excited, not on the subject of adjournment.

Mr. KELSO. I simply stated that the gentleman was somewhat excited. He probably got word in the House of Representatives as to what was going on here, and immediately hastening to the hall, he reached his seat a little tired, and, perhaps panting. [Laughter.] Well, sir, the gentleman from Allen spoke, to his appeal from the decision of the Chair, and gentlemen listened to him very quietly, but when I got up to make a brief statement with regard to the action of the gentleman, a shout of question and order went up from different parts of the hall—but I mildly rebuked it by saying that I would speak to that portion of the Convention who were disposed to be civil, and those who had neither sense nor manners, could continue to cry out question.

Mr. K., here proceeded at some length to speak in support of the action of the majority of the Convention in adjourning over on yesterday, but as the same arguments were advanced in a previous speech he made upon this question, the reporter has not deemed it necessary to insert them. He concluded with hoping that the protest would be rejected, as it was couched in language at once direspectful and untrue, so far as the action of the majority of the Convention was concerned.

Mr. GORDEN. I rise only to express the hope that the gentleman who introduced this protest will withdraw it for the present, so as to erase the offensive words it contains. If this is done, I will subscribe my name most cheerfully to the protest. Unless this is done, I shall be under the necessity of voting to reject it.

Mr. EDMONSTON. If I were to consent to strike out all the offensive language in this protest I should have to strike out the protest entirely, as I have no doubt that every portion of it is offensive to some members. Gentlemen may draw what inference they please from the language of the protest; but that language expresses but the truth. I prefer taking a vote on the protest just as it is, and the majority can vote it down if they choose. I desire to place myself right upon the record, and I will risk the consequences of such action. In case the Convention refuse to receive the protest I pledge myself to carry the matter to the country.

Mr. STEELE said he would ask the gentleman from Dubois whether from his personal knowledge of his action here and elsewhere, he could charge him with indulging in frolic and revelry; but on the contrary, whether he had not always been seen at his post endeavoring to do his whole duty as a representative of the people, and voting in accordance with his best judgment upon the subjects under consideration. He had voted on yesterday for adjournment because he believed it was due to the ladies who had applied for the Hall in order to carry out an engagement which they had made for its occupancy previous to the contract made by the Convention. It was a simple matter of justice that they should give the ladies an opportunity of fixing up the Hall; and even at his advanced age he felt bound to say that when justice and beauty presented a petition for so trifling a boon as had been asked of the Convention, he for one, would not reject it. [Applause.]

Mr. SHOUP called for the previous question.

The call having been seconded by the Convention,

The main question was ordered to be put.

The question being, Shall the protest be rejected.

The yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 72, nays 39.

YEAS.—Messrs. Allen, Badger, Balingall, Beach, Biddle, Bourne, Bryant, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Conduit, Cookerly, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Farrow, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hamilton, Harbolt, Hawkins, Helmer, Hovey, Howe, Kelso, Kent, Kendall of Wabash, Kinley, Maguire, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Mowrer, Murray, Nave, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Spann, Steele, Tannehill,



Taylor, Thornton, Walpole, Wheeler, Wiley, and Mr. President—72.

**NAYS.**—Messrs. Anthony, Bascom, Beard, Bicknell, Borden, Butler, Chandler, Colfax, Crumbacker, Davis of Vermillion, Dick, Dobson, Edmonston, Fisher, Gootee, Haddon, Hardin, Hitt, Hogin, Huff, Johnson, March, Mather, Mathis, May, McClelland, Moore, Morgan, Newman, Ritchey, Smiley, Smith of Scott, Stevenson, Thomas, Trimble, Watts, Wolfe, Work, and Wunderlich—90.

So the protest was rejected.

#### HOLDING OF OFFICES.

Mr. DOBSON from the committee on salaries, compensation, and tenure of office, reported the first section of report No. 15, which had been re-committed with instructions, and amended so as to read:

"That no person shall hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That counties casting less than one thousand votes may confer the offices of Clerk, Recorder, and Auditor, or any two of said offices upon one person: *Provided, however*, That the office of Postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative."

Mr. BASCOM moved to re-commit said section with instructions to strike out the words "casting one thousand votes," and inserting the words "containing one thousand polls."

Mr. FARROW moved a call of the previous question.

The call was seconded by the Convention, and the main question ordered to be put.

The question then being, Shall the section be re-committed with the instructions offered by the gentleman from Wells.

It was decided in the affirmative.

#### ORDERS OF THE DAY.

The section providing that no laws shall be passed restraining the free interchange of thoughts and opinions, or restricting the right to speak, &c.; the section declaring that in all prosecutions for libel, the truth of the matters alleged to be libellous, may be given in justification; and the section requiring that all courts shall be open, and every person, for injury done him in his person, or reputation, shall have remedy by due course of law; were severally ordered to be engrossed.

The fourth section was read a second time, as follows:

"No person arrested or confined in jail, shall be treated with unnecessary rigor. No person shall be put on trial on any criminal charge, without public opportunity first had, to offer rebutting testimony, and repel the charge in its inception."

Mr. LOCKHART moved to amend by striking out all after the word "rigor," and inserting

"no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, and all offenses the punishment of which is by fine or imprisonment in the county jail, or imprisonment in the county jail alone, shall be prosecuted in such manner as shall be prescribed by law."

Mr. GORDON rose and said: This question was discussed at length in the earlier part of the session, when the resolution of the gentleman from Tippecanoe was under consideration; and it is presumable that the members are now ready to vote on it without farther delay. This, but especially the protracted length of our session, admonishes me, as it ought every member, to be brief in the remarks that I may make.

As this section, as it comes from the hands of the committee, dispenses with the use of the Grand Jury, it appears to me that a due regard for the wishes of a majority of our constituents, requires that the amendment just offered by the gentleman from Vanderburgh, should be adopted. The idea of abolishing the Grand Jury is new to the greater portion of the people of our State; too new, I fear, to justify us in incorporating a section like this in the Constitution. I apprehend that, had those who voted in favor of calling this Convention to amend the Constitution, been requested to state their reasons for so doing, but a small portion of them would have mentioned the abolition of the Grand Jury as one of their reasons. There were some amendments that the people were desirous of seeing made to the old Constitution, but there is reason to fear that we may make such radical changes in it, that they will have as much objection to the amended as to the old Constitution. I think that, if we would act wisely, we would proceed to make only such amendments as the people contemplated would be made, when they voted for the calling of this Convention; and not protract our session by discussing questions that were not then agitated, or at most, were thought of but by few. Already have the murmurings of our citizens from the most remote parts of our State, like the mutterings of the distant, but steadily approaching tempest, reached our ears, warning us to seek our political safety, by a speedy adjournment.

Gentlemen may descant upon the odiousness of some of the features of the old Constitution; still, I think it would be well for our action not to precede public sentiment. It will be time to make a radical change in our organic law, when the people have determined that such a change ought to be made. All great changes in governments, that have been beneficial, have been made after the public mind has been prepared for them. Our citizens did not expect this change to be made, when they voted for the amendment of the Constitution. The amendments they desired to be made were few. They were satisfied with the old Constitution in the

main. They considered it an excellent Constitution, and in this they were correct; for, to its excellence the uniform prosperity of our State since its adoption, bears ample testimony. For thirty-four years have the people of Indiana lived under it, in the full enjoyment of their liberties; each citizen pursuing the road pointed out by his own fancy, to wealth and to happiness. The population of our State in the mean time, has increased, from comparatively a few thousands to one million of souls. Wealth and improvements have kept pace with our population. Large portions of our State that were then uninhabited, except by the Indian, have since been settled. The forests have been cut down, and the wilderness has become the abode of civilized men. Where then were only the wigwag of the Indian or the lair of the wild beast, flourishing towns and villages now present themselves to our view; bearing silent but conclusive testimony to the energy and enterprise of the citizens of Indiana, and to the excellence of the government under which they live.

In changing, then, the Constitution under which our State has advanced from a thinly populated territory to the prominent position she now occupies among the States of this Union, care should be taken that the innovation be not greater than we have reason to believe can, with safety, be made. No provision should be incorporated in the new Constitution that might possibly have an injurious effect, or even the effect of which may be doubtful. The people wish no untried experiments to be made. They wish nothing to be incorporated in the Constitution that might possibly retard the upward march of our State, to that prominent position which, by proper management, she is destined at no very distant day, to assume among her sister States. With a mild climate; with a fertile soil; with expansive prairies; and forests of excellent timber; with a surface well adapted to the construction of the different kinds of public works; with numerous manufacturing facilities; with a population, too, whose intelligence and enterprising spirit will favorably compare with the intelligence and the enterprise of the citizens of the surrounding States. If possessing these elements of future greatness, Indiana should fail to meet the just expectations of her friends, the cause can only be sought for in her Constitution and laws.

Then I hope that each member of this Convention, in the amendments that he may favor, may be actuated by an innovating spirit, not simply for the sake of innovation, but only from a conviction that such amendments will advance the best interests of the State, and will meet with the approbation of a majority of our fellow citizens.

In amending this Constitution, we should constantly bear in mind that more than fifty thousand voters of Indiana cast their votes against

the calling of this Convention, and consequently, in favor of the old Constitution as it is; and should govern ourselves accordingly. Not that we should (as some of the members appear to think we ought to do) recommend the old Constitution back to the people, after a majority of the voters of our State have decided in favor of amendment, and have sent us here for that purpose; but I only request that in amending it, some little regard, at least, should be paid by us, to the wishes of so large a portion of our fellow citizens.

From the observations that I have made, I am led to believe that even the majority of those who voted for the calling of this Convention, do not desire many alterations to be made to the old Constitution, and I know that thousands of our citizens wish none. Under such a state of facts, it seems to me the proper course to be pursued, in order to avoid the danger of the Constitution that we may submit to the people for their adoption, being rejected by them, is to make only such amendments as we have reason to believe the people will approve.

Mr. President, I am under the impression that the majority of the voters of our State do not favor the abolition of the Grand Jury, and I believe that to incorporate a clause in the Constitution, abolishing it, will not meet with their approbation. It is an institution that American citizens have ever regarded in a favorable light. It has existed in our country from the days of the Puritan fathers down to the present moment. The people have never discovered it to be that destroyer of reputation, that enemy of innocence, that adversary of liberty, that engine of evil, which gentlemen would have us to believe it to be. Strange that such should be its real character, and the American people live so long in total ignorance of it! So far from considering it the adversary of liberty, they have thought it so important to the protection of the rights of the private citizen as to require a place in the Constitution of the United States. And as that Constitution, as originally adopted, did not extend to the citizen this protection, it was afterwards so amended that no person should be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except as therein provided. I shall not contend that this provision in the Constitution of the United States, interferes with the rights of this State, to proceed against offenders within her jurisdiction in any manner she may see proper; but I do think that, as it has been thought proper to interpose the Grand Jury between the General Government and its citizens, the same barrier ought to be placed between the State government and her citizens.

Without attempting to give an account of the origin or original design of the Grand Jury, I would merely ask those gentlemen who have alleged that it was an engine of oppression in the hands of the king, if the great cause of com-



plaint against the court of the Star Chamber, was not that its proceedings were conducted without the intervention of a jury? and that when an attack was made by the prince, on the rights of the subject, was not this court preferred on this account? It was principally because its proceedings were conducted without the interposition of a jury that its existence was considered dangerous to the liberties of Englishmen, and it was therefore abolished; not, however, without great reluctance on the part of the king; but juries, whether grand or petit, have ever been considered a barrier between the prince and the liberties of the subject.

The opponents of this system have somewhat the advantage of its friends. They can show us the faults of the system, as they have developed themselves in its operations; and what human institution is there that has not some faults? These they take good care to parade before us in their worst aspects; but we cannot so readily expose to view the evils that would result were their notions adopted, from the fact that we have not yet experienced them.

Gentlemen have been very eloquent in denouncing the Grand Jury, and in urging its abolition; but the amount of their objections, if I mistake not, may be summed up in a few words. They say they object to it, because it had its origin in a barbarous age; because it has come down to us through many generations from a British ancestry; because its proceedings are secret; because they are *ex parte*; because the system is expensive.

I shall not attempt, Mr. President, to reply at any length to the objections that have been made to the Grand Jury system, as these objections have already been ably answered, but shall content myself with making only a passing remark. The fact of its having a British origin, I think, is not calculated to cast odium upon the system. I presume that were the majority of this Convention to trace back their genealogy but for a few generations, they would find that their ancestors were citizens of the same country where the Grand Jury system originated; yet we boast much of our origin. Then I see not why we should condemn this system simply on account of its origin. It appears to give some gentlemen great satisfaction to speak disparagingly of everything English. But let gentlemen talk as they may about England, and about English laws, we are, notwithstanding, indebted to her for many things. It is the fact of our being the descendants of Englishmen that gives us our present importance as a people. Had this country been colonized by any other than the Anglo-Saxon race, the history of an American Republic would never have been written. Had any other than English blood flowed in the veins of our Revolutionary ancestors, the chivalric deeds of '76 would never have been recorded. It was from England that our ancestors inherited that enter-

prising character which distinguishes the American people. It was from England that our ancestors brought their notions of human rights, and it was in England that our favorite tree of liberty germinated. And although the tender plant long languished under the influences of the unwholesome political atmosphere that surrounded it, yet, when transplanted in the more genial climate of America, it grew up and shot forth its branches around on every side, so that millions now repose in peace and quietude beneath its shade. I must hear a weightier objection to the Grand Jury system than its British origin, before I can vote to abolish it.

To its antiquity, Mr. President, I find no objection. I have been taught to treat old age with respect, and to regard it as honorable. Nor is this the only feature in our civil polity that has come down to us from former ages. We all vie with each other in our professions of attachment to democracy and republicanism, yet there were democracies and republics many ages before the institution of Grand Juries. There once existed among the States of Greece something like our own federal system, but no one objects to our admirable system of government on that account. Neither is the Grand Jury system objectionable on account of its antiquity.

Some gentlemen object to the secrecy of its proceedings, and to the fact of its being an *ex parte* tribunal; others again seem to think these features are the beauty of the system. Where learned doctors disagree, I shall not venture an opinion.

That the Grand Jury system is expensive, Mr. President, I admit—probably more expensive than it ought to be—but I believe this expense can be somewhat reduced by reducing the number of offenses of which the Grand Jury shall take notice. Let the smaller offenses that now go before the Grand Jury be tried and punished by justices of the peace. As the greater portion of the time of the Grand Jury is now occupied with these petty offenses, if they are turned over to justices of the peace, the objection on the score of expensiveness will be in a great degree removed. Still, to maintain good order in a community, the community must incur expense. Violations of the law will occur, and the offenders must be brought to punishment. Much, no doubt, depend on the manner of dealing with criminals, yet the peace and harmony of a community depends more on its moral sense than on its method of administering justice.

It has also been said that the Grand Jury is an engine by means of which men vent their malice upon each other. I believe that many an informer is actuated only by malicious motives. I think, however, that a sufficient check can be given to malicious prosecutions by making the informer liable for the costs, where

the judge will certify that there were no grounds for the prosecution.

The reason that so large a portion of the indictments fail on the trial is owing chiefly to the inexperience of the prosecuting attorneys, and not to any fault of the Grand Jury; yet this is urged as a principal reason for abolishing it. By inducing the more experienced lawyers to act as prosecutors, this objection may be obviated.

Thus I believe the most objectionable features of the Grand Jury system may be removed. Probably it cannot be so modified as to be entirely unobjectionable. Neither do I believe that anything can be substituted in its stead that will be faultless.

Our object is to bring to light crimes that are committed, and to punish the offenders, in order that others may thereby be terrified from committing the like offenses. I am not particular by what means this object shall be attained. If it cannot be so well accomplished by means of the Grand Jury as by some other method, I would prefer that other method, whatever it may be. I am persuaded, however, that some of the objections raised to the Grand Jury system will apply with equal force to the plan proposed. However this may be, the fact that the public mind, as I believe, is not at present prepared for this change, is a sufficient reason to induce me to vote against a change. Within a few years past, Conventions have assembled in a number of the States to form State Constitutions, and in all the new Constitutions that I have seen, the Grand Jury system has been retained. From this fact I would infer that Grand Juries are not regarded as much of an evil in those States. Neither do I believe the majority of the people of our own State look upon them as much of a nuisance. All that is required for it to give general satisfaction is an improvement of the system. If, however, I thought the people desired its abolition, I should not oppose their wish; but as I think they do not, I shall oppose an alteration of the old Constitution in this respect. The amendment offered by the gentleman from Vanderburgh is, I believe, in the language of the Constitution of the United States; I prefer the language of our old Constitution, but am not very particular—either will suit me.

Mr. BASCOM. I desire, Mr. President, as I before remarked, to reflect the will of my constituents on this subject. I have written to my constituents to get their views in regard to this proposition of abolishing the Grand Jury. In return I have received numerous communications, public and private, in a variety of ways, and I have also obtained the opinion of the press in regard to the subject, and from the best information I can get a decided majority of those I represent are in favor of abolishing the Grand Jury system. My action upon the subject, therefore, will be governed according-

ly. In my county the Grand Jury has been divested of a great portion of its power with reference to the trial of minor offenses, and so satisfactory has been the result of this change that the people now desire that the system be abolished altogether.

Mr. SMITH of Ripley moved to strike out the amendment, and insert:

"No person arrested or confined in jail shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment, or impeachment."

Mr. PEPPER of Crawford. Is it in order, Mr. President, to perfect the original section?

The PRESIDENT. It is in order to perfect that portion which it is proposed to strike out.

Mr. PEPPER of Crawford. Then I move to strike out all after the word "be," on the second line, and insert the words "held to answer to any criminal charge except in such manner as shall be prescribed by law."

Mr. KENT said:

Mr. PRESIDENT—It matters not to me, whether the Grand Jury had its origin one thousand years ago, in the monarchy of England, or at the formation of our system of government. If it is a wise institution, one that will secure to the citizen and the country the greatest good, with the least evil, it should be continued, though its origin dates no further back than yesterday; but if it is a bad one, it should be discontinued, though it had its existence in the remotest ages of antiquity.

Our admiration of long established customs, and veneration of the memory of the great and good of past generations, should not weaken the force of that great truth in human action, that all "great revolutions of principles, and all great reforms, work from below, upward." Nor on the other hand, should the love of change be so great, as to disqualify us for a just appreciation of those measures of governmental policy, ordained by the fathers of the republic. But, while we should ever cherish, in grateful recollection, the men and the deeds of this most eventful period in the history of mankind, we should not forget that truthful maxim, that to err is human. We should remember, too, that however much we may admire this beautiful and nicely adjusted political organization, its builders were not infallible; and that time, and the progressive spirit, and searching intellectual energy of the age, demand great changes in the policy of governments. Nor need gentlemen apprehend, that because they advocate this measure of reform in our judicial system, they subject themselves to the just imputation of a want of proper regard to the framers of the American Constitution; for the chief excellence and undying fame of the fathers of this republic, consists mainly in their being the greatest and wisest revolutionists, the world ever witnessed.



Where! let me ask, in this world renowned republic, has the unfettered spirit of progress, in forming and re-forming State constitutions, been productive of evil? Was it in the determined and successful resistance that the honest, but mistaken few encountered in the early history of the nation, when they questioned the capacity of the people for all the purposes of self-government? Was it when, in a later period in the political history of our country, the legal profession vainly resisted the election of the highest judicial officers by the people? Or was it during those periods of our national history, when the people demanded, frequently against the will and effort of powerful monopolies, those great reforms of government, essential to the well being and prosperity of the country? And do gentlemen believe that the people, skilled as they are in the science and policy of governments, will heed the warning voice of those who have ever resisted their onward progress in perfecting the organic law of State governments?

We, sir, are a progressive people; this is a progressive nation, and this too is an age of great and rapid advancement in all those reforms of government, which have made this the greatest among the nations of the earth. But, while these radical and rapid changes are being made, not only in the affairs of government, but in the great departments of science and industry; why is it that gentlemen apprehend so great and direful evils in the discontinuance of a system, which is an anomaly in our form of government. Are they so wedded to this relic of barbarous and monarchical ages. this secret inquisition, where malice and revenge, hatred and perjury, go unrebuked and unpunished, and where the character and liberty of the citizen is but too often at the mercy of the vicious and depraved, that all efforts to change or modify it, is to be frowned down by the force of numbers? How much more would it comport with the spirit and humanity of the age, if, instead of laboring to retain this iniquitous tribunal, we should labor to devise a more humane and equally efficient one for the punishment of crimes. All acknowledge that the system has been prostituted to the basest of purposes, and the worst of crimes; and many believe that it is the great charnel house of character, sweeping in its resistless current, to ruin and despair, the innocent as well as the guilty.

It is a great mistake, Mr. President, that the legal profession are more familiar with the Grand Jury system, than the people generally. It is seldom that a lawyer, except the Prosecuting Attorney, enters the Grand Jury room; and whenever he does, it is for the purpose of giving information of some violation of the penal laws of the State. True, much practical knowledge of the working of this tribunal is acquired in open court, and in the examination

of criminal cases; but this information does not impress one favorably with the system.

There is much, even in the prosecution of criminals, to the prejudice of Grand Juries. Hardly a case comes up for trial, where one or more of the witnesses for the prosecution does not exhibit bitterness of feeling, or strong bias, against the accused; so much so, as to make him the object of severe animadversion by the attorney for the defense. And this is not only frequently, but almost always the case. What, then, must be the character of much of the testimony given before a Grand Jury? Here is a secret and *ex parte* examination. The accused person is not there—his counsel is not there, nor are his witnesses present. The examination is not only without his knowledge, but for the avowed purpose of hearing evidence of his guilt, and of pronouncing judgment of criminality against him; and that, too, upon testimony oftentimes engendered by malice and revenge. And this is the institution which has been represented as one of the essential elements of enlarged liberty, and one of the main bulwarks of our free institutions.

This system, with its inquisitorial power, strikes at that just and humane provision of the law, which declares that all persons charged with crime are presumed innocent, until the contrary appears. But the bare finding of an indictment against a person, creates the presumption of guilt, not in law, 'tis true, but before that more terrible tribunal, public sentiment. And it is impossible for him to escape, however innocent, the blighting consequences of this public suspicion of his guilt.

But, Mr. President, there are other objections to this system, if possible, of a still more serious character. Without intending to call in question the honesty of motive, or integrity of character of Grand Juries, there is no sophistry which can possibly shield them from the allegation of having uniformly given a too willing ear to complaints originating in personal dislikes, and which have been the prolific source of long and bitter controversies, not unfrequently ending in scenes of the most startling and appalling character. How often is it the case, that this class of indictments, which are seldom, if ever sustained, deeply affect the peace of entire communities, and the happiness and prosperity of whole families. I know many instances where prominent citizens have been indicted for supposed breaches of the peace, or petty misdemeanors, which have created and kept the members of society in a state of excitement and hostility toward each other for years.

But, shall I be told that these cases are exceptions to the general rule, and that it is unwise and dangerous to determine the character of the system by this mode of reasoning? Undoubtedly, if this class of indictments are exceptions to this rule, I am wrong. But are

they? I think it will be found, upon a careful examination, that not one out of twenty are sustained by a jury of the country. And if this be true—and, so far as my observation goes, it certainly is—the general rule is obviously against the continuance of so dangerous a system in a government founded upon the will of the governed, and for the protection of life and liberty, as well as to secure the peace and prosperity of the people. But other defects, incident to, and peculiar only to this institution, crowd upon the mind.

In a large number of indictments for the higher offenses, there are technical defects by which the worse class of criminals often escape the just condemnation of the law; or the cases are continued from term to term, to correct these errors, thereby increasing the burdens of the county, and also rendering it inconvenient and expensive to the witnesses.

But, say the friends of the system, cannot this acknowledged defect be remedied? We answer, no; and hazard nothing in declaring that it is an incurable evil—one that all the learning of the legal profession, for centuries, has not been able to eradicate; and for the reason of the great discrepancy in the testimony given before the Grand Inquest, and that introduced upon the trial of the case, under a most searching cross-examination by the counsel for the accused. And add to this the evidence for the criminal—frequently contradicting that of the prosecution, in part or in whole—often weakening it in one or more of the essential allegations of the indictment, and almost always rendering it less reliable for conviction, and is it any wonder so few of the many indictments found are sustained by a trial in open court, and before a jury of the country. But the evil stops not here.

The system imposes upon no inconsiderable number of citizens in every county in the State, and particularly in those where they have a large criminal docket, most onerous duties. In much the largest number of indictments, particularly those for the smaller offenses, all the witnesses for the prosecution are compelled to be in attendance at two terms of the court—at one for the finding of the indictment, and at the succeeding one for the trial of the case. It frequently happens, too, that the witnesses are detained for several days before the trial comes on, or the case is continued until the next term of the court, when the witnesses are compelled again to be in attendance. Now, if these hardships are but seldom imposed, they might be endured without complaint. But it is otherwise. They are not only frequent, but general; and what makes it still more oppressive is, that these services are mostly required of a class of our fellow-citizens who are the least able to make the sacrifice. Besides these, demanded but unpaid for requirements, mostly growing out of the character of this *educational*,

*liberty expounding* tribunal, (as its admirers represent it to be,) the citizen is subjected to others, that if less burdensome, are still obnoxious to justice and a wholesome public sentiment. How often is it the case that persons are called before the Grand Jury, perhaps from the remotest corner of the county, upon a mere rumor, which has reached the ear of one of the jurymen, that some petty offense has been committed, or that a supervisor has neglected the discharge of his duty in some unimportant particular. I have known more than three hundred witnesses called before the Grand Jury at a single term, under the belief that they could give information of persons who had been guilty of minor misdemeanors.

At the April term of the Floyd Circuit Court, 1848, over three hundred and fifty indictments were found; and out of this whole number, there were not to exceed twenty convictions, and those were for the most frivolous offenses.

In large counties bordering on the Ohio river, and especially in cities where they have a large fluctuating population, the present system is very expensive, and frequently operates with great hardship, and sometimes most unjustly, too, against a class of persons who are unable, either from pecuniary disability, or from being comparative strangers in the county, to give security for their appearance at court. These persons are generally committed to jail, where they remain several months at a serious expense to the county; and, if innocent, which is frequently the case, at the loss of reputation, which, to an honorable man, is dearer than life itself. I have known, in the last several years, a number of cases, where innocent persons have been indicted, committed to jail, and before they were released by a verdict of acquittal, the hard earnings of years of toil have been consumed. It was only a few months since, in mid-winter, that a citizen of New Albany was arrested for larceny, said to have been committed in an interior county. Having resided there but a short time, he was unable to find security for his appearance at court, and was committed to jail, where he remained several days, when he was taken to the county where the indictment was found, and where he had formerly resided. On his arrival there, he had no difficulty in obtaining the required bail, and returned home with the sheriff, in whose custody he had been.

True to his integrity, he was punctual in his attendance at court, had his trial, and was acquitted; the prosecution having totally failed in creating the slightest suspicion that he was guilty of the charge alleged against him. But for the full particulars of this iniquitous case, as they were disclosed at the trial, I refer to the honorable delegate from the county of Jackson.

However revolting this case may appear,



the consequences to the man and his family are still more so.

In New Albany, he was among strangers, employing a capital of about five hundred dollars in a laudable business. Thus situated, he is arrested, thrown into prison, and from thence taken to Jackson county, where he is finally released upon bail. He returns home to witness a wretched family, the loss of business, and to know and feel that he is the object of general suspicion. Besides all these painful reminiscences, we find that in a few short months, the savings of years of honest industry are wasted away.

Yet we are told that this institution is "a shield to the weak," that its abrogation "will be a violation of the great charter of our liberties—the bill of rights, of the *habeas corpus* act, and, in short, of that divine right bestowed upon man by his maker—the right to govern himself."

But, say the friends of the system, and those who favor it in a modified form, what do the movers of this reform propose, instead of this time honored institution? Is it not the duty of those who advocate the abolition of the Grand Jury, to suggest for the consideration of the Convention, a better and more acceptable tribunal in its place?

These may be proper questions; quite likely they are. But it certainly must have occurred to those who put them, that in this, as well as all other reforms, there is a common responsibility; and that it is neither violent opposition to wholesome reforms, or a blind adherence to old usages, that will stay the onward progress of the people in establishing the former by the abolition of the latter.

Thus far, the discussion of this question, with one or two exceptions, has been marked by a most commendable spirit—a spirit of earnest inquiry, not only into the character of the present institution, but that of the proposed substitute. I will not pretend to say that the advocates of the discontinuance of the system, have been so fortunate in the suggestions which have been made for a substitute, as a more thorough examination of the subject might suggest; nor do I flatter myself that the one I may offer will meet with more favor.

I think it is generally understood that the important judicial duties imposed upon the court of probate, demand higher legal attainments; and that to secure this, there must be a change in the system. What this change should be, is a matter not yet determined. Some favor the surrogate system, others the circuit, while many advocate the election in each county, of a judge, with legal qualifications. For one, I am not tenacious of the name, but shall favor the best and most efficient tribunal. And it is to this judicial officer, whether a Surrogate, Judge of Probate, or Court of Common Pleas, that I would impose

certain criminal proceedings. Upon this Court I would also confer the power to hear and determine writs of *habeas corpus*, injunctions, and have concurrent jurisdiction in other such legal proceedings, as may require prompt judicial action.

Criminal offenses are usually divided, by statutory enactments, under three heads. The first are petty misdemeanors, punishable by fine only. The second are misdemeanors of a higher grade, which are punishable by fine and imprisonment in the county jail. And the third are felonies, punished by confinement in the penitentiary.

Now, sir, however much we may differ upon the subject under discussion, our highest ambition should be, to adopt the best policy to suppress crime, and promptly to punish the guilty. But measures which I may believe would best secure these essential elements in government, others would look upon with doubt, while many would oppose them under the highest convictions of duty. How, then, shall we secure these important objects of government—the suppression of crime, and the prompt punishment of the offender?

To justices of the peace, I would give exclusive jurisdiction in all cases of petty misdemeanors. But here I am admonished by some of the friends of the Grand Jury system, that many of this class of officers are either corrupt or ignorant, sometimes both, and with little qualification for the discharge of the duties imposed upon them by law. For one I am not prepared to admit the correctness of these sweeping declarations. I believe, as a general rule, they are as competent officers, in the sphere of their official duties, as are the higher judicial officers of the State. I believe, too, they are as honest, and as free from corrupting influences, as any other class of officers charged with the execution of the laws. While, however, these are my firm convictions, I am free to admit, they sometimes err, and occasionally act corruptly. But are your circuit judges entirely free from error and corruption? Have these secondary judicial tribunals always decided correctly, and according to justice? I think it will be found, upon examination, that the Supreme Court has reversed more cases, in proportion to the number taken up on appeal and writs of error from circuit courts, than the latter courts have of appeals from justices' dockets. Whence, then, let me ask, this assault upon this class of officers? Is it because they sometimes, frequently if you please, decide wrong? This certainly, as we have seen, is not peculiar to this tribunal, and therefore should be no valid objection to it. Besides, I cannot but believe that others are equally culpable, perhaps more so, for these erroneous decisions. Generally speaking, this class of officers are not very familiar with law, or legal proceedings; and as there are decisions of a contradictory character

upon almost every conceivable question, is it surprising that these minor courts should now and then mistake what the law is, and decide incorrectly? And in addition to this perplexity, they generally have the advice of counsel on both sides of the case, coming to opposite conclusions as to what the judgment of the court should be, and each contending that he is right, beyond all dispute.

Now, sir, I think it will be found upon examination, that this much abused class of judicial officers, generally speaking, are more likely to do substantial justice between man and man, than the higher courts of the country. And for this reason: the former courts decide cases upon the principles of justice, irrespective of the nicety of law proceedings, while the latter tribunals are tied up by the forms and technicalities of special pleadings.

To the county court, however constituted, I would give exclusive jurisdiction of all secondary offenses; and make it also the examining court, in cases of felonies. And it is my firm conviction, that if this plan is adopted, it would entirely obviate the dangers gentlemen apprehend from enlarging the duties of justices of the peace, in criminal proceedings; while it would secure to persons charged with secondary misdemeanors, a more speedy trial; and, if innocent, immediate acquittal; but, if guilty, more certainty of conviction. But what is still more desirable, is, that when a person is charged with an infamous crime, he should first have a public opportunity to offer rebutting testimony, and repel the charge made against him. So obvious to my mind is the justice and humanity of this policy—a policy—in contradistinction to that of a secret and *ex parte* examination of witnesses—founded upon an unalterable law of our being, that, were it not for the prejudice of education, and the great reluctance in the human mind to discard old usages, the opposition to the abolition of the system would be a matter of serious surprise. But this very characteristic of our being, is, by the action of this secret tribunal, often made the unwilling instrument of injustice and inhumanity; not because there is an inherent desire in man to do wrong, but from that acknowledged law of mind, that if evidence is heard on one side, and excluded on the other, a prejudgment is almost certain to follow. So controlling is this principle, that I question whether it would be possible for a stranger to enter a court house during the sitting of the court, witness the criminal in the box, and hear the indictment read, without at once becoming prejudiced against him. Yet this prejudice is of little moment when compared with that created by a secret and *ex parte* examination.

But, sir, adopt the section before the Convention, and you at once, and forever, close the door against that class of criminal cases, originating in malice and revenge. And is not this desirable? Can any question of more impor-

tance engage the attention of this Convention, than the protection of the innocent, against the malevolence of the depraved? The benign policy of the law declares, that it is far better that ninety and nine guilty persons should escape punishment, than that even one, who is innocent, should suffer. But this just and gracious principle in the administration of criminal proceedings, is almost entirely disregarded by Grand Juries; and it is impossible for it to be otherwise, so long as their examinations are *ex parte* and in secret.

But, is the question asked, how these evils can be remedied? or what do I propose as a substitute for indictments? and whether the contemplated change will secure a more prompt execution of the criminal laws of the country, and at the same time give greater protection to the innocent, and more certain punishment to the guilty? Sir, these are important questions—questions of serious import, and deserving the calm and scrutinizing investigation of the Convention. And with this spirit, uninfluenced by the desire and ambition of success, only for the glory of triumph, it is my firm belief that a change may be made that will more fully secure these great ends in the administration of the penal laws of the State.

I have already remarked, that in nearly all criminal cases for the higher offenses, incipient proceedings are had before a competent judicial tribunal, upon an affidavit being filed before such court.

Now, sir, I would make the affidavit, in all cases, whether in preliminary examinations, or upon final trial, the foundation of the charge against the accused party. And, if upon hearing the evidence in such examinations, both for and against the State, it was found there was an essential variation between the evidence and the charge in the affidavit, an opportunity would be afforded to correct it, with little delay, and no additional expense to the county. This, then, would at once obviate the difficulty, delay, and expense often resulting by the finding of indictments from a partial, prejudiced, and *ex parte* examination of the testimony in the case.

Another great benefit that will result from open examinations, and the hearing of the evidence for and against the criminal, would be the formation of a correct public judgment of the guilt or innocence of the accused.

Sir, this discussion has not only been fruitful in appeals to imaginary evils which may befall the country by the abolition of grand juries, but gentlemen have fallen into the greatest possible absurdities in relation to restricting its duties.

Gentlemen tell us that this judicial system, in many particulars, works badly, and that all cases of petty misdemeanors should be disposed of without its intervention. Now it will be seen that this modification of the powers of this tribunal will cut off nine-tenths, at least, of all the



business now imposed upon it, and that its only remaining duties will be to inquire into the higher criminal offenses.

Then, sir, what force, or even meaning, is there in the remark, that the gambler, the horse-racer, the retailer of spirituous liquors without license, and that numerous class of petty offenders found in every community, are the advocates of the abolition of this system. If, in the language of an honorable delegate, we "take from the grand jury their jurisdiction over petty misdemeanors," what reason, I ask, is there to suppose that those who are guilty of these offenses will join in the cry, "Down with the monster!"

It has been stated, and several times repeated, during this discussion, that it seldom happens, in cases of felonies, that incipient proceedings are commenced before the grand inquest; but that, almost invariably, the charge is first made and examined before a justice, or other officer, and the accused party either released, or recognized to appear at the next term of the court, or for want of bail, committed to jail. So general is this rule that the exceptions will not exceed one in twenty; and in the Floyd Circuit Court, only one in fifty-three. Yet we are told by the friends of this tribunal, that those who are "accused of the most heinous and infamous crimes," are most interested and clamorous for its abolition. But the reason for this opposition is equally as mysterious as that petty offenders should desire its immediate discontinuance.

Again: It has been more than intimated by gentlemen that if you abolish this system the influence and power of the great, and strong and rich, who commit crime, will shield them from exposure and punishment. This, sir, is an assumption, contradicted by numerous facts and the uniform criminal proceedings against these influential classes. The truth is, there is hardly a case to be found on record, of a great, a strong, or a rich man, having been guilty of a crime, where he was not first arrested upon a warrant issued by a justice, or some other competent judicial officer. I have no knowledge of a single exception to this rule, where a conviction followed; and if gentlemen will examine the criminal proceedings of our courts, from the organization of the government to the present time, they will find but few cases of this class, where the incipient proceedings were had before a grand jury.

Fortunately, Mr. President, those who advocate the abolition of the system, have many examples, clearly showing that its continuance is not necessary to secure the just and faithful administration of the criminal laws of the country against this class of offenders.

The memorable case of Aaron Burr for treason, the case of the Crowningshields and Knapps for the murder of White, the case of Monroe Edwards for forgery, the case of General Keene for robbing the mail, the late case of Professor Webster for the murder of

Dr. Parkman, the case of the great speculator Rathbun for forgery, the quite recent case of General Hinton—a leading and influential member of one of the great political parties of the country—for robbing the mail, and the case in Philadelphia where a merchant of high standing and several persons of respectability obtained insurance for a large amount upon a cargo destined for the southern ports, but which was discovered, when at sea, to be nothing but rubbish, and that a quantity of the oil of vitriol was so arranged that it should communicate with other articles which would create spontaneous combustion. I say, sir, that in all these cases arrests were made and examinations had, before they were presented to the grand jury for a secret and *ex parte* re-examination of the evidence only on the part of the State. I might go on and enumerate hundreds, and even thousands of criminal cases, where the incipient proceedings were had before the minor judicial courts of the country; but I think it will require great research to find even a small number where the proceedings were first had before grand juries. In the great State of New York, where they have a large criminal docket, they do not exceed one in one hundred and nineteen, while in this State there has been but few cases, and in many counties not a single case has occurred since the formation of the State government.

Sir, the great name of the sage of Monticello has been invoked to bolster up this odious institution. Yes, gentlemen have stated on this floor that the immortal Jefferson, the ripe scholar and able statesman, declared "that no nation could ever be enslaved where the grand and petit jury systems prevailed." When this bold statement was first made I doubted its correctness; and I now say to this Convention and to those gentlemen who called to their aid this model patriot, that there is not the slightest foundation in all his writings for this declaration; that he never was the author of such a sentiment.

Again: The argument that the secrecy of Grand Juries is necessary to screen the timid, and ensure immunity to the cowardly, is of little force. Moral courage is essential to the due administration of any form of government. Without it the powerful and daring break through all law. And moral courage, like physical courage, grows by exercise. In a neighboring State, Kentucky, in all primary elections, the *viva voce* system prevails; and you will scarcely find a Kentuckian who is not wedded to it. Yet the same argument may be adduced against it, as in favor of the Grand Jury. It might be said, that the timid, governed by fear, might give his vote against his conscience; and that the brave, by dint of intimidation, might control the votes of his weaker neighbor, who would not dare to incur his hatred or ill will. In practice this is not found to be the case. That which men are

accustomed to dare they do not shrink from. We have been accustomed to avail ourselves of the mysteries which shrouds the doings of Grand Juries, until we come to imagine that we cannot dispense with it. If the system of secret accusation were done away, the wonder would soon be, that we had ever regarded it as necessary.

But, Mr. President, in the course of this discussion, the question of economy has been alluded to; and the relative cost of Grand Juries, and the proposed system, has been made. From this estimated calculation, the expense of the new, over that of the old tribunal, is greatly lessened. It is true, that this is of little moment, compared with an efficient system; but, if by the change, we secure both, it is certainly desirable, and should have its proper influence upon the members of this Convention.

Sir, I have taken some pains to ascertain the cost of the Grand Jury system for the county of Floyd, during the years 1848 and '49, and the annexed table is the result of such investigation:

|                                       |          |
|---------------------------------------|----------|
| Expenses of the Grand Jury . . . . .  | \$605 00 |
| Subpoenaing of witnesses . . . . .    | 260 00   |
| Bailiffs . . . . .                    | 60 00    |
| Other necessary expenses . . . . .    | 56 00    |
| Jail fees in minor offenses . . . . . | 670 00   |
| Petit Juries . . . . .                | 595 00   |

Making a total of . . . . . \$2,246 00  
Add to this the loss arising from over two thousand witnesses called before the Grand Jury, and the finding of over five hundred indictments, and their appearance the second, and frequently the third time, before the court, and if time is money, we have a large additional item, exceeding over four thousand dollars, which added to the above, makes the large sum of six thousand two hundred and forty-six dollars, most of which is a useless expenditure of money, justly chargeable to the palpable defects of this institution.

Now these expenses and burdens, great as they are, do not include the fees of the Clerk, who receives little or nothing for these onerous services—nor the Sheriff's fees, for which he gets, comparatively speaking, no remuneration.

But, Mr. President, I am admonished, if not by the impatience of the Convention, by a just sense of its indulgence, to hasten to a conclusion.

The best interests of society, the highest claims of humanity, are involved in the decision of the question before us. If there be doubt as to how it shall be decided, that doubt arises solely out of the fact, that prejudice often bears ruling sway over the heart of man, and that ancient customs are wont to endure long after their utility has been disproved and their injustice made apparent.

What are the words we are required to endorse or condemn? "No person shall be put on

trial on any criminal charge, without public opportunity first had, to offer rebutting testimony and repel the charge in its inception." If this were an original proposition, now first presented, it would pass as unquestioned as the assertion of the right of trial by jury, or the declaration that all courts shall be open. Take, for a moment, the converse of the proposition, and see how it will read. "The citizen put on trial on a criminal charge, shall have no previous public opportunity to offer rebutting testimony; nor shall he be allowed to repel any charge brought against him in its inception." Is not the sentiment monstrous, on the face of it? As an original proposition, not bolstered up by the time honored name of the Grand Jury System, what voice in this Convention would be raised in its favor—what vote given in its support? Ancient vestments have shrouded flagrant abuse. A respected title has covered up a legal enormity. Let us penetrate the falacious veil; let us look through a specious name to an odious reality; and the fate of the Grand Jury System will be decided now and forevermore.

Pending the question,

On motion of Mr. MOWRER the Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the section relating to Grand Juries.

Mr. LOCKHART requested the gentleman from Ripley to withdraw his amendment, for the purpose of enabling him to offer a substitute for the section, in lieu of his former amendment.

Mr. SMITH of Ripley. I would like to accommodate the gentleman, if I was sure that I should have an opportunity of offering my amendment again.

Mr. SMITH withdrew his amendment.

Mr. LOCKHART then withdrew his former amendment, and offered the following as a substitute for the original section:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury; and all offenses, the punishment of which is by fine or imprisonment in the county jail, shall be prosecuted in such manner as shall be prescribed by law."

Mr. SMITH of Ripley renewed his amendment as an amendment to the substitute.

The PRESIDENT. The question is on the amendment offered by the gentleman from Crawford.

Mr. SMITH of Ripley. I understand that the gentleman from Vanderburgh has modified his amendment.

The PRESIDENT. The motion of the gentleman from Crawford is to amend the original section, and consequently takes precedence over a motion to strike out the section and insert a different one.



**Mr. SMITH.** I would like to know if my amendment is considered as being renewed?

**The PRESIDENT.** Certainly.

The question being about to be put on the amendment of the gentleman from Crawford,

**Mr. PETTIT** said he hoped the vote would not be taken now. It was an important question, and the Convention was far from being full. He believed that the gentleman from Lagrange contemplated addressing the Convention, and he had anticipated hearing him, although the gentleman was on the opposite side of the question. He would move that there be a call of the Convention.

**Mr. BORDEN.** Is the motion debatable?

**The PRESIDENT.** It is not the usual practice to debate a motion for a call of the Convention.

**Mr. BORDEN.** Is there a quorum present?

**The PRESIDENT.** That will be ascertained when the call is made.

**Mr. BORDEN.** I was under the impression that the Chair ascertained that fact before calling the Convention to order.

**The PRESIDENT.** The Chair has not thought it necessary to count the members.

The question was taken on the motion of the gentleman from Tippecanoe, and it was decided in the affirmative.

The names of the members were then called, and the Secretary reported that there were 94 delegates present. The result having been announced,

**Mr. PETTIT** said: A great many of the members, I suppose, are this afternoon listening to the Governor's address. I am not willing that the vote shall be taken upon the section until they are here. And I therefore suggest that we pass it by until the day after to-morrow.

The question being put, the section was postponed until Thursday by unanimous consent.

**The PRESIDENT.** The next thing in order is the following section on its second reading.

The Secretary read the section, which provides that criminals shall have the right to a public trial by a jury, the right to be heard by counsel, &c.

The question being on the engrossment of the section,

**Mr. STEVENSON** proposed to amend by striking out the words, "of his peers."

This is a new phrase, said **Mr. STEVENSON**, that has been here inserted. There is nothing of the kind in the old Constitution. It merely requires that the party shall be tried by a jury. I think we had better strike out the word "peers."

**Mr. PETTIT.** This word simply means his equals in political standing—persons having equal rights in the community. I take it that the purpose of this clause is to prevent such an anomaly as a white man being tried by negroes, for instance. I do not suppose that gentlemen wish to bring about such a result. It is merely

a guard against putting a citizen of Indiana upon his trial before those who are not his equals.

**A VOICE**—"How will it be if free negroes are to be regarded as citizens?"

**Mr. PETTIT.** It is not intended that they shall have political rights.

**Mr. STEVENSON.** One word in reference to this matter. This word "peers" is not found in any of the Constitutions of the States. It is a new phrase, and one that must produce some difficulty. A man is put upon his trial; the question is, who are his peers—who are his equals? Must it be men of equal wealth?—is a poor man not to be upon the jury which tries a rich man?

**Mr. PETTIT.** There must be political equality.

**Mr. STEVENSON.** What is political equality? Are you going to require that democrats shall be tried by democrats, and whigs by whigs? I have no idea that any such thing is intended, but I say the question is, who is to be considered the peer of the accused? If you say that a man shall be tried by his equals, are not all men equal? Our Constitution declares that all men are born free and equal? If that be the case, what is the object of this provision? Is it put there without an object? I presume not. I presume that the men who drafted it had an object in view. Then what is that object?—is it to keep the negro from trying the white man? No, sir, that is not it, because such a provision is not necessary. Well, then, what is the object? There can be none unless it be to prevent a poor man sitting upon the jury where a rich man is to be tried; or, to prevent a learned man from trying an unlearned man—or a man of a particular occupation in life, from trying a man of a different occupation. I say that I can see no object in it. We have not this word in our old Constitution—nor in our laws; and I should be glad before I am called upon to vote for it, to know for what purpose it is introduced. If gentlemen can give a satisfactory reason for it, I will go for it; until then I shall go against it.

**Mr. OWEN.** I would not talk five minutes for the sake of keeping the phrase in, or putting it out. But there is not a word in the whole range of the common law that is better understood—every one understands it perfectly. The provision is, that a man shall be tried by his equals. We have expressly declared that all men are created equal; this declaration stands in the very same article. It means that, and can mean nothing else. No other construction can be given to it; but it is not worth talking about. If the Convention think it is better to strike it out, I have no objection that it shall be stricken out.

**Mr. RARIDEN** favored the motion to strike out; although the meaning of the phrase, he said, was perfectly clear and would be readily understood by everybody. There could be no

doubt as to what the decisions of the courts would be in regard to persons of color serving on juries. No such thing was contemplated. The phrase was in common use. In England the signification was, that noblemen shall be tried by noblemen; commoners by commoners, peasants by peasants. He thought it would be as well to leave out the phrase, and leave the matter to be regulated by the Legislature.

Mr. MORRISON of Marion said he was prepared to vote for the motion to strike out; but he would like to have a recognition of the composition of the jury. He would, therefore, move to amend the motion by inserting the words, "composed of a jury of the State." [A Voice—"a jury of the county."]

Mr. STEVENSON accepted the amendment as a modification of his motion.

The question was then taken on the amendment of gentleman from Putnam, to strike out the words "of his peers," and insert "composed of a jury of the country," and it was agreed to.

Mr. RARIDEN. I propose now to insert after the word "county," the following words; "unless for cause shown, the judge shall direct a change of venue to some other county."

Mr. HALL. It appears to me that the section is precisely as it should be after the striking out of the word "peers." I move that the amendment be laid upon the table.

The motion was agreed to.

Mr. SMILEY moved to amend by inserting the words "licensed or unlicensed" after the word "counsel."

The amendment was adopted.

Mr. COLFAX proposed to amend the section by adding a provision authorizing a change of venue in criminal prosecutions upon the application of the accused.

Mr. OWEN suggested that it would be better to strike out the words which restrict the trial to the county in which the offense is committed, and leave it to the Legislature to make the necessary provision on the subject.

Mr. GIBSON remarked that, if that restriction were stricken out, it would give the State the right to remove the trial, whereas it ought to be the privilege of the accused.

Mr. RARIDEN agreed with the gentleman from Clark, that this is a right that should not be given to the State, because it might operate oppressively upon the individual. It was the right of the criminal to be tried in the county where the offense is committed; but the courts had held that, if he chose to surrender that right, they might exercise the power of removing the trial to another county.

Mr. PETTIT said he did not think that, upon a judicial construction, there would be an absolute necessity for amending the section as proposed. But it could do no harm. He agreed with the gentleman from Wayne, that it was the right of the accused to be tried in the coun-

ty where the offense is committed; but if he should see fit to waive his right, the State could not object. But, for the purpose of making it more certain, he had drawn up an amendment similar to that which had been proposed by the gentleman from St. Joseph, and had intended to offer it, if the gentleman had not anticipated him. He hoped the amendment would be adopted.

The question was taken on the adoption of the amendment, and it was decided in the affirmative.

The question then being on the engrossment of the section,

Mr. RISTINE moved to amend by adding, at the close of the section, a provision giving to the accused, or his counsel, the closing argument before the court or jury trying the case.

The question was taken, and, by ayes 32, noes 33, the amendment was rejected.

The section was then ordered to be engrossed for a third reading.

The section which provides that no man shall be put twice in jeopardy for the same offense, was read a second time.

Mr. MARCH moved to amend by adding the words "in any criminal prosecution."

The amendment was agreed to.

On motion by Mr. NEWMAN, the word "man" was stricken out, and "person" inserted.

The section was then ordered to be engrossed for a third reading.

The section which provides that offenses, other than capital, shall be bailable by sufficient securities, and that capital offenses shall not be bailable when the proof is evident, or the presumption great, was read a second time.

Mr. THORNTON moved to strike out the section; and substitute in lieu thereof a provision to the effect that all cases shall be bailable when security of a sufficient amount is given, according to the magnitude of the offense and the circumstance of the accused.

I have had, said Mr. T., some little experience in criminal trials, and I have seen difficulty arising from the refusal of the courts to suffer an individual, charged with crime to give bail. I was recently engaged in a case of this character in our circuit, in which the right of an individual charged with murder, to be let to bail, was brought in question.

So far as my opinion is concerned, I have for many years entertained the belief that no person should be subjected to a forfeiture of life for any offense whatever. I have sincerely doubted the *right*, as well as the *policy*, of taking life as a punishment for crime; and I am not prepared to say but this Convention may come to the same conclusion. I hope, at least, that the Legislature will ere long do so. I dislike the use of the phrase "*capital offense*." It implies that the punishment must be death. If gentlemen agree with me, they will say that



this is not the language that ought to be inserted in the Constitution.

In the case above referred to, the accused, as before remarked, was charged with murder; and upon the question, whether he should be admitted to bail, the president judge seemed to hesitate whether he had a right to such privilege under the provisions of our present Constitution, arising simply from the fact of his being charged with the crime of murder. But, I would ask, how is the *proof* to be assumed as *evident*, or the *presumption* great? Is it to be predicated on the circumstance, *merely*, that the accused stands charged with murder in an indictment, without adducing any proof of the fact? Or must it first be shown, on the part of the prosecution, that the case is such as to preclude the accused from asking the benefit of bail? The latter is the only rational conclusion; to assume any other would be involving a monstrous absurdity, and tend to oppression. This, although the only one reconcilable with reason, common sense, and the plain rights of the accused, would subject his case to pre-judgment, as the Court, whose province it is to settle the question of bail, *must* have some legitimate and satisfactory proof of the circumstances attending the transaction, to enable it to decide understandingly.

I have been retained sometimes in cases where it has become my painful duty to defend a man on trial for his life, and I have ever contended that it was the duty of the court to require, on the part of the prosecution, the requisite proofs which went to establish the guilt of the accused, before the court could refuse to admit the prisoner to bail; but the practice seems to be, just to charge an individual with murder, and the court, instead of following the maxim of the common law, which presumes that every man accused of crime is innocent until the contrary is proved, acts upon the presumption of the guilt of the accused, and refuses bail. Well, sir, I do not like the words "capital punishment," because it recognizes the infliction of the odious and abhorrent death-penalty, and this must be the case as long as the Constitution, which contains such a provision, continues in existence. It seems to me, then, that some other language ought to be used. I am, therefore, for striking out the section and inserting the words which I have suggested.

I have seen, with great pleasure, during the period of our deliberations in this Convention, gentlemen advocating the rights of man, and for the protection of our citizens, in the enjoyment of their liberty. I have seen the utmost jealousy evinced here at the idea, even, of imprisonment for debt. But under this provision, a man may be charged with an offense of which he is wholly innocent, and yet he is to be liable to incarceration in a jail, without having an opportunity afforded him to show his innocence,

or to demand proof of his guilt—without the privilege of being admitted to bail. I call upon gentlemen to come to the rescue. I know that when an aggravated offense is charged against an individual, a clamor is raised, and the prejudices of the community excited against him. In the case to which I above alluded, the accused person had the misfortune, in self-defense, as he believed, to take the life of a fellow man; and I believe, conscientiously, that the circumstances of his case were such, that if ever there was a case of justifiable homicide, it was that case. It was proposed that he should give bail in any amount the Court might prescribe; yet the judge hesitated whether he had the right to admit him to bail, and no other reason seemed to be assigned, except the fact that he stood indicted for murder. The presumption should be, that the accused should be deemed innocent, until the contrary is shown. And I want to know how a judge is going to find out, before hand, that the man is guilty. It is a violation of the great principle just mentioned, that every person accused of the commission of crime, even upon indictment, is presumed to occupy the platform of innocence until that presumption is overcome by proofs of his guilt. Then I contend that no danger can grow out of the proposition I have had the honor to submit. It may be said, that if the offender be let to bail, facilities for escape will be afforded, and the ends of justice may be defeated. But, notwithstanding this, I cannot but believe that the rights of the citizen would be placed on safer ground, as, instead of the accused being incarcerated in prison, upon the mere presumption of guilt, often to the ruin of his health and character, he would be permitted to enjoy his liberty, and have the opportunity of preparing for his defense.

I know that gentlemen feel more or less attachment for old established usages, but I never could perceive how the language here used, and which is but a transcript from the old Constitution, is to be practically applied; and owing to the various constructions it may receive, it appears to me it would be much safer to adopt language less equivocal, and more clear and positive in its terms. I admit, that before an original court of examination into the nature of the charge alleged against an accused person, it can have a sensible application, perhaps; but when the accused has been indicted and is brought before the court, upon an application to be admitted to bail, it appears to me to be doing violence to every presumption in favor of human liberty, as understood under our free institutions, for the court to assume, that because an indictment has been returned by a grand jury against him, there exists such "*great presumption*" of guilt, as to close the door to giving bail. This consideration is strengthened by reflecting that as under an indictment for murder, the accused may be found guilty of a minor offense, grand

juries often return indictments for the more aggravated offense, when the evidence only conduces to establish the less one.

There is another consideration to which I wish to call attention, and it is this: I have seen the same amount of bail exacted from a poor man, as from a rich one. When the Court makes an order to hold a man to bail, no matter what his circumstances may be, although poor, he is required to give bail in the same amount as if he were the richest man in the State. This amendment contemplates that bail shall be proportionate to the magnitude of the offense and the circumstances of the party arrested. I would not advocate making invidious distinctions between men, but what I mean is this: when a man is called upon to give bail, if he be wealthy it is much more proper to require that he should give larger bail than if he were a poor man. It seems to me, therefore, that some provision of this kind should be adopted.

Mr. GIBSON inquired of the Chair if it was in order to amend so as to perfect the original section before striking out the entire section?

The PRESIDENT replied in the affirmative.

Mr. GIBSON then proposed to amend by striking out the words "capital offenses," and inserting the words "murder and treason." It was a matter that was, at least, questionable, he said, whether there ought to be such a thing as capital punishment in this State. If offenses were capital, they must necessarily be punished with death; but he doubted the propriety of declaring that any offenses should be regarded as capital offenses. With regard to the proposition of the gentleman from Floyd, he considered it one of the most startling innovations that had ever been introduced into our system. What was it? It was that a man who was willing to pay a sufficient price, might commit murder with impunity. The only question he would have to ask himself would be. Am I willing to pay the price? Having settled that question he might commit murder, and then walk abroad at noon-day. All he has to do was to pay the price at which the bail was fixed, and then he might quietly put up his goods and leave the country. It appeared to him that it would be much better to insert the particular crime instead of saying "capital offense," because the Legislature might, at some future day, abolish the punishment of death. They might say that no man shall forfeit his life for any offense. He thought that the Convention ought to adopt the amendment that he had proposed. It would accomplish the object that was contemplated by the gentleman from Floyd.

Mr. LOCKHART said he could see no advantage that could arise from amending the section as proposed. The amendment of the gentleman from Floyd was very objectionable, and that of the gentleman from Clark was

scarcely less objectionable. He would move that they be laid upon the table.

Mr. OWEN requested the gentleman to withdraw his motion for a moment.

Mr. LOCKHART withdrew the motion.

Mr. OWEN said he thought the object of the amendment of the gentleman from Clark was certainly a good one, and that it ought to be adopted. It was not at all improbable that the death punishment would hereafter be abolished, and in that case there would be nothing to which the provision would apply.

Mr. HOWE moved to amend the amendment by inserting after the word "murder," the words "in the first degree."

Mr. GIBSON accepted the amendment.

Mr. BORDEN said he was desirous of making a distinction between murder and treason. He hoped that a provision would be inserted declaring that treason should not be punishable by death. So far as the crime of murder was concerned it was correct and proper that it should be punishable by death. He saw no difficulty in the matter; but he thought the Convention would do well to abolish the death penalty for political offense, and reserve it for murder in the first degree.

The question was taken on the amendment of the gentleman from Clark and it was agreed to.

The question then recurred on the amendment of the gentleman from Floyd.

Mr. THORNTON. I never for my part submit a proposition that I have not some doubts that I may be wrong. But it seems that I am not fortunate enough to make any proposition that is agreeable to the intellectual palate of the gentleman from Clark. I have for years bestowed some attention upon this subject, and my observations have conducted me to the conclusion that the infliction of the death-penalty is intrinsically wrong in principle, and contrary to sound policy.

Had I the formation of a code of criminal law for this community, I would not incorporate in it a provision subjecting any person to a forfeiture of life for the commission of any offense whatever. I would feel disposed to imitate the course of Mr. Livingston, when appointed to frame a criminal code for Louisiana, who omitted to insert therein any penalty for the crime against nature; as he said he would not recognize the possibility that such an offense could be committed. In accordance with such views, it seems to me that to prescribe a punishment for the crime of treason against the State is time and paper thrown away, as no such offense is likely ever to be committed.

I cannot yet understand how a court can undertake to say that they can refuse bail because the merits of the case are of such a character, that bail ought to be refused. If there is anything that should be studiously kept out of view, it is commenting on the merits of the case of



an individual, which is pending for trial in a court of justice. It tends to deprive the party accused of his just rights. It prevents him from having a fair trial. I never did believe in this thing of suspending a human being in the air, like a dog. It is revolting to my mind, and I am glad to witness indications unfavorable to the continuance of it as a punishment for crime in several of the States, especially those which have been revising their Constitutions and criminal code recently. Great changes have been wrought within the last quarter of a century throughout the civilized Christian world. The scenes recently occurring at New Albany are enough to convince any one of the impropriety of countenancing the execution of criminals. I am now sixty-six years of age and I never saw but one man executed, and I trust in God I never shall see another.

I do not wish to be found experimenting on untried ground. I am no experimenter, no Jacobin. I believe the proposition that I have offered is right in itself, and that experience will prove it.

The gentleman from Clark, has put an extreme case. But admitting the happening of such a contingency as he suggests, which is not very likely, and the rich man bailed should pay the forfeiture, it seems to me that the community would derive more benefit from that, than hanging him. Taking his life upon the gallows will not restore the murdered individual to life again. It also strikes out of existence a member of society, who if suffered to live, and undergo suitable punishment by imprisonment in the State Prison, might be able in some degree, to atone for the wrong he had inflicted on society, by rendering services in labor or otherwise, and at the same time would have the opportunity of repenting his crime, and becoming reformed. On the contrary, let his life be forfeited, and you deprive society of his services, and at the same time consign him with all his sins upon his head to meet the dread consequences wholly unprepared. The sole object of criminal punishment, after securing society, is to reform, not to exterminate the offender. The mild precepts of the Gospel is "that no pleasure is taken in the death of a sinner, but rather that he should return and live." It is enjoined upon us also to forgive our brother although his offenses may amount to seventy times seven.

I insist upon it, therefore, that the case presented by the gentleman from Clark, is an extreme one. I do not think that such is likely soon to happen in Indiana. I say to the Convention, that I shall not feel mortified if they reject my proposition, but it strikes me that it is in unison with those principles of philanthropy which religion and philosophy inculcate. The other parts of the proposition, I hold are calculated to advance the cause of personal liberty. If an individual shall have committed

a crime of a very high and aggravated character, let the amount of the bail be augmented accordingly. So far as I am concerned I must adhere to the principle that is contained in my proposition; and I should be glad to have the yeas and nays upon it.

The yeas and nays were ordered, and they were taken with the following result—yeas 9, nays 90:

YEAS.—Messrs. Chapman, Dick, Dunn of Perry, Foster, Hawkins, McClelland, Mooney Thornton, and Zenor—9.

NAYS.—Messrs. Allen, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Biddle, Blythe, Borden, Bourne, Bracken, Butler, Carr, Carter, Chandler, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Conduit, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Frisbie, Garvin, Gibson, Gootee, Gregg, Hadson, Hall, Hamilton, Harbolt, Helm, Hendricks, Hogin, Howe, Huff, Johnson, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Maguire, March, Mathis, May, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Ristine, Ritchey, Schoonover, Shoup, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Watts, Wiley, Wolfe, and Mr. President—90.

So the amendment was not agreed to.

Mr. McCLELLAND moved to amend the section by striking out *habeas corpus*, and inserting "have the body."

Mr. PETTIT. How absurd it is!

Mr. GIBSON. I move to amend the amendment by inserting the words "have his carcass." It will be found just like the original. [Much laughter.]

Mr. McCLELLAND. That is Norman French, I suppose.

Mr. GIBSON (laughing). I withdraw it.

The question was taken on the amendment of the gentleman from Randolph, and it was rejected.

The section was then ordered to be engrossed for a third reading.

Mr. MAY. I was not so fortunate as to catch the eye of the President before the section was declared by the Chair to be passed. If I had succeeded in doing so, it was my intention to have said a few words in reference to the change of phraseology of the section.

Mr. GIBSON moved that the vote by which the section was ordered to be engrossed, be reconsidered for the purpose of enabling the gentleman from Steuben to address the Convention.

The motion was agreed to.

The question then being, Shall the section be engrossed for a third reading?

Mr. MAY. If my recollection is correct, Mr. President, some two or three weeks since, this Convention passed a section substantially as follows:

"In the enactment of laws by the Legislature, all technical terms in the Latin language shall be avoided as far as is practicable."

I have not that section before me, nor can I turn to it without detaining the Convention longer than I am willing to do. I believe, however, I have correctly stated the substance of it. If not, I shall be pleased to have any gentleman correct me.

Now, Mr. President, it is a matter of little or no consequence to this Convention, whether that section was voted for by me or not. For our present purpose, it is sufficient for us to know that the section was passed, and it may, of course, be presumed to have received a majority of the votes of the members present. Whatever may have been my opinion of the wisdom of the Convention in making it a part of the Constitution, it is certain that I did not participate in the discussion that was then had, nor should I now do so, did I not think that we are, by the course we are pursuing, involving ourselves in an inconsistency, which is, to say the least, discreditable.

I believe, Mr. President, that, thus far, there have occurred, since we entered upon the work of revising the Constitution, only three instances of these technical Latin words which we have declared to be odious and deserving to be expunged from our laws. The first instance occurred in that section which has for its subject the manner of elections and in which the term "*viva voce*" occurs. When that section was under consideration, an attempt was made by some gentleman to have that term stricken out, and some English word or words of equivalent import inserted in its place. The second instance occurred in that section which we have passed and in which the words "*ex post facto*" are found. As in the first instance, so also in this, an attempt was made to have these Latin words stricken out, and English words substituted. And now, sir, we have in the section before us the third instance of these objectionable Latin terms, namely, the term "*habeas corpus*," and the question is, shall we again do as we have twice before done, by ordering its engrossment, vote to retain this phrase, and thus, a third time, violate a rule of our own making; or shall we endeavor to avoid it, and use in its stead English words of equivalent meaning?

Now, Mr. President, so far as I am concerned, I do not very much care whether this Convention retains these technical Latin terms, or substitute English words. I make no pretension to an intimate acquaintance with the Latin or any other language, but sir, from what I have heard from the lips of gentlemen who have so profoundly discussed this question, I am well satisfied that I can soon learn all that

they know about the matter, and, with a reasonable amount of diligence in study shall be able to work my way through these obstructions, at least as successfully as some other gentlemen. I am, however, desirous, that in making this Constitution, we shall not stultify ourselves. Having laid down the rule that technical terms in the Latin language ought not to be used, I desire that we should live up to this rule, which is of our own making. Especially, sir, do I desire that we ourselves shall abide by every rule that we have laid down for others. By the section which we have passed, we have made it imperative upon the Legislature, that they shall never use Latin terms, except where it is absolutely necessary; and yet we continue to use them ourselves, as if we had never established any such rule.

Now, Mr. President, I wish to ask this Convention if it is anything else than the fear of making ourselves ridiculous, which restrains us from doing as we have ordered the Legislature hereafter to do! Is it anything else which deters us from marching up to the line which we have chalked out, and which we have required our future legislators to stand up to? I certainly can think of no other reason, unless gentlemen say that in the instances which have thus far occurred, it has not been practicable to insert English words in place of the Latin terms.

With all due deference, however, Mr. President, to those learned gentlemen, who evidently are perfectly at home in this discussion respecting the meaning of Latin words, I must be permitted to give it as my opinion, that for every one of these technical Latin phrases which have thus far occurred, it is entirely practicable to substitute equivalent English words.

Let us take for instance, the first example which occurred—the one occurring in that section which reads, "all elections in the Legislature shall be by a '*viva voce*' vote," and which we passed almost upon the very same day we established the rule that Latin terms should no longer be used. Gentlemen surely cannot have forgotten the motion which was then made, to strike out "*viva voce*," and insert their English meaning, "living voice." That motion did not prevail. If it had prevailed, the section would have read as follows: "All elections in the Legislature shall be by a '*living voice*' vote." Why did not that motion prevail? Not because one sentence does not convey the same meaning as the other, but evidently because it sounds awkwardly, and looks ridiculously.

Now, sir, I confess that I do not altogether like the term "living voice," myself. I do not fully admire the use of the word "living" in connection with the word "voice." I am not certain that I know fully the difference between a *living* voice and any other kind of voice. But why not use the word "*voice*?"



alone, omitting the term "living?" It seems to me amply sufficient. The section would then read: "All elections shall be by a voice vote." Is not this, Mr. President, as intelligible as "*viva voce* vote?" It certainly is as easily and quickly spoken, if that is of any consequence. It seems to me that the most fastidious English scholar we have here (and, sir, we have some confessedly brilliant ones) might by an effort bring himself to use such a phrase. But if that should not suit him, let him designate some other term. I would suggest, for instance, the word "audible." There is abundance of them. So that, in this instance, at least, there was no reason why we should have hesitated to walk up to the line we marked out for the Legislature to stand up to.

Let us now, Mr. President, turn to the next phrase—the term "*ex post facto*"—that we have encountered, and see if that, too, may not somehow be avoided. This, sir, like the last, is a Latin phrase, but, unlike the last, is so miserably put together, if I may use that term, that if it were not sanctioned by an immemorial usage, a man using it would only excite mirth and contempt. The gentlemen from Randolph (Mr. McClelland) in his speech the other day, characterized this phrase as "*dog Latin*,"—I have elsewhere heard it styled "*hog Latin*." It is enough for our purpose here to know that in itself it is a perfectly meaningless phrase, one which can plead for its use nothing but custom. But we have decided that we will not perpetuate the custom, unless in cases where it is absolutely necessary. Now sir, I ask, is it necessary in this case? Is there no English word which can be substituted in its stead? I assert that such a word exists. The word "*retro-active*" is synonymous with the phrase "*ex post facto*," as any one can satisfy himself by turning to the larger edition of Webster's English Dictionary. It will there be found that the same definition is given to this term, when applied to a statute law, that is given to the term "*ex post facto*" in our law books. There is also the word "*retrospective*"—a word of more familiar use, but one not, as it seems to me, sufficiently corresponding to this Latin phrase, to justify its substitution for it. The word first named, however, does correspond in meaning sufficiently to take the place of this barbarism—for it is nothing less—the term "*ex post facto*."

Now, Mr. President, I can anticipate that some learned members may say that this very word itself is a Latin word, and is therefore to the full as objectionable as the original phrase. Should they say so, I shall beg leave to differ with them, and though I should be an unequal match for any of them in such a contest as this, I yet, sir, should hardly hesitate to try to make good my assertion as against theirs. And in passing I may perhaps be permitted to say that it seems to me hardly sufficient for a gentleman

seeking to prove words to be Latin words, to prove them to be of Latin origin, as the learned gentleman from Monroe (Mr. Read) gravely undertook a day or two since to do. Not much learning is needed to convince any man that our language is a composite one—a language made up of words derived from many other languages, the Latin language with the rest. This however is far from establishing that words of foreign origin, but which have been subsequently adapted to our own language, are still foreign words.

Let us now turn, Mr. President, to the third and last instance of technical Latin term which we have encountered—the term contained in the section now under consideration—the words "*habeas corpus*." And I must here again ask gentlemen to remember that my position is not so much, that this and the like phrases shall never be used by any one, as it is that they ought not to be used by us so long as we retain the section prohibiting the Legislature from using them. I am now only urging gentlemen to live up to their own rule.

What we desire to ascertain now is whether some English words may not be found corresponding in meaning to the Latin words in the sentence: "The writ of *habeas corpus* shall not be suspended."

I confess, Mr. President, that I do not altogether like the words which the gentleman from Randolph (Mr. McClelland) proposed to us as a substitute. They sounded harshly and unpleasantly to me when first proposed, and perhaps appeared to others equally undesirable. But may not some others be found less objectionable?

While the gentleman who preceded me was speaking, a friend upon my left who seldom obtrudes his views upon the Convention, drew up as a substitute for the original section the following, which, with his permission, I will read to the Convention:

"No person illegally imprisoned, or restrained of his liberty under any pretence whatever, shall ever be deprived of the right to be personally brought before some tribunal or officer, for the purpose of having the cause of such imprisonment or restraint examined into."

What objection, I would ask, can be raised against such a phraseology of the section? It seems to me to be only objectionable on account of its length, its circumlocution. This certainly is no terrible evil, to avoid which we are required to sacrifice consistency.

Another phraseology of the section occurs to me, Mr. President, by which we may escape from these Latin technicalities, if we really desire to do so, half so much as we profess. Let the section be amended to read as follows:

"The writ of freedom, heretofore styled the writ of *habeas corpus* shall never be suspended except, &c."

Now, sir, I can imagine that this proposition may excite a smile with some gentlemen, for the reason that it retains the very phrase which we seek to avoid. True it is retained; but it is only retained that it may be identified with the new name henceforth proposed to be given to it, and be then dismissed among things to be forgotten.

The "writ of freedom," or, if gentleman prefer it, the writ of *liberty*. I ask if such a term may not properly take the place of *habeas corpus*, without any very violent shock to gentlemen with over-sensitive nerves, to say nothing of ears. What we seek is some brief English phrase to take the place of the Latin phrase. So that it express substantially the same idea, and does not offend against correct taste and grammar, the rest is of but little consequence. The commissioners appointed to revise the New York code, under instructions to avoid these Latin technicalities, decided to style the writ of *habeas corpus* the "writ of deliverance"—*deliverance from imprisonment* a gentleman tells me, and by that name it is now known and used in that State. Surely, Mr. President, liberty has suffered no such shock there, in consequence of the change, that gentlemen need be frightened from their consistency. As between the phrase "writ of freedom" proposed by myself, and the phrase "writ of deliverance," as used in New York, I do not know that there is any great choice. I certainly would not argue long for either. Both are brief, and both substantially express the same idea which is contained in their Latin substitute.

But, Mr. President, I am detaining the Convention too long on this question. I have not attempted in these few remarks, to convince gentlemen of the propriety of establishing the rule to avoid Latin technicalities. That rule they have established for themselves. I have only endeavored to show them that there is no particular necessity for violating it—at least none as yet. Why then, I ask, is it repeatedly violated? I can conceive of no other reason than the very simple one that arises from a fear lest we make ourselves ridiculous by adhering to it.

The question was then put and the section was ordered to be engrossed by unanimous consent.

The section which declares that excessive bail shall not be required—that excessive fines shall not be imposed—that cruel and unusual punishment shall not be inflicted, &c., was read a second time, and no amendment being offered, was ordered to be engrossed for a third reading.

The section which declares that no law shall restrict the right of the people to bear arms, whether in defense of themselves or of the State, was read a second time.

Mr. RARIDEN said he would like to know from the gentlemen who reported this section

whether it was the intention to permit or prohibit the wearing of concealed weapons. He preferred the language of the old Constitution. He would move to strike out the section and insert the corresponding section of the old Constitution.

Mr. OWEN said he would suggest to the gentleman from Wayne that if he wished to prohibit the carrying of weapons it would be necessary to change the language of the old Constitution. For if it were declared by Constitutional provision that the people should have the right to bear arms, no law of the Legislature could take away that right.

Mr. RARIDEN. I will change my motion so as to strike out the word "restrict" and insert the word "restrain."

Mr. OWEN. Had it not better be, "no law shall deprive the people of the right," &c.

Mr. RARIDEN. Yes, sir, that will be better.

The question being taken upon the amendment, it was rejected.

Mr. MILROY moved to strike out all after the word "arms."

The amendment was not agreed to.

Mr. NEWMAN moved to strike out the whole section and insert the corresponding section in the old Constitution.

The motion did not prevail.

Mr. SHOUP moved to amend by inserting the words, "in an open and unconcealed manner."

The amendment was rejected.

The section was then ordered to be engrossed for a third reading.

The section which declares that the Legislature shall not bestow any title of nobility, nor confer hereditary distinctions, nor grant extraordinary privileges, was read a second time.

Mr. READ of Monroe moved to amend by striking out the words, "grant extraordinary privileges," and inserting the following:

"Nor grant to any citizen or class of citizens privileges and immunities which, upon the same terms, shall not belong equally to all citizens."

Mr. READ said that his object in offering this amendment was to render the section more distinct and definite in its signification. It was not designed to interfere with the rights of corporations, and had no reference whatever to a State Bank, nor would it affect any of the institutions of the State. He was convinced that such a principle as that embraced in the amendment should find a place in the Constitution. He had consulted a number of legal gentlemen on the subject, and they all agreed that it was a sound principle. It was merely intended to prevent that which had been much complained of in this country, and which might be called class legislation.

Mr. BORDEN moved to amend the amendment by striking out the word "citizen" and inserting the word "inhabitant."



**Mr. BADGER** moved to lay the amendments upon the table.

A division of the question was asked for and the question was first taken on laying the amendment of the gentleman from Allen on the table, and it was decided in the affirmative.

The question then being on laying the amendment of the gentleman from Monroe on the table,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 39, nays 85—as follows:

**YEAS.**—Messrs. Badger, Ballingall, Bascom, Beard, Blythe, Bourne, Bright, Clark of Hamilton, Clements, Cole, Conduit, Davis of Madison, Davis of Parke, Edmonston, Farrow, Foster, Frisbie, Hall, Harbolt, Hawkins, Huff, Kendall of Wabash, Lockhart, McLean, Milligan, Moore, Morgan, Newman, Prather, Rariden, Ritchey, Robinson, Schoonover, Smith of Ripley, Spann, Stevenson, Tannehill, Thomas, Walpole, and Watts—39.

**NAYS.**—Messrs. Allen, Anthony, Beach, Berry, Biddle, Borden, Bracken, Bryant, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Johnson, Kent, Kilgore, Kinley, Maguire, March, Mather, Mathis, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Tague, Taylor, Thornton, Trimble, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—85.

So the amendment was not laid on the table.

The question being on the adoption of the amendment,

**Mr. DAVIS** of Madison moved to amend the amendment by inserting the following proviso:

*“Provided, That this section shall not be so construed as to prevent the Legislature from establishing a State Bank.”*

**Mr. BUTLER** moved that the amendment to the amendment be laid upon the table.

The motion was, upon a division, ayes 69, noes 53, agreed to.

**Mr. RARIDEN** moved that the Convention adjourn.

The Convention refused to adjourn.

**Mr. WALPOLE** moved that the section be re-committed to the committee on rights and privileges.

The motion was not agreed to.

The question being on the amendment of the gentleman from Monroe,

**Mr. RARIDEN** demanded the yeas and nays, and they were ordered.

**Mr. RITCHEY** said he was afraid there was something covered up in this amendment. He was afraid there was something intended by it that was not apparent upon its face. He moved that, for the present, it be laid upon the table.

The **PRESIDENT** remarked that the motion to lay on the table was not now in order, a similar motion having been decided in the negative.

**Mr. KILGORE** said, that in order to afford time to reflect upon the proposition, he would move that the Convention adjourn.

**Mr. PETTIT.** Is it in order to move to adjourn over until Thursday? If so, I will make that motion; for I can assure gentlemen that I shall not work on New Year's day.

**Mr. RITCHEY** rose to a point of order. He desired to know whether the question could be taken upon adjourning to any other than the usual hour, upon a mere motion?

**Mr. PETTIT** withdrew his motion.

The Convention refused to adjourn.

The question being on the adoption of the amendment of the gentleman from Monroe,

**Mr. MATHER** moved the previous question.

The previous question was seconded by the Convention, and the main question was ordered to be now put.

The yeas and nays having been previously ordered, were taken, with the following result—yeas 69, nays 52—as follows:

**YEAS.**—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Borden, Bracken, Bright, Bryant, Carr, Carter, Chandler, Chapman, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Hawkins, Hitt, Hogin, Hovey, Howe, Johnson, Kent, Kilgore, Kinley, Mather, Mathis, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Morrison of Marion, Mowrer, Nave, Niles, Owen, Pepper of Crawford, Pettit, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Trimble, Wheeler, Wiley, Work, and Wunderlich—69.

**NAYS.**—Messrs. Badger, Ballingall, Beard, Blythe, Bourne, Butler, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Conduit, Davis of Madison, Davis of Parke, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Graham of Warrick, Hall, Hardin, Helm, Helmer, Hendricks, Huff, Kendall of Wabash, Lockhart, Maguire, March, Miller of Gibson, Milligan, Moore, Morgan, Newman, Prather, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Snook, Spann, Stevenson, Tannehill, Thomas, Thornton, Walpole, Watts, Wolfe, Zenor, and Mr. President—52.

So the amendment was adopted.

The section was then ordered to be engrossed for a third reading.

The PRESIDENT laid before the Convention a communication from the Governor, Auditor, and Treasurer of State, stating that the agreement for the use of the Masonic Hall by the Convention, was for the day time only, and if occupied at night there would be an extra charge.

On motion,

The Convention adjourned.

### SPEECH OF MR. TAYLOR,

*Of Laporte, on the "Rights of married women," delivered Tuesday Morning, December 17, 1850.*

MR. TAYLOR. I have waited with great patience, Mr. President, for an opportunity to participate in this debate, and I therefore, with the indulgence of the Convention, embrace the present occasion to make a few remarks.

It is well known that the gentleman from Posey (Mr. Owen) has presented for our consideration, this proposition, the object of which is to keep separate, as the sole estate of the wife, all the property owned or received by her before or during the marriage. He presented it, doubtless, because in his judgment, it is better calculated to promote human happiness generally, than any other that has been submitted to this body.

Yet there are other gentlemen equally anxious to promote the general happiness, as far as it can be done by our action, who entirely differ with him in opinion, as to the effects of the measure proposed.

That men, equally honest, should entertain different views and arrive at opposite conclusions, is neither unusual nor surprising. Yet the gentleman, whose sincerity I am ready to acknowledge, has wrought himself into a passion on this subject. He has had it so long upon his mind, that he cannot listen with common forbearance to any argument in opposition to his view of it. He looks upon it almost as treason for any gentleman to differ with him as to the mode of protection which the law shall afford to the wife respecting her property.

I do not think, sir, that gentlemen should be hasty in making up their minds upon this question. They may be inflicting an injury, where they seek to confer a benefit. I will not yield to any gentleman on this floor, in a sincere desire to protect those to whose kindness and affection we are so much indebted. I too, have had a kind mother, and have yet sisters, a good and affectionate wife, and confiding children, and it is for their protection, that I would sustain the present system of law.

I sincerely regret that the gentleman from Posey, brought forward this proposition, for the

reason that its agitation will do no good, and its adoption would create discord and disunion in the family circle, and strike down the happy relation existing between man and his wife. What, sir, can be more delightful than the happiness which meets at the family altar, and nestles around the fireside, when all are united by the sweet ties of affection and a common interest? What more painful than to see those whom God and nature have made one, drawn apart and rendered unhappy by a diversity of interests, engaged in a foolish and wicked struggle to keep their property from the enjoyment of one another, forever sacrificing domestic peace on the altar of cupidity? Even if, in springing this question, you persuade the wife that she is opposed by the laws of the land, you render her discontented and miserable, and wound the keenest sensibilities of the human heart.

I do not think, sir, that the women of this country are slaves. I believe that on the contrary, they have much to do with training us from our boyhood, and preparing us for usefulness in life; and that our conduct as statesmen and as patriotic citizens, is greatly influenced by their counsels.

I have been astonished in hearing the unjustifiable attacks made on our present system of laws, a system which had been in existence here more than seventy years. Is it possible that our revolutionary fathers and their descendants have for seventy years, been engaged in passing laws only to enslave the kind partners of their bosoms? It is a stigma upon those great men who have long since passed away. Did Washington, and Adams, and Franklin, and Jackson love their wives less than we do ours? Never let it be said, sir, that men of such wisdom, principle, and kindness of heart as were the founders of this government, enacted laws to oppress those whose consolations and sympathy cheered and supported them in the darkest hours of misfortune, and whose smiles gave a brightness to the triumphs they achieved in the cause of their country.

But can it be that the females of this State, desire a change in those laws under which they have lived so long without inconvenience or injury? Do they wish to engage in commerce or in the other various employments of men? I think not, sir. I believe they have no anxiety to engage in pursuits so foreign to their gentle nature. They feel that the hard toil of the laborer, the anxieties of business, the greedy strife for wealth, or fame, or power, are not for them. If, however, any young lady, unlike the majority of her sex, has a taste for the occupations of men, she has only to remain single, and as the law now stands, she may follow any of the trades or professions, to her entire satisfaction. The opportunity is afforded her and the law will grant her protection. There can be no manner of doubt, however, that if the young ladies do make such a choice, there



will be many single men who will regret it. [Laughter.] But should they prefer to regard with favor, the worthy young men of the country, and give to them the charge of their welfare, as those have done who have gone before them, I imagine that all parties will be much better pleased.

No doubt the motives of the gentleman were honest, in introducing this section; but if he had viewed it as I do, he never would have brought it before this body. He appears to think that happiness in the conjugal relation is connected with dollars and cents, but I maintain that the institution of marriage is based on a stronger and more durable foundation. It is founded on the difference between the sexes, and established by the laws of nature, which have given to man, strength, hardihood, and courage; to woman, weakness, delicacy, and tenderness; which, in a word, have made man the father, protector, and head of the family; woman the mother, nurse, and bosom companion. Money is only useful as an assistant to add to the comfort of man and wife, where it is made the principal object of marriage, it becomes a curse. I have known married couples as happy without any property whatever, as those who possess it in abundance. And, sir, where they have property, it is abused to talk about the pecuniary rights of the wife, when a faithful and affectionate husband has the charge of that wife.

But, sir, there is another view of this subject which I would commend to the attention of gentlemen. Suppose this section permanently adopted, and its provisions in full operation, what would be the effect in a social and political point of view? Woman would not all at once take the lead in commerce, but in numberless cases where the husband had been unfortunate, the property would pass into the hands of the wife, and all the gains of trade would accrue to her. She would begin to feel a sex pride and ambition, and her property would be left to her daughters. The infection would spread from one to another, until, in the course of time, all the large landed estates, the bulk of the property, would belong to the females, and I maintain that, at length, men would be reduced to comparative insignificance, and we would have a new kind of aristocracy, a great landed female aristocracy. Those who are in favor of such a state of things and the numberless evils which would grow out of it, may vote for this proposition, but I trust that they would pause and consider well before they do so.

When gentlemen desire action with reference to drunken and profligate husbands, the case is different. To protect a wife from the oppression of such a husband, I am as ready as the gentleman from Posey. If that gentleman will present a proposition restricting the power and privileges of such husbands, I will go as far as the farthest in sustaining him. And whatever measure of a liberal and just character

may be presented for the protection of the widow, of her who has lost her only earthly support, I will sustain, with all the powers I possess. I desire that she should have a comfortable subsistence reserved to her from her husband's property. Let such cases be specially provided for, but let them not be made an excuse for the sweeping measure before us.

It the gentleman from Posey will offer a section to bind closer the husband and wife, instead of dividing them, to promote the peace, and harmony, and happiness of the domestic circle, instead of destroying them, he will obtain for it my hearty co-operation and support.

Perhaps the position I make may not meet with the approval of all the ladies. If so, I regret it, for in assuming that position, I am actuated only by a most sincere desire to improve their condition, and to administer to their welfare.

These briefly, are my views upon this question, and I have only to say that I shall be compelled to vote against the adoption of this section now under consideration.

#### REMARKS OF MR. HITT,

*Delivered on Monday Morning, Dec. 23, 1850.*

MR. HITT presented a memorial from citizens of Kuox county, praying for a clause in the Constitution, that no persons be permitted the right of suffrage until they have paid a tax.

He said: These memorialists are mostly farmers of the county I have the honor in part, to represent. I know them personally, and can testify to their industry, intelligence and respectability.

I heartily concur in the sentiments expressed in the memorial. They complain of a grievance which no doubt pervades every county in the State, more or less. They are very willing to bear their legitimate share of the burden of taxation for the support of government, but are not willing that a certain class of citizens, who make the most noise and bustle on election days, should enjoy equal rights and privileges with themselves, and pay nothing into the Treasury. They think that every voter should be required to pay some tax, (if only a poll tax,) before voting. Although this involves a principle, which to some, might appear rather too much anti-republican, nevertheless, I think it a true one and should be incorporated in the Constitution.

Every true American should feel proud to acknowledge it a privilege as well as a duty, to aid in support of a government which guarantees to him the greatest political rights and privileges of any other on earth. Better far abolish the poll tax entirely, if the burden be not equally borne,

I hope the Convention will duly consider this matter, and at the proper time, give it a calm and respectful consideration. I move to lay it upon the table for the present.

WEDNESDAY, JAN. 1, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. STEELE.

ORDERS OF THE DAY.

Sec. 1 of report No. 30, providing that no law restraining the free interchange of thoughts or opinions, &c., should be passed, was taken up, read a third time and passed.

LIBEL.

The second section, declaring that in all prosecutions for libel, the truth of the matter alleged to be libellous, may be given in justification; and the jury shall have the right to determine the law and the facts, was then taken up and read a third time.

Mr. THORNTON. I desire, sir, to submit a motion to re-commit the section under consideration, with certain instructions, to which I wish to call the attention of the Convention. It will be recollected that, several years ago, our Supreme Court decided that the court had a right to give the law to a jury, even in *criminal* as well as in *civil* cases. Afterwards they modified that decision, by saying that jurors should be the judges of the *law* as well as of the *facts*. The section now about to pass, it seems to me, is hardly full enough. It guards the rights of individuals who are prosecuted for libel criminally, but I have doubts if an individual who is sued for libel, in a civil action, can, under its provisions, be permitted to give the truth in evidence as a defense.

The celebrated Lord Mansfield, the most distinguished jurist who ever graced the English bench, held the monstrous doctrine, that the greater the truth the greater the libel. It is well known that a decision of this character, pronounced by him, in the great case of the *King vs. Woodfill*, gave rise to the pungent and terrible philippics of Junius, and eventually brought about the passage of an act of Parliament, securing to the individual who might be prosecuted for libel, the right to give the truth in evidence.

I have no doubt but that the draftsman of this section, had it in view to make it cover *civil* as well as *criminal* cases; but I am apprehensive, if left in its present form, it will be liable to misconstruction, and its import may be so frittered away by the action of the courts, as to preclude a defendant, in a civil action, from giving the truth in evidence as a defense. We have abundant examples of the tendency of some of our American courts, as well as those of Great Britain formerly, to adopt a construction, which has the effect to deprive a defendant of the benefit of it. The whole current of the recent New York cases of libel, especially the Cooper cases, go to show this, and very recently, under the improved system there adopted, decisions have been given which clearly indicate that the truth

of the alleged libel will not always serve as a shield to a defendant. It is now admitted to be well settled law, that, in a criminal case, the jury has an unquestionable right to decide upon questions of law as well as of fact, although they may differ from the court in so doing. It has even been held that if a juror, whose convictions of the law lead him to a different conclusion from the opinion propounded by the court, should, through a false difference to such opinion, surrender his own, he would be obnoxious to the imputation of having committed moral perjury; and it would not change the character of the case, if, in entertaining such conviction, he should differ from all his fellow-jurors, as well as the court.

But I understand, sir, that in civil cases the court has a right to propound the law, and the jury to find the facts. In a civil action, then, might not such a construction obtain, as might have a tendency to preclude the defendant from giving the truth in evidence, unless we provide some sufficient guard here for that purpose.

I propose to re-commit, with the following instructions: To insert after the word "libel," in the 5th line, the following: "as with any criminal so with any civil case;" and also after the word "right," in the 6th line, insert the following: "in all criminal cases."

I am indebted to my friend on my right, (Mr. McClelland,) of Randolph; indeed, I may well say it his proposition, instead of mine—in the well known hackneyed phrase so often used here, "*his thunder*"—for this proposition. It has struck my mind seriously, however, that there is something in it. I believe that we ought to make provision in the new Constitution, that parties should have the right to give the truth in evidence as a defense in civil actions as well as criminal prosecutions. The proposed amendment will secure the object.

MISCELLANEOUS.

The third section, making provision for remedy by law in courts for injury of character or person, and the fourth, fifth, sixth, and seventh sections, referring to the manner in which criminals shall be tried, were severally read a third time and passed.

HABEAS CORPUS.

Mr. ALLEN moved to re-commit the eighth section, in relation to writs of *habeas corpus*, with instructions to strike out and insert—

"No person, unlawfully imprisoned or restrained of his liberty, under any pretence whatever, shall ever be deprived of the right of being personally brought before some tribunal or officer, for the purpose of having the cause of such imprisonment or restraint inquired into, and justice done in the premises."

Upon this motion the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 45, nays 69:



YEAS.—Messrs. Alien, Badger, Ballingall, Bascom, Borden, Bright, Carter, Chapman, Clark of Hamilton, Conduit, Davis of Madison, Davis of Parke, Dunn of Jefferson, Edmonston, Elliott, Gregg, Hall, Hamilton, Harbolt, Hawkins, Hitt, Keiso, Kinley, March, May, McClelland, Miller of Fulton, Milligan, Milroy, Morgan, Murray, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Robinson, Sims, Smiley, Snook, Steele, Stevenson, Tague, Watts, and Work—45.

NAYS.—Messrs. Anthony, Beach, Beard, Bicknell, Biddle, Blythe, Bourne, Bracken, Bryant, Butler, Carr, Chandler, Clark of Tippecanoe, Clements, Coats, Cole, Cookerly, Dick, Dobson, Dunn of Perry, Duzan, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Haddon, Helm, Helmer, Hendricks, Hogin, Hovey, Howe, Huff, Johnson, Kent, Kilgore, Lockhart, McGuire, Mather, Mathis, McLean, Miller of Clinton, Miller of Gibson, Mooney, Nave, Newman, Niles, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Sherrod, Shoup, Spann, Tannehill, Thomas, Thornton, Trimby, Wheeler, Wiley, Wolfe, Wunderlich, Zenor, and Mr. President—69.

#### PUNISHMENT FOR OFFENSES.

The ninth section, declaring that excessive bail and fines shall not be permitted, and cruel and unnecessary punishments inflicted, was taken up and read a third time.

Mr. MILROY moved to re-commit the section, with instructions to add: "the penalty of death shall in no case be inflicted."

Mr. BORDEN moved to amend: "except it be for cool, deliberate, and premeditated murder."

Mr. B. said that he did not believe that a man should be put to death for political offenses. A man ought only to be executed, in his opinion, where he deliberately formed the design to commit murder. If a man was only to be sentenced to the penitentiary for life when he committed a murder, a burglar, for instance, would commit murder, in order to remove the evidence against him, if he should be disturbed in his depredations. He would reason to himself that, if caught, he would have to go the penitentiary, and if he killed the individual who might discover him in the act of burglary, there would be no evidence against him; and if the deed were found out, he would only have to go to jail. He was in favor, then, of inflicting the penalty of death upon all who coolly and premeditatively committed murder, but for no other offense.

Mr. KELSO remarked that he was opposed to capital punishment in any form. He considered that, when, by the operation of law, the life of a human being, charged with murder, was taken in the form of an execution, it was no more nor less than committing another mur-

der right over for the murder the criminal had committed. Surely, a murder could not be committed more coolly than it was by law. A court investigated the case of a man charged with committing murder, and counsel were employed to seek out evidence to convict him, so that he might be punished if guilty; and this, in his estimation, was as cool and deliberate attempt to murder the accused, as he himself could ever have been guilty of in the murder of anybody else.

The gentleman from Allen (Mr. Borden) had stated that a burglar, if the law provided simply for incarceration in the penitentiary for murder, would thereby be encouraged to kill an individual who might catch him in the act of committing burglary, because he would thus get rid of the evidence that would send him to the penitentiary. Now, he thought that the argument was on the other side, and that, in seven cases out of ten, if a man could enter a house for the purpose of robbing it, he would not destroy life if he were caught in the act, for fear of going to the penitentiary for life, as a murderer would be tracked much more closely than a mere thief; and there would be some difference between a chance between two and fourteen years in the one case, and imprisonment for life in the other. He saw no good reason whatever for destroying life for any offense whatever.

The gentleman from Allen (Mr. Borden) wished men hanged for cool and deliberate murder. This, he said, would, unfortunately for him, destroy the force of all his argument upon the case of burglary, which he has just put. If a man enter a house with burglarious intent, and, upon being surprised, should, to effect his escape, kill his pursuers, this would be neither cool or deliberate; it would be a hasty killing upon the spur of an emergency, and would not come within his own rule of cool and deliberate murder.

They had, he said, a penitentiary, and they might apportion a dozen different wards, in proportion to the magnitude of the offense. They might prepare a dungeon for the murderer, from whence the light of day should be forever excluded.

Some gentlemen took the ground that, public executions would tend to awe the populace and repress murders; but he was satisfied that facts proved the contrary, and that executions tended more to encourage the crime of murder than to repress it. And why? Because the murderer became an individual of note; thousands would come to witness his execution; and his crime and probable execution would be the common talk of the day. Pride, then, would come to his aid, to enable him to walk to the scaffold apparently unawed, and to brave death, even with its icy hand upon his shoulder, and he thus becomes the hero of the day. The best thing, he thought, that could be done in rela-

tion to this matter was, to wipe from the statute book of Indiana this barbarism of hanging, for which no reasonable excuse could be offered.

Mr. BORDEN said that, at the request of several friends, he would modify his amendment as follows:

"Except it be for the crime of cool and premeditated murder."

Mr. HOWE said this was a question of very grave importance; and as he did not consider this the proper time for its discussion, he would move that the section and pending amendments be made the special order of the day for Friday week.

The motion was agreed to.

#### CONCEALED WEAPONS.

The twelfth section, providing that no law should restrict the right of the people to bear arms, whether in defense of themselves or of the State, next came up in order.

Mr. MILROY moved to re-commit the section, with instructions to strike out, and insert "No person shall be restricted in the right to carry visible arms."

As the section now stood, Mr. M. thought that it gave a direct license to every desperado and ruffian in the State to carry concealed weapons. He did not think, however, that this was the opinion of the Convention, or that they would restrict the Legislature from passing any law for carrying concealed weapons.

A MEMBER. I hope the gentleman will modify his amendment, by adding after the word "arms" the words "or eyes." [Great laughter.]

The motion to re-commit was not agreed to.

Mr. NILES moved to re-commit the section, with instructions to strike out, and insert the words, "That the people have a right to bear arms for the defense of themselves and the State," which was the precise language of the provision in the old Constitution upon the subject. He, Mr. N., was desirous whenever the words of the old Constitution were unobjectionable, and had received judicial construction, to retain them in the old form. He was opposed to the reported section from a fear it might possibly be so construed as to deprive the Legislature of power to prohibit the carrying of concealed weapons. The practice of carrying concealed weapons was one of the most dastardly, odious, and murderous practices that was ever tolerated in the civilized world, and unquestionably there was not a gentleman on that floor who would not feel shocked at the idea that no such prohibition could be passed.

Mr. COOKERLY (in his seat) The section has never yet been so construed.

The section was re-committed, with the instructions offered by the gentleman from LaPorte.

#### MILITARY.

Section thirteen, relating to the subordination of the military, and section fourteen, having reference to the quartering of soldiers, were read a third time, and passed.

#### TITLES OF NOBILITY.

Section fifteen, originally providing that "The Legislature shall not bestow any title of nobility, nor confer hereditary distinctions, nor grant extraordinary privileges," was then taken up for consideration.

This section, as amended on yesterday by Mr. Read of Monroe, was ordered to be engrossed, as follows:

"The Legislature shall not bestow any title of nobility, nor confer hereditary distinctions, nor grant to any citizen or class of citizens privileges and immunities which upon the same terms shall not equally belong to all citizens."

Mr. NILES said that he understood there were strenuous objections to the passage of this section, and he therefore hoped the vote upon the engrossment would be re-considered, so that opportunity might be afforded for showing whether these objections were just or not.

Mr. NAVE said that he had voted in the affirmative on the engrossment of this section last evening, as amended, having given the amendment offered by the gentleman from Monroe (Mr. Read) but a cursory examination at that time. He had since examined the amendment more thoroughly, and was satisfied that it was extremely objectionable. He would move, therefore, that the vote upon the engrossment of the section as amended be re-considered, and he would give his reasons for that re-consideration in a very few words.

The language of the amendment adopted last evening, "nor grant to any citizen or class of citizens privileges and immunities which upon the same terms shall not equally belong to all citizens," he looked upon as of an extremely doubtful character, and which might have different constructions placed upon it. It might be so construed as that if a certain number of individuals in Indiana should organize themselves into a company to construct a railroad, a plank-road, or a ferry across a river, every citizen of Indiana would be entitled to enjoy the privileges of the road equally with those who had constructed it, and every citizen might receive a portion of the profits arising therefrom. But he understood that the amendment went even further than this, and that it was a direct attack upon every corporation in the State, private and public, upon State and individual banking. Many other reasons might be given. [Mr. N. was here compelled, owing to an affection, to cease his remarks.]

The question was then taken upon the motion to re-consider, and the yeas and nays being demanded were ordered, and the Secretary reported the following result:



**YEAS.**—Messrs. Badger, Ballingall, Beard, Blythe, Butler, Clark of Hamilton, Clements, Cole, Conduit, Davis of Madison, Davis of Parke, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Kilgore, Lockhart, March, Miller of Gibson, Milligan, Morgan, Nave, Newman, Prather, Rariden, Read of Clark, Ritchey, Schoonover, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Wallace, Watts, Wolfe, Zenor, and Mr. President—59.

**NAYS.**—Messrs. Allen, Anthony, Bascom, Berry, Bicknell, Biddle, Borden, Bright, Bryant, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Coats, Cookerly, Crumbacker, Dick, Dobson, Dunn of Perry, Duzan, Elliott, Graham of Miami, Howe, Johnson, Kelso, Kent, Kinley, Mather, Mathis, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Mowrer, Murray, Nofsinger, Pepper of Ohio, Pepper of Crawford, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Trimble, Wiley, Work, and Wunderlich—54.

So the vote upon the engrossment of the section was re-considered.

Mr. HALL moved to amend, by striking out the entire section and inserting that "The Legislature shall not grant any title of nobility or hereditary distinctions."

Mr. DUNN of Perry moved to lay the amendment upon the table.

Upon this motion the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 43, nays 72:

**YEAS.**—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Borden, Bright, Bryant, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Coats, Cookerly, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Graham of Miami, Graham of Warrick, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Mooney, Morrison of Marion, Niles, Owen, Pepper of Ohio, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Snook, Trimble, Wiley, and Wunderlich—43.

**NAYS.**—Messrs. Badger, Ballingall, Beard, Bicknell, Blythe, Butler, Clark of Hamilton, Clements, Cole, Conduit, Davis of Madison, Davis of Parke, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kilgore, Kinley, Lockhart, Maguire, March, Mathis, Miller of Gibson, Milligan, Milroy, Morgan, Murray, Nave, Newman, Nofsinger, Prather, Rariden, Read of Clark, Robinson, Schoonover, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Taylor,

Thomas, Thornton, Wallace, Watts, Wolfe, Work, Zenor, and Mr. President—72.

So the amendment was not laid on the table.

Mr. BERRY moved to amend the amendment by adding "nor grant any extraordinary privileges."

Upon this motion a division was called for, and by ayes 54, noes 40, the amendment was adopted.

The amendment as amended was adopted; and the section was ordered to be engrossed.

#### TERMS OF OFFICE.

The sixteenth section, providing that the Legislature shall create no office, the term of which shall be longer than four years, was taken up and read a second time.

Mr. READ of Clark moved to except the pilots at the falls of the Ohio river.

Mr. R. said he knew but little of these pilots, but he was satisfied from what he had heard in regard to them, that the longer they held their offices, the better they were qualified to perform their necessary duties. Some had held their situations for thirty and forty years; and he thought, as so much depended upon their skill and experience in the transportation of men and property, their term of office should be an exception. Five years would hardly enable a man to learn the hazardous duties of a pilot.

Mr. MILLIGAN moved to strike out the word "five," immediately before the word "years," in the 47th line, and insert the word "four."

Mr. DUNN of Jefferson. I move to lay the pending amendments on the table.

Mr. COOKERLY called for a division of the question.

The question being first on laying the amendment of the gentleman from Jay (Mr. Milligan) on the table,

It was decided in the negative.

The question then being on laying the amendment of the gentleman from Clark (Mr. Read) on the table,

It was decided in the affirmative.

Mr. McCLELLAND. I move to amend the amendment by striking out the word "four" and inserting "three."

Mr. DUNN of Jefferson. I move to lay the amendment to the amendment on the table.

The motion was agreed to.

Mr. DUNN of Jefferson moved to amend the amendment by striking out the word "four" and inserting the word "six."

Mr. COOKERLY. I move to lay the amendment to the amendment on the table.

Upon this motion, the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 63, nays 56:

**YEAS.**—Messrs. Anthony, Bascom, Beach, Bracken, Bright, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Coats, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry,

Duzan, Elliott, Fisher, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Hawkins, Hendricks, Hitt, Johnson, Maguire, March, Mathis, May, McClelland, McLean, Miller of Gibson, Milligan, Milroy, Mooney, Morrison of Marion, Mowrer, Niles, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Sherrod, Smiley, Snook, Smith of Ripley, Spann, Tague, Taylor, Thornton, Trimble, Wheeler, Wiley, Wolfe, and Work—63.

NAYS.—Messrs. Badger, Balingall, Beard, Berry, Biddle, Blythe, Borden, Bourn, Bryant, Clark of Hamilton, Clements, Cole, Conduit, Davis of Madison, Dunn of Jefferson, Edmonston, Farrow, Foster, Frisbie, Garvin, Gibson, Graham of Warwick, Gregg, Helm, Helmer, Hogen, Hovey, Howe, Huff, Kelso, Kilgore, Kingley, Lockhart, Mather, Miller of Clinton, Miller of Fulton, Morgan, Murray, Nave, Nofsinger, Rariden, Read of Clark, Ristine, Robinson, Schoonover, Shoup, Sims, Steele, Stevenson, Tannehill, Thomas, Wallace, Watts, Wunderlich, Zenor, and Mr. President—56.

So the amendment to the amendment was laid on the table.

Mr. SMITH of Ripley. I move to amend the amendment by striking out the word "four" and inserting the word "two."

Mr. BASCOM. Mr. President, I call for the previous question.

The call having been seconded by the Convention, the main question was ordered to be put.

The PRESIDENT. The question is first upon the adoption of the amendment to the amendment.

The amendment to the amendment was not concurred in.

The PRESIDENT. The question is now upon the adoption of the amendment of the gentleman from Jay, (Mr. Milligan,) to strike out "five," and insert "four."

The amendment was adopted.

The section was then ordered to be engrossed for a third reading.

#### RIGHTS AND IMMUNITIES.

Mr. READ of Monroe offered the following additional section:

"The Legislature shall not grant to any citizen or class of citizens, privileges and immunities which upon the same terms shall not equally belong to all citizens."

Mr. R. said, I think the Convention will bear me witness, that I have not hitherto been pertinacious in advocating a principle when there has been a disposition in the Convention to reject it. I have always willingly abided by the result. But it is well known that on last evening the principle contained in the section I have just offered was adopted in the form of an amendment to the fifteenth section of Art. 20, by a large vote. This morning the gentleman from Hendricks made objection to the section

as amended, and a motion to re-consider the vote prevailed. The section was then so amended, as that the principle I desired to have incorporated in it, did not come directly before the Convention. I have therefore brought forward the present section, in order that we may have the opportunity of voting directly upon the principle itself. I had supposed that the language of my former amendment was so plain that it would be impossible to misunderstand it; and I must say to the gentleman from Hendricks, (Mr. Nave,) that I was surprised at the conclusions he drew from the language of the amendment.

Mr. HOVEY moved to amend, so that where rights or immunities have been or may hereafter become vested by law in any company, citizen, or citizens, the General Assembly shall have no power to impair the same.

Mr. SMITH of Ripley. There is a great deal of plausibility in the section offered by the gentleman from Monroe, (Mr. Read,) and because of the plausibility of the principle it contains, I voted yesterday for the engrossment of the fifteenth section, with an amendment embodying this principle. I desire to vote for the present section if I can have my mind fully satisfied as to its extent and bearing. I desire to have the gentleman's own understanding of it, and therefore will ask him a question. Suppose the Legislature of the State of Indiana or this Convention grants the power to establish a State Bank and branches—there is now a limited number of these institutions under the present Constitution—would not the amendment of the gentleman conclude that power?

Mr. READ of Monroe. Suppose the Legislature or this Convention should authorize the establishment of a State Bank and branches, upon the principle of the proposed section; in that case every branch would have to come in on the same terms. For example, if there was a sufficient amount of capital in a town or village, it would be in the power of the capitalists of that place to commence the business of banking as a branch of the State Bank, and upon the same conditions with other branches, and no one set of individuals in the business of banking could claim exclusive privileges. This destroys the monopoly principle, and I think that there are not twenty gentlemen even among those who are in favor of the State Bank, who would be in favor of this principle of monopoly. The doctrine of the section carried out in the laws and the Constitution would destroy monopoly State banking, but not prevent every system of State banking which might be devised.

Mr. SMITH of Ripley. I thank the gentleman for the explanation. I understand from it that this proposition is conclusive against the State Bank upon the plan on which it is now organized, and I regret exceedingly, therefore, that I must vote against it. But, sir, I am com-



mitted on this point. I am a State Bank man. The State of Indiana has got stock in the State Bank, and has fixed limitations upon it and its branches; but if the principle of my friend from Monroe is carried, there will be no limitations upon banking at all. He goes to the fullest extent for free banking, and for digging the present State Bank up by the roots.

Mr. BIDDLE. I desire to say a word or two in favor of the proposition of the gentleman from Monroe, (Mr. Read,) which meets with my cordial approval in every respect; and I think when it comes to be clearly understood in its effects by the members of the Convention, it will meet with the approbation of every gentleman in favor of equal rights.

One word in regard to this proposition as it stands connected with the State Bank question. I do not attempt to conceal my opinions on that subject; I shall vote against a State Bank. But allowing that a majority here are in favor of a State Bank that will not preclude them from providing for the application of this principle as a general rule, with the exception in favor of a State Bank. This is the way to settle the Bank question, so far as it is connected with this proposition. Much has been said in regard to the application of this principle to rail and plank roads and ferries. The position taken by the gentleman from Hendricks (Mr. Nave) I consider a very unjustifiable one: that any corporation enjoying a certain monopoly, if you please, shall divide its profits with every citizen in the State. On the same principle, one individual who makes a contract with another must give the benefits of that contract to all his fellow citizens. The position, sir, is not a correct one. Gentlemen have put the case of a ferry, most frequently, as a case in point. Let us examine it. There is a case now pending in the Supreme Court, of a right to the exclusive use of a ferry which has been granted from year to year upon the conditions precedent, as prescribed in the Statute of Indiana, which is claimed to be held *in fee simple*. I will not speak of the judicial decision which should be made in the case, as it was my duty to decide it. But I undertake to say that this proposition interferes with no such right, or with the legislative power to grant the privilege of the use of the ferry from year to year as it is now granted. It does not mean that every citizen of Indiana has a right to a ferry license before granted to another; it only means that every citizen may apply under the same circumstances and on similar terms. Of course when once granted it belongs to the recipient. Would it not be absurd to say that if there was a contract made with A and B for a year, C, D, and E could come in and have equal privileges with A and B after the contract was made? It means that C, D, and E have an equal chance with A and B in obtaining the contract.

Sir, the proposition is a plain one, that there shall be no exclusive monopolies—no privileges granted to one man which shall not, *under the same circumstances*, belong to all men.

It is a sound judicial principle, that may be applied safely and justly to the rights of all men. This principle leaves men of capital precisely where it leaves men in their natural condition—equal. If the majority of this Convention will not grant to all men equal rights, let them vote against the proposition. If they do not desire to leave the road of capital, of skill, of enterprise, of talent, of industry, of worth, open alike to every citizen of Indiana, let them vote against it. And if gentlemen on this floor, in the middle of the nineteenth century, wish to declare before the world that all men are *not* created with equal rights, then, I say again, let them vote against this proposition.

Mr. NILES. I would not rise to make a remark, except that from the motion which I proposed to submit this morning my position may be misunderstood. I have been disposed to believe, from the first, and have not been able to change my mind, that this section embodies a sound principle, and that it may be safely incorporated in the Constitution. From fears which I had heard expressed, not only in but out of this Hall, as to the effect of the section, I was desirous to listen to all the objections which could be urged against it. But the more I have listened to others and reflected upon the subject, the more strongly I have become confirmed in my first impressions.

Surely no man would take a stand in favor of the opposite doctrine, or be prepared to contend that exclusive privileges ought to be granted. Present the question in that light and who would be found to vote for it? Who would be willing to occupy such a position?

This section does not prevent the creation of a State Bank, as some have seemed to fear; for if banking, under the old system of one or more special charters is adopted, the exception will be specially provided for. If exclusive privileges be permitted to any number of men over all others, it can be justified only on the ground of some over-ruling public necessity, and for the sake of the public interests. And would it not be better to make such cases exceptions to the general rule? But I apprehend that the cases are extremely rare, and in my judgment they never exist, in which the public interests are best promoted by the creation of monopolies, though I would not use that word in its odious sense. I am no enemy to corporations, but I would have all laws upon such subjects general, and the door for competition open to all alike.

The case of ferries has been referred to as one requiring exclusive privileges, but I have no fears that ferries cannot be sustained under general laws, and without tolerating burthensome monopolies. There are ferries in this State

that have earned to their owners, over and above expenses, one hundred thousand dollars in a few years—an almost insupportable tax upon the people. [Here Mr. Kent spoke to Mr. Niles, in a voice not distinctly audible to the reporter.] My friend from Floyd informs me that one ferry at his town, has been worth a quarter of a million of dollars. Ought such burthens to be imposed upon the many for the benefit of the few? Had this idea of no exclusive privileges been incorporated in the unwritten Constitution of Great Britain five hundred years ago, how different would have been the subsequent history of that country. And even if they may have been useful in the earlier stages of civilization, the necessity for their existence has nearly if not altogether disappeared. A time has arrived when, from the more general diffusion of intelligence and the pervading spirit of enterprise, free competition under equal laws, can meet the demands of the public interest.

There may be some casual evils grow out of this section, but they are evils which will work out their own cure. It is objected to as a mere abstraction. But if it is an abstraction it expresses a wholesome sentiment. If it be only an abstraction it can do little harm, but if its spirit is carried faithfully into our legislation, I apprehend it will be useful.

Pending the question, on motion the Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the section introduced by Mr. READ of Monroe, in relation to class legislation.

The pending question being on Mr. HOVEY'S amendment,

Mr. PEPPER of Ohio. The section proposed by the gentleman from Monroe, is intended to prohibit the Legislature from establishing monopolies, or granting special privileges. I am in favor of it; and I want gentlemen of this Convention who are in favor of giving such power to the Legislature to put their names upon the record. I want to bring the Convention to a test vote. If gentlemen are willing to empower the Legislature to grant special privileges and monopolies, let them so declare. If there is any member of this Convention who is disposed to favor such a doctrine, I desire that he shall distinctly avow it. If there be such, they will, of course, decline to vote for the proposition of the gentleman from Monroe. Who are they who are in favor of granting special privileges and monopolies to individuals? I ask, who? Sir, there is no party here in favor of any such doctrine. If it were a whig doctrine, I know that my friend from Cass, (Mr. Biddle,) and my friend from Laporte, (Mr. Niles,) would not have been found voting against it. Is it true that the democratic party are in favor of it? I think not. I think that the doctrine is

anti-republican. I think there is no party in this country—no respectable portion of the inhabitants of the State, who are in favor of any such doctrine; and I feel quite sure, if the proposition were plainly put to this Convention, that power shall be granted to the Legislature to establish monopolies, there would be but few voices in favor of it. Sir, I want to leave it distinctly impressed upon the record, what is the sentiment of this Convention in relation to this matter. I want to have on record my own view of it, as a legacy to my sons, and my sons' sons, to the fourth generation. And I here enter my protest against any proposition that will leave it in the least degree doubtful whether the Legislature may grant such special privileges and monopolies.

Mr. HALL. The gentleman from Monroe showed me the amendment that he has offered, previous to offering it: and at first view I was inclined to go for it. It was certainly quite plausible, and I thought it might be safe for the Convention to adopt it. But, sir, upon reflection, I am constrained to come to a different conclusion. I asked myself what was the object to be attained by the adoption of the amendment? If the object to be reached by it, was, that the Legislature should be deprived of the power to create monopolies or grant exclusive privileges—if that was the object, it was certainly a good one, and the proposition ought to be adopted.

But, when I reverted to the report made by the gentleman from Monroe, some days ago, as chairman of the committee on corporations, I find a section which reads as follows:

"Corporations shall not be created by special acts, but may be formed under general laws. All laws conferring corporate powers, may be altered from time to time, or repealed."

This section prohibits the Legislature from granting special charters in future. Then, looking at the amendment of the gentleman as an additional restriction upon the Legislature, the question necessarily arises, what is the object to be attained by it?

Now, sir, if I understood the remarks of the gentleman from Cass, he says he is in favor of allowing the Legislature, where they grant a charter to one individual or company to do a certain work, to grant a charter to another individual or to another company to do a work, beside the former, if they see fit.

Mr. BIDDLE assented.

Mr. HALL. Well, then, I am not mistaken. The gentleman would allow a second company to be chartered to construct a road alongside of the first.

Now, sir, if that be the object of the amendment, I want it understood that I am decidedly opposed to it.

When men have undertaken a work, and have expended a sum of money towards its accomplishment, I hold that it is wrong to em-



power others to construct a work that will interfere with their interests.

Now, so far as corporations are concerned, there is a sufficient prohibition in the report of the committee which I have just read. That, I think, is as far as we ought to go.

Mr. BIDDLE said he desired merely to make an explanation. The gentleman had reported him a little to strong.

I said, continued Mr. B., that I was in favor of allowing equal privileges. I am opposed to corporate power that operates injuriously to the interests of the public. But I do not say that where, for instance, a ferry is granted to an individual, it would be proper to interfere with the right thus vested in him, by granting identically the same privilege to another. But, in the construction of a road, I can see no more injustice in allowing another road to be opened by the side of the first, than there is in a professional man opening his office by the side of another.

In regard to the amendment of the gentleman from Posey, I have no very great objection to it, although I consider it entirely useless. I am in favor, however, of the proposition of the gentleman from Monroe, because it recognizes a principle of justice, a departure from which would inevitably result in injury to some person or persons. There is no danger of its interfering with the rights of individuals.

Mr. DOBSON said that the strange turn that this matter had taken had rendered it necessary that he should say a word in regard to the section.

Now, sir, said Mr. D., gentlemen talk a great deal about the rights of corporations. What is a corporation? It can be nothing but a mere artificial person. It enables individuals to operate with aggregated wealth under one general head. It is in reality an artificial person. Then, I ask you if this artificial person should have rights that are not granted to natural persons. I think not. For one, I go for the broad doctrine, that all men who have arrived at years of discretion should have equal rights, and that artificial persons should not be created, having rights beyond those which every man has in his individual capacity.

There is a great deal said about the individual liability of corporations. Now, sir, view that matter in connection with what has been said in regard to artificial persons. A man is protected in the enjoyment of his property. But is not the property of a natural person liable for the payment of his debts? Certainly. I ask you, then, why artificial persons or corporations should not be placed upon the same footing? There is no reason that I can discover why they should not. I hold the doctrine, that the rights of individuals and of corporations should be protected and regulated under general laws. There should be no dif-

ference made in this respect between natural and artificial persons. I believe in the doctrine of universal competition.

Mr. HOVEY. I have a few remarks to make in regard to the amendment I have offered. It will be remembered that on yesterday evening I voted for the section now proposed, though I requested at that time that the matter should be deferred, in order that we might have an opportunity further to investigate the subject. But gentlemen were not disposed to defer action upon it. I like the general idea that is embraced in the section; but leave the section as it is at present worded, and it will abolish all corporations of every kind or description throughout Indiana. There is no question of that. For one I am not disposed to go that length. I wish to see this young and vigorous State checkered over with railroads, and I say boldly and emphatically, if you establish the principle contained in the instructions moved by the gentleman from Monroe, you, in effect, veto all public improvements hereafter to be made. Gentlemen appear to be indisposed to trust any body but themselves. We have declared that the General Assembly shall pass no law unless such law shall have received the votes of a majority of all the members elected. We have declared also that they shall pass no special laws or laws of a local nature.

These are prudent reforms, but when we have placed these restrictions upon legislation, I think we have gone far enough. I am one who thinks there is some virtue outside of these walls—some honesty and integrity to be found beyond the limits of this Hall. I believe the people can be trusted, and I believe the more you trust them the more they deserve to be trusted. I hope the Convention will reflect calmly and dispassionately upon this matter. I say again, that if you adopt the resolution as it stands, you will cripple the energies of the State.

Mr. COOKERLY. The gentleman has made the sweeping declaration that if you pass this section, it will prevent all internal improvements in future.

Mr. HOVEY. I say it will prevent men from investing their capital in works of internal improvement hereafter to be made, because it will allow rival works to be established side by side.

Mr. COOKERLY. In reply to that, I say that the construction of a work of that kind requires an outlay of capital; and there never will be two works constructed side by side unless the business of the country is sufficient to justify the expense of the construction. Sir, there is no danger that a provision of this kind will break down internal improvements. On the contrary, it will build them up. It will encourage the construction of public works, and I do trust that delegates upon this floor will pass the section. It is in accord-

ance with the spirit of the age. It is in strict accordance with republicanism, and I think we ought not to hesitate a moment about adopting it.

Mr. SMITH of Ripley said, that the object that he had in view in making the remarks that he had made this morning, was to elicit explanations from gentlemen, and he confessed that he had been somewhat edified by the discussion that had taken place. The proposition appeared to him, at first, to be a plausible one, and he had now come to the conclusion that the principle it embodied was a correct one.

In reference to the argument of the gentleman from Posey in opposition to the proposition, he had only to say that that very argument induced him to go for it. He thought it was a most conclusive argument in favor of the proposition.

The argument of the gentleman from Posey, said Mr. S., is that it will destroy the system of internal improvements, because privileges will be given to all persons to construct works where they please. That, sir, is just the privilege that the people should have. Suppose I am engaged in the construction of a plank road, and another person proposes to construct a road in the neighborhood of mine—have I any right to prevent it? I had supposed that the privilege existed under our present laws? If it does not, it should exist. There should be no such thing as monopoly or exclusive privilege. It has been very properly said that it requires capital to construct works of improvement, and such works will only be constructed where the business of the country is sufficient to make them profitable; and where this is the case, they should be constructed, and no restriction should be placed upon them, no obstacle should be placed in the way of their construction.

Mr. CLARK of Tippecanoe. I voted yesterday against this proposition because I did not understand it. I voted for it this morning because I think it means nothing at all. Now I have listened to this discussion to learn from gentlemen who advocate the measure what is the precise purpose they have in view; what restrictions they would impose on legislation. But we have been favored with nothing but dissertations upon abstract principles.

Mr. DOBSON. I will state to the gentleman, that the objection I had to the proposition is this: It has been decided by the Supreme Court of the United States, that a State cannot take back or revoke a privilege granted, when rights have been acquired under it.

Mr. CLARK of Tippecanoe. Gentlemen have not satisfactorily explained to my mind, that such a provision as this will have any such effect. It provides that if the Legislature grant to one set of persons a privilege, it shall grant the same privilege to all other persons. If

they grant a privilege to a corporation, they shall grant the same privilege to all other persons who ask for the privilege.

Now I say I voted for it, simply because I think it means nothing. If it does mean anything, I have been unable to perceive it; and it was because I did not understand what was meant by it, that I did not vote for it at first. It is right, in my judgment, that all corporations should be individually liable for the debts of the company, and that all corporations should be formed by general, and not by special laws. But there may be something more in the proposition—something which is not apparent. I agree with the gentleman from Gibson. I think there are cases in which it would be right to grant monopolies—in the case of a ferry, if you choose. I would grant a monopoly, so far as a ferry is concerned, by providing that there should not be another within a certain distance, so as to make it the interest of the party to whom the privilege is granted, to invest a necessary amount of capital, to provide for the public convenience.

Now if it be necessary that monopolies should be granted, I see no reason why we should tie the hands of the Legislature in reference to the subject. It is not like the case where one professional man opens an office by the side of another, because he charges such fees as he pleases. But where we grant to an individual a ferry, it is upon the condition that he shall be prepared with the necessary accommodations for the public, and not charge beyond a certain price. It is done for the public good, and not for private benefit. Upon the same principle it is provided by law that a miller shall take only a certain amount of toll. It appears to me that this is a subject for legislation—a subject that requires to be legislated upon according to the circumstances of the case, so as to provide for the public interest.

It was because I entertained these views, that I voted against the proposition in the first instance, and because I could not see the precise effect that the proposition would have upon future legislation; and gentlemen who have attempted to explain, have not made the matter more clear to my mind. They have not told us what legislation it will prohibit, and what it will permit.

Mr. BASCOM moved that the amendment of the gentleman from Posey be laid upon the table.

The motion prevailed, and the amendment was accordingly laid upon the table.

Mr. EDMONSTON moved to amend by providing that nothing contained in the section should be so construed as to authorize the Legislature to enact a law in favor of free banking.

Mr. KENT moved that the amendment be laid upon the table.

The yeas and nays were demanded, and they



were ordered, and, being taken, were—yeas 67, nays 56—as follows:

YEAS.—Messrs. Allen, Anthony, Beach, Berry, Bicknell, Biddle, Bourne, Bracken, Bright, Bryant, Chapman, Clark of Tippecanoe, Coats, Cole, Conduit, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Garvin, Gordon, Gregg, Hamilton, Helm, Hovey, Howe, Johnson, Kent, Kinley, Maguire, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Tannehill, Thornton, Trimble, Wheeler, Wiley, Work, and Wunderlich—67.

NAYS.—Messrs. Badger, Ballingall, Bascom, Beard, Blythe, Borden, Brookbank, Butler, Carr, Carter, Chandler, Clark of Hamilton, Clements, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Frisbie, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Huff, Kelso, Kilgore, Lockhart, March, Miller of Gibson, Milligan, Morgan, Mowrer, Nave, Newman, Prather, Robinson, Schoonover, Snook, Smith of Ripley, Spann, Stevenson, Tague, Thomas, Wallace, Watts, Wolfe, Zenor, and Mr. President—56.

So the amendment was laid upon the table.

Mr. KELSO said, that before taking a vote upon the section, it certainly ought to be made distinctly plain, one way or the other. He would, therefore, move to amend so as to provide that nothing in the section contained, shall be so construed as to prevent the Legislature from establishing a State bank and branches.

Mr. CHANDLER moved that the amendment be laid upon the table.

The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 64, nays 59—as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Chandler, Chapman, Clark of Tippecanoe, Coats, Conduit, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Garvin, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hardin, Helm, Hendricks, Hovey, Howe, Johnson, Kent, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Morrison of Marion, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Thornton, Trimble, Wheeler, Wiley, and Wunderlich—64.

NAYS.—Messrs. Badger, Ballingall, Beard, Blythe, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Davis of Parke, Dobson, Edmonston, Farrow, Fisher,

Frisbie, Gootee, Hall, Harbolt, Hawkins, Helmer, Hitt, Hogin, Huff, Kelso, Kilgore, Kinley, Lockhart, Maguire, March, Mathis, Miller of Gibson, Milligan, Morgan, Mowrer, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Schoonover, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Wallace, Watts, Wolfe, Work, Zenor, and Mr. President—59.

So the amendment was laid on the table.

Mr. CLEMENTS moved to amend, by adding the following: "and it is understood that this section is intended to incorporate free banks, and none others."

Mr. BRACKEN moved the previous question.

The previous question was seconded, and the main question ordered to be now put.

The question being on the amendment of the gentleman from Davis,

The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 13, nays 105—as follows:

YEAS.—Messrs. Anthony, Blythe, Brookbank, Carter, Clements, Davis of Parke, Edmonston, Farrow, Frisbie, Gootee, Huff, Kelso, and Mathis—13.

NAYS.—Messrs. Allen, Badger, Ballingall, Bascom, Beach, Beard, Berry, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Butler, Carr, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Conduit, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Garvin, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Howe, Johnson, Kent, Kilgore, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimble, Wallace, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—105.

So the amendment was not adopted.

The question then being on the adoption of the section proposed by the gentleman from Marion,

The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 80, nays 41—as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Carr, Chandler, Chapman, Clark of Tippecanoe, Coats, Cole, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Farrow, Garvin, Gordon, Graham of Mi-

ami, Gregg, Haddon, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Johnson, Kent, Kinley, Maguire, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Morrison of Marion, Mowrer, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Tague, Thornton, Trimble, Wallace, Wheeler, Wiley, Work, Wunderlich, and Mr. President—80.

**YAYS.**—Messrs. Badger, Ballingall, Beard, Blythe, Brookbank, Butler, Carter, Clark of Hamilton, Clements, Conduit, Davis of Madison, Davis of Parke, Edmonston, Fisher, Frisbie, Gootee, Hall, Hardin, Helmer, Hitt, Hugin, Hovey, Howe, Huff, Kelso, Kilgore, Lockhart, March, Miller of Gibson, Morgan, Nave, Newman, Prather, Rariden, Robinson, Schoonover, Spann, Tannehill, Thomas, Watts, Wolfe, and Zenor—41.

The section was then ordered to be engrossed for a third reading.

Mr. SHOUP moved the following, as an additional section:

“SEC. —. The business of banking shall be free to all, upon such terms and under such restrictions as the Legislature shall impose.”

Mr. KELSO. That would break up the whole banking question, and I do not wish that it should be adopted now. I will move, therefore, that its consideration be postponed until a week from next Monday.

Mr. HAMILTON. The question of banking will come up in a few days; I regret that the gentleman has introduced his proposition at this time. The committee on banking have reported a section very much like this, and when that subject comes up I have an amendment to offer to the section reported by the committee. In the mean time, I move that the section proposed by the gentleman be laid upon the table.

The motion was agreed to. And,  
On motion by Mr. CLARK of Tippecanoe,  
The Convention adjourned.

#### THURSDAY, JAN. 2, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

Mr. CLARK of Tippecanoe, in pursuance of notice, introduced an amendment to the standing rules, to the effect, that after a section has been re-committed with instructions, it shall not be in order to move additional instructions.

After a few remarks in relation to the propriety of adopting the proposed amendment,

The question being put, a division was asked

for, and by ayes 52, noes 31, the amendment was adopted.

#### GRAND JURIES.

The Convention then took up the special order, being the section in relation to Grand Juries.

On motion by Mr. LOCKHART, its consideration was postponed until next Tuesday week.

#### MILITIA.

The article reported from the committee on the militia, by the chairman, Mr. PEPPER of Ohio, providing for organizing the militia, and providing for sedentary and active militia, was read a second time, and ordered to be engrossed for a third reading.

Mr. MILROY made a minority report, embracing a provision for a volunteer corps.

#### CLASS LEGISLATION.

The section in relation to class legislation, offered by Mr. READ of Monroe, was taken up on its third reading.

Mr. RARIDEN moved to commit the section to the committee on the legislative department, with instructions to add the following:

“Nor authorize, in any manner, a monopoly of the college and school lands, to promote the higher branches of education; but the same shall be distributed for the benefit of common schools.”

Mr. MORRISON of Marion said he had serious objections to this mode of proceeding. He could see no propriety in attaching irrelevant matter to a section; and in this case it appeared to him to be peculiarly improper. It was going out of the way to make a personal attack upon the gentleman who had introduced the section, and who happened to be connected with the Indiana State University, because, forsooth, he had had the temerity to offer a section to be inserted in the Constitution! He for one was in favor of the principle embodied in the section. He believed it to be, abstractly considered, a principle of right and justice.

He thought, moreover, that such an amendment should not be adopted, after what had been done by the Convention in regard to the State University. There had been a report adopted, acknowledging the right of the University to the land set apart for its support, and he had supposed the gentleman from Wayne was peculiarly tenacious of vested rights. This fund was set apart expressly for the use of the University, and he held that if it were diverted from that purpose, the General Government would be absolved from the obligation to continue the investment to the State of Indiana, in any shape.

He did not think it would be a proper course of action, to blend two such subjects together. He hoped, for the reasons that he had adduced, and for many others which might be adduced,



that the section might be permitted to pass, without being embarrassed with any extraneous matter.

Mr. RARIDEN said he could not conceive that this was extraneous, by any means. While they were limiting the power of the Legislature in reference to one subject, he thought it was very proper to limit it in regard to other subjects. There was nothing personal in the matter. The gentleman from Marion did him great injustice in supposing any such thing. There were a great many gentlemen in the Convention, who, like "my Uncle Toby," had their favorite hobbies. The hobby of the gentleman from Marion was the technical phrases of the law. The gentleman had ridden that hobby through the Convention. And now the gentleman from Monroe had mounted his hobby—a recognition of the broadest abstract rights of individuals. It was all catering to the appetites of the multitude—it was a mere race for popularity, and in that race he had no idea of allowing himself to be distanced. [A laugh.] The Supreme Court had decided, at the present term, that the proceeds of these lands belonged to the State of Indiana, to be disposed of according to the will of the people of the State, expressed through the law-making power; and yet gentlemen were contending that the fund should be devoted exclusively to one object, making it as much a monopoly as if the Almighty had decreed it. If gentlemen were determined to be pertinacious in riding their favorite hobbies, he had as much right to his hobby, as they to theirs. They might tell the people of the State, that a representative from Wayne county—they might tell them that Rariden of Wayne, was in favor of taking away the fund from the wealthy class, and giving it to the poor. They might make what capital they could out of that. [A laugh.]

Mr. BASCOM said he thought there had been discussion enough in relation to this matter. He would, therefore, move the previous question.

The Convention refused to second the demand for the previous question.

Mr. McCLELLAND said he merely wished to vindicate the position that he occupied in regard to this matter. If the gentleman from Wayne would bring up his proposition in a separate and distinct form, he would support it. He believed that the Government owed to every person a home and education; that that home and education should be limited in value and quantity. He saw no reason why money should be given to high schools in preference to the common schools of the country. He believed in the doctrine contended for by the gentleman from Wayne; but he did not coincide with the gentleman in the propriety of bringing forward his proposition, for the purpose of obstructing that of the gentleman from Monroe.

He says, continued Mr. M., that he is afraid that gentleman will get ahead of him; that they will crowd him off the track. Why did not the gentleman from Wayne, then—who stands, I believe, at the head of the bar of the whole country—who sets himself up a model for all men to imitate—why did he not show us that it was necessary to retain the technical phrases of the law, instead of riding his own hobby, and arguing long and loud about niggerology, and quarreling with editors of newspapers all over the country? Why did he not do this? Now, he tells us that gentlemen are riding their favorite hobbies, and that he is afraid they will crowd him off the track. I do not believe there is any danger of crowding him off the right track; for I do not think he is on the track. But when he brings forward a proposition for the purpose of breaking down another proposition, I shall most decidedly vote against it. But let him bring forward his measure as a separate and distinct proposition, and I shall be found supporting it.

Mr. KELSO said he should vote for the recommitment, with the instructions proposed by the gentleman from Wayne, because he conceived there was no more appropriate place for such a provision than to connect it with this section. Like the gentleman from Randolph, he was in favor of the principle contained in the proposition of the gentleman from Wayne, and he would go for inserting it in this place, not for the purpose of breaking down the proposition of the gentleman from Monroe, but to give it strength. He had voted yesterday against the section introduced by the gentleman from Monroe, and he had done so because he thought the proposition was intended to do away with any but free banking. But if its effect would be to make all privileges free and common, he would go for the section.

Now, sir, continued Mr. K., I hold that the whole object of the General Government, in making this donation of land, may be couched in the single word "education," and it is left to the people of Indiana to appropriate it in such way as they think will redound to their greatest good. And I say there is no more justice in putting the land within a certain compass, or in possession of a particular institution in Indiana, than there is in saying that there shall be special privileges granted to a particular portion of the community, or to a particular part of the State. I say we might grant extraordinary privileges to a few—privileges not common to the whole people—just as well in the one case as in the other. If the donation be confined to the higher institutions of learning, it will inure practically to the benefit of the wealthy classes in the community to the exclusion of the poor. Now, if we can make a more just and proper application of the fund, why not do it? And why not do it now? Why not make it part and parcel of the section

which the gentleman himself acknowledges is intended to break down monopolies. If such be the object of the section, I shall vote for it.

Mr. BORDEN said it would be recollected that this subject had been brought up some time since and referred to a select committee. That committee had not acted, in consequence of the absence of the gentleman from Dearborn (Mr. Holman). He was glad that the distinguished gentleman from Wayne had taken up the subject. He was glad to have his co-operation. He was for giving the fund to common schools; and if that could not be done, he was for distributing it among the colleges; and if it could not be so disposed of, then he was in favor of appealing to the General Government for a change of the terms of the donation. As the subject had gone to a committee, however, he thought it should not be acted upon by the Convention at this time.

Mr. PETTIT said, that the section under consideration which had been engrossed and was now upon its passage, and the motion to re-commit and amend, as proposed by the gentleman from Wayne, were very different.

The section introduced by the gentleman from Monroe, that was yesterday engrossed, and is now upon its passage, continued Mr. P., is a plain, simple, unequivocal declaration of equal rights and privileges. It is a direct and unequivocal prohibition upon the Legislature against giving any advantages to one class of persons over another. It reads as follows:

"The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not belong equally to all citizens."

I could not have doubted, sir, that if we had been about to establish for the first time, a law for a civilized community—if it had been our first effort to lay a platform or form a declaration of personal and political rights—I could not for a moment have doubted that this would have been one of the first declarations adopted by acclamation—that it would have met with universal approbation.

This section applies to the future action of the Legislature. It declares that the Legislature shall not hereafter place one class of citizens upon a pedestal of fame and wealth, and trample another in the dust of ignominy and poverty. [Applause.]

That is what this section provides for. But the proposition of the gentleman from Wayne seeks to do a positive wrong. It directs the Legislature that they shall hereafter do a positive wrong—that they shall take away from the State University of Indiana that which the law of the land has conferred upon that institution.

Well, sir, the section before us provides that no rights shall be given to one class of the community that are not given, upon the same terms, the same conditions, and under the same

circumstances, to all. Sir, this land was granted to this State for the erection and maintenance of high schools, or colleges, or an university, where the higher branches of education should be taught. It was contemplated that there should be a regular gradation from the common schools of the country to institutions where those who are able to educate their children might find a place within our own borders, where all the sciences and languages are taught. By the acceptance on the part of the State of Indiana of the donation, it has become settled, permanent, and fixed.

The object now appears to be to level this institution of learning—an institution where the accomplished scholar may be formed, where a man may receive a finished education, where education may be made complete, and to distribute the funds which have been devoted to the support of such an institution amongst the minor schools of the State—or I may say to scatter them, to the winds of heaven—to throw them out in a thousand different channels, to make them more diversified than the sands on the sea shore, where their benefits cannot be felt, where they would be but a drop in the bucket.

Sir, the section as it now stands, proposes not to interfere with vested rights, whereas, the instructions offered by the gentleman from Wayne propose to abrogate vested rights.

If a proposition were now here that the State Bank should be abolished, together with all rights claimed under it, the gentleman from Wayne would be the first to say, here are vested rights. This is holy ground. You cannot disturb this ground—you cannot trample upon these rights. And I advise the friends of the section that has been introduced by the gentleman from Monroe, that was engrossed yesterday, if this proposition is insisted on, to come in with an amendment declaring that the State Bank of Indiana shall cease to exist. ["Consent."] If we surrender or interfere with vested rights in one instance, let us lay the leveling axe to them all. Let us put our hands upon every right, upon every institution that claims any right, monied institutions and all—real or fancied, imaginary or substantial. Let them all come within the action of the Convention at once.

Mr. OWEN. There are two modes of legislating. One is to let a proposition stand by itself, upon its own merits, to act upon it singly and simply—to vote aye or no upon it without reference to any other matter: and the other is to patch together incongruous matters, and either carry a bad proposition by connecting it with a good one, or destroy a good proposition by connecting it with a bad one. Now, sir, to this last mode of proceeding I am utterly opposed. It reminds me of a story of a school boy who was very fond of fruit. He walked into the room of the schoolmaster, and found



there a magnificent bunch of grapes. He coveted the grapes, and his mouth began to water to taste them. Said he, "If anybody knows any just cause or impediment why these grapes and my mouth should not be joined together in the holy bonds of matrimony, let him declare it, or henceforth forever hold his peace." No response being heard he proceeded to devour the grapes. The schoolmaster happened at that moment to be entering the room, and having heard what had been said by his pupil, he proceeded to adopt the same formula. Seizing a rod he said: "If any body knows any just cause or impediment why this rod and this boy's back should not be joined together in holy matrimony, he will now declare it." Said the boy, "I do," "What is the reason," demanded the master? "Because," said the boy "the parties do not agree." [Laughter.] Now it is exactly so in regard to this amendment and the section. The parties do not agree. If the parties do not agree to marry then according to all principles, human and divine, they should not be joined together.

Mr. BIDDLE. Mr. President, I do not rise to debate this question. I expressed my views on the subject yesterday. I would remark, however, that this Convention cannot divest the college fund without the consent of Congress. It is granted for a specific purpose, and is guarantied by a contract. No power can abrogate or change it, except the power that made it. The State of Indiana, and the Congress of the United States, can change it by their *joint* consent; not otherwise. That fund is safe with the courts.

Mr. RARIDEN (interposing.) Does the gentleman from Cass remember the late decision of our Supreme Court?

Mr. BIDDLE. He does; but that case does not involve the same point.

I was about to add, Mr. President, that I had found an additional reason why equal rights should be granted to all men. If rumor speaks correctly, two of our most distinguished members are candidates for the United States Senate. Now if either of these gentlemen should be elected, why, you see, we shall all be senators! [Laughter.] Who of us, then, would not vote for the proposition?

Mr. READ of Monroe. I have had the rashness to introduce upon this floor a proposition which I thought right in itself. It is a proposition so just, so consistent with the sound principles of political economy, so consistent with the great principles of liberty, that it is difficult for any man to meet it with direct opposition.

I have uttered hardly a word in support of the principle. I had, from the first, resolved to leave it to its own fate. If, upon its own simple, naked merits, it cannot succeed, let it go. It has been most ably supported by others.

Gentlemen need not disguise that in the amendment now pending there is intended a direct personal thrust at myself. This is palpable in the very thing. How far, by any conduct of mine, since I have been a member of this body, I have merited such an attempted rebuke, others must judge. In no single instance, I think I may say, have I been guilty of a discourtesy to a single member of this body. But let that pass. My principles I must support at whatever expense.

Upon yesterday, when it was attempted to connect with the proposition the State Bank question and the Free Bank question, without any reference to my own individual opinions on these subjects, I voted against any such connection.

When we reach, in the course of a few days, the proper report, I may, perhaps, if need be, have occasion to express my opinion on the subject now attempted to be lugged in.

Mr. KENT demanded the previous question.

The demand for the previous question was, upon a division, ayes 52, noes 48, seconded.

The main question was ordered to be now put.

The question being upon the re-commitment of the section with the instructions proposed by the gentleman from Wayne,

The yeas and nays were demanded, and they were ordered.

Mr. COOKERLY. I would like to be excused from voting upon this amendment.

The PRESIDENT put the question: Shall the gentleman from Vigo be excused from voting?

It was decided by acclamation in the negative.

Mr. COOKERLY. I don't like to be gagged down upon such a question as this. I do not want to be compelled to vote without having an opportunity to give my reasons.

The PRESIDENT. The gentleman is out of order.

The yeas and nays were then taken, with the following result—yeas 45, nays 72—as follows:

YEAS.—Messrs. Allen, Badger, Ballingall, Beard, Brookbank, Butler, Carter, Clark of Hamilton, Coats, Conduit, Crawford, Davis of Madison, Davis of Parke, Edmonston, Farrow, Frisbie, Gootee, Hall, Hawkins, Helm, Hitt, Huff, Kelso, Mathis, Miller of Clinton, Milligan, Nave, Newman, Prather, Rariden, Robinson, Schoonover, Sims, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Walpole, Watts, Wheeler, Wiley, Wolfe, and Zenor—45.

NAYS.—Messrs. Anthony, Bascom, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bracken, Bright, Carr, Chandler, Chapman, Clark of Tippecanoe, Clements, Cole, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson,

Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foster, Garvin, Gibson, Gordon, Graham of Miami, Haddon, Hamilton, Helmer, Hendricks, Hogin, Hovey, Howe, Kent, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Mowrer, Murray, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Shannon, Shoup, Smiley, Snook, Smith of Ripley, Steele, Thornton, Trimby, Work, Wunderlich, and Mr. President—72.

So the section was not re-committed.

The question then being, Shall the section pass?

The yeas and nays were taken under the rule, with the following result—yeas 89, nays 30:

YEAS.—Messrs. Allen, Anthony, Badger, Bascom, Beach, Bicknell, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Butler, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Coats, Cole, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Farrow, Foster, Gibson, Gordon, Graham of Miami, Haddon, Hamilton, Harbolt, Hawkins, Hendricks, Howe, Johnson, Kent, Kinley, Lockhart, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Morrison of Marion, Mowrer, Murray, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thornton, Trimby, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Mr. President—89.

NAYS.—Messrs. Ballingall, Beard, Blythe, Brookbank, Clark of Hamilton, Clements, Conduit, Crawford, Davis of Madison, Edmonston, Frisbie, Hall, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Miller of Gibson, Morgan, Nave, Newman, Rariden, Robinson, Schoonover, Thomas, Walpole, Watts, and Zenor—30.

So the section was passed and referred to the committee on revision.

The section which declares that emigration from the State shall not be prohibited, was read a second time and ordered to be engrossed for a third reading.

Mr. PEPPER of Crawford (addressing the Chair). Is it in order to introduce an additional section?

The PRESIDENT. It is in order.

Mr. PEPPER of Crawford. I offer for adoption the following additional section:

"SECTION — No distinction shall be made by law between resident aliens and citizens, in the possession, enjoyment, or descent of property."

It must be obvious to all, said Mr. Pepper,

that we ought to have some such provision as this in the organic law of the State.

It will be recollected that at common law, aliens cannot own a foot of real estate in this country. A few of the States have changed the common law, in this particular, by constitutional enactment, while most of the other States, including Indiana, have provided by Legislative action that aliens may purchase and possess real estate. The right to purchase, enjoy, and transmit property, should be guaranteed to them, beyond all contingency, by constitutional provision, the same as it is guaranteed to native born citizens. We have by almost unanimous vote, extended to foreigners the right of suffrage and the right to hold office on very just and liberal terms, and while we thus invite them to our State, we should take the necessary steps to secure them in the right to own and transmit property in its fair and liberal sense.

Besides, sir, this is emphatically an agricultural State; her soil and climate make her such, and not until her dense forests and vacant lands are brought into active cultivation, by the sturdy arm of industry, will all her resources be developed. To accomplish this she needs a greater increase of population—more tillers of the soil. She is capable of sustaining more than ten times her present population, and the more liberal you make the laws in reference to obtaining and enjoying property, greater will be the inducement for the emigrants in search of homes, to make Indiana their permanent abiding place, and the sooner will your young and growing State attain that high and enviable position which she is ultimately destined to fill.

Mr. BORDEN remarked that such a provision had been introduced into the Constitution of some of the new States, and the effect of it had been to induce immigration to those States. They had been rapidly filling up with an industrious population. He thought it was the very best policy that a State having large tracts of unoccupied lands could adopt.

Mr. RARIDEN said he would prefer to have a slight amendment made to the proposition of the gentleman from Crawford, and it was that a declaration of intention to become citizens, should be required of aliens before extending to them the privilege proposed by the amendment.

Mr. DAVIS of Madison moved to amend the amendment of the gentleman from Crawford by adding the words "provided that such aliens have declared their intentions to become citizens of the State."

Mr. FOSTER said he was not quite sure that the section was altogether right, and he could not consent to vote for it unless the amendment proposed by the gentleman from Madison were adopted. He was not one of those who had mounted the hobby of Native Americanism, or any other hobby; but it did seem to him that



they were carrying this matter to too great a length when they proposed to put foreigners on the same footing with American citizens. In his county there were aliens who had been there for several years, and they had shown no inclination to become citizens; on the contrary they were in the habit of treating the institutions of the country with derision. The laws of this country they were wont to say, were not in consonance with the law of Moses. [A laugh.] They were abolitionists to all intents and purposes. He thought it would be clearly wrong to put these men on an equal footing with the native born citizen. These people know that in this country all their civil and religious rights are guaranteed to them, and yet they refuse to take the oath of allegiance to the best Government that God Almighty's sun ever shone upon. ["Consent."] By their insidious doctrines they are doing all they can to sap the foundations of the Government. The Convention went far enough the other day, when they adopted a provision making a difference of only six months residence between aliens and native born citizens. He had voted for that provision, but when he did so he almost doubted the correctness of the vote; but he did not for a moment doubt the impropriety of passing this measure unless the amendment were adopted with it. He was utterly opposed to allowing foreigners to enjoy all the privileges of citizens, while they declared that the Government which extends to them these rights, was not consonant with, or conformable to human rights.

He was not willing to put these individuals on a par with the native-born citizens of the country. He, for one, would never consent to it.

Mr. WATTS said he was in favor of the proposition for several reasons, and he was opposed to the views expressed by the gentleman last up. If there were persons in his county, who were not disposed to become citizens, he thought it would be a bad way of punishing them, to prevent them from holding property. Whenever the Legislature had been applied to to pass a law to enable foreigners to hold property, and to transmit it to their heirs he had never known the application to be refused. The Legislature had, invariably, in such case passed a special act to enable the property to go to the heirs of the individual. And if there were individuals living in the county of Monroe who were guilty of such conduct as the gentleman has stated, there should be some means of punishing them, besides depriving them of the privilege of holding and transmitting property.

Mr. LOCKHART said that he was in favor of the provisions of the section under discussion. In that portion of the State in which he resided, there was a large foreign population, many of whom have experienced great inconvenience in the settlement of the estates of deceased aliens. It was true that for four or five

years past we have had a statute which measurably removed the evil, yet he thought that it ought to form a section in the Constitution. It may not be amiss to state that in some of the continental States of Europe, the laws of descent and distribution are made to depend upon the law of the country where the heir or distributee resides, so that if by the law of the country where the heir lived and owed allegiance, foreigners were allowed to inherit, the rule would be reciprocal, hence the great importance of inserting the provisions of this section in the Constitution. He had known a German who resided in this State, prior to the passage of the statute to which he had referred, who fell heir to property in one of the German States, who was compelled to change his residence from Indiana to Pennsylvania or Maryland, before he was entitled to enjoy the inheritance.

The government of the United States now has treaty stipulations with twenty or more foreign powers, which, to some extent, regulates this matter, but let the diplomatical intercourse be broken off and treaties annulled, and great difficulties and confusion would ensue. The policy of our Government has been to invite foreigners hither. Let us then secure to them and to their friends in the country from whence they came, their just right to inherit.

Mr. EDMONSTON said he had a single remark to make in reference to the amendment. The merits of the question had been amply explained by the gentleman from Vanderburg and others. He thought it was but a matter of justice and right, that when a foreigner arrived in this country with the intention of purchasing property, and becoming a permanent resident, he should not be embarrassed by being required to seek out the means of becoming a citizen by the process of naturalization, before being entitled to procure a location for his family, and to hold the property he might acquire for such a purpose, and transmit it to his heirs.

Mr. PETTIT said he was in favor of the principle of the section which had been proposed by the gentleman from Crawford, but he was in favor of carrying that principle further. The section did not go so far as he desired it to go. I did not provide that alien heirs of an alien resident might inherit property. It only provides that there should be no distinction made between resident citizens and resident aliens, as to property. That was not so far as he wished to go. He wanted to see it provided that when a man comes to this country, though no drop of his blood runs in the veins of a man in America, his foreign relatives should receive the reward of his labor. Unless the gentleman would accept a modification of his proposition to this effect, he would ask the Convention to vote it down in order that he might offer a proposition that the property of aliens shall go to their heirs whether they reside in this country or not. He desired that the product of the toil

of every man, no matter whether foreigner or native-born, should go to his blood relatives wherever they might be found. This was but in accordance with the liberalizing spirit of the age.

Mr. PEPPER of Crawford said he had no objection to the addition proposed by the gentleman from Tippecanoe. He would accept it as a modification of his amendment.

It was accordingly added, in these words:

"All real estate owned by aliens may be willed, or shall descend to the heirs of such owner, whether resident or non-resident, alien or citizen."

Mr. READ of Clark said that the present Constitution, as they all knew, provided that when a foreigner, who owns real property in the State, dies, such property escheats to the State. Considerable litigation had grown out of this condition of things, and he thought it was important that the Legislature should be released from that kind of legislation. It appears to me, continued Mr. R., that the amendment proposed by the gentleman from Tippecanoe goes a little too far. The provision of the Constitution of Wisconsin, in regard to this matter, suits my view. It appears to me that we should not be asked to go further than to put the foreigners upon a footing of equality with our native born citizens, in respect to the inheritance of property. Otherwise great evil might grow out of it. Foreigners, as the gentleman from Hancock has observed, may buy up large tracts of land, put their tenants or serfs into possession, and keep the property beyond the control of the State. Then let us adopt a provision of this kind, putting foreigners upon an equal footing, in regard to the rights of property. And it is all that they can ask.

Mr. LOCKHART. As there seems to be no difference of opinion in regard to the propriety of adopting a provision of this kind, for the purpose of perfecting the section I move that it be referred to a select committee.

Mr. DUNN of Jefferson. Before the question is taken, I desire to direct the attention of the Convention to one feature of the proposition of the gentleman from Tippecanoe, which seems to condemn it at once. The purport of it is that the property of all persons dying intestate should descend to their heirs, whether such heirs are aliens or citizens.

Now I hope that this Constitution will never compel the Legislature to adopt such a provision as that in our law. What would be the effect of it? Suppose that a man should die leaving a widow, but no children. This provision would compel the Legislature to pass such laws, as would give to the heirs of the deceased his real estate, whereas justice would require that his widow should take some part of the lands in fee.

The PRESIDENT. Does the gentleman

from Clark intend to offer his proposition as an amendment?

Mr. READ. Certainly.

The PRESIDENT. The gentleman will send it up in writing.

Mr. DOBSON. I have an amendment which I wish to offer.

Mr. PETTIT. There are forty amendments already.

Mr. DOBSON. May they not all go to the committee?

The PRESIDENT stated the question to be upon the amendment of the gentleman from Clark to the proposition offered by the gentleman from Crawford.

The amendment was agreed to.

On motion by Mr. WALPOLE, the section with all the pending amendments was referred to a select committee of five, consisting of Messrs. PEPPER of Crawford, READ of Clark, PETTIT, DUNN of Jefferson, and LOCKHART.

The section which provides that there shall be neither slavery nor involuntary servitude in the State, otherwise than for the punishment of crimes, was read a second time.

The question being upon its engrossment,

Mr. NAVE said, before the Convention acted upon the section, he wished to insert, as an additional section, the last section of the bill of rights, as contained in the present Constitution, as follows:

"To guard against any encroachments on the rights herein retained, we declare that everything in this article is excepted out of the general powers of Government, and shall forever remain inviolable."

I wish to offer this additional section, at this time, continued Mr. NAVE, because, after the article has been acted upon, it will be out of the power of any gentleman in this Convention, under the existing rules, to offer an amendment, without moving to re-consider; and as the bill of rights is a mere catalogue of abstractions, declaring what are the rights that are not to enter into the general powers of the Government, it becomes necessary that we should so declare them, and declare that they shall never enter into the general powers that are conferred upon the different branches of the Government of Indiana. I presume there will be no objection to the proposition; I do not deem it necessary, therefore, to detain the Convention with any further remarks.

The section was adopted.

It was then ordered to be engrossed for a third reading.

The question being upon the engrossment of the section which provides that "There shall be neither slavery nor involuntary servitude within this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the



bounds of this State, shall be valid within the State."

Mr. EDMONSTON moved to strike out the latter part of the section.

The motion was not agreed to.

Mr. CLEMENTS moved that the section be re-committed, with instructions to strike out all after the word "convicted," and insert a provision that the immigration of Negroes and Mulattoes into the State, be prohibited.

Mr. KELSO remarked, that the subject of the immigration of Negroes into the State had been referred to a select committee. What that committee would report, could not be known until the report was made. He thought they ought to have that report, before acting upon this proposition.

Mr. DOBSON. I understand the gentleman proposes to refer the section, with his amendment, to that committee.

Mr. PEPPER of Ohio. I presume there is not a citizen of the State of Indiana, who contemplates that the Constitution will retain the section in any other form than that in which it has stood, since the formation of our Government. There is, in my opinion, an additional reason why this subject should not be referred, as proposed by the gentleman from Davies. I, for one, retain my opinion upon the question of restraining Negro immigration to the State. I am still in favor of a restriction of this kind, but I am also in favor of having the article or section on this subject submitted separately to the people. I hope that the provision will remain precisely as it has stood for the last thirty-four years. The people, so far as I am aware, have been perfectly satisfied with it.

Mr. CLEMENTS said he wished to make a single remark before the question was taken. In the first place, he understood that this subject had been before the select committee for a considerable time; and he was aware that there was strong opposition to the amendment he had proposed. He had moved the commitment of the section, with instructions, with the view of having early action on the part of the Convention, in regard to the subject of Negro immigration.

In the first place, (continued Mr. CLEMENTS,) in reply to what has been said by the gentleman from Switzerland, I apprehend that if the committee report, and the Convention adopt, a clause to be inserted in the Constitution, prohibiting the immigration of Negroes into the State, it will cover that class of Negroes that might be brought in by indenture, and if so, there can be no necessity for the latter part of the section; it will be mere tautology. And the prohibition, it appears to me, may as well be inserted in this section, as in any other. If a majority of the Convention, as I suppose, are in favor of prohibiting the immigration of free people of color to the State, then, sir, the friends of such a clause had better refer the whole mat-

ter, to the committee. It may be that the select committee may not report in time for the action of this body, for I hope we shall soon arrive at the termination of our labors. Now is the time to act upon the subject. The people of my portion of the State are in favor of restricting the immigration of this class of persons; and if it be the intention of this Convention to adopt a provision in reference to the subject, it should be no longer delayed.

Mr. CRUMBACKER said it appeared to him there could be no advantage derived from hastening this question forward, at this time. The committee would undoubtedly report in time for the action of the Convention. They were the friends of the measure. He entertained no doubt that the question would be brought up as early as was necessary, in order that the Convention might act deliberately upon it. He would, therefore, move that the instructions be laid on the table.

Mr. COOKERLY. I hope the gentleman will withdraw that motion for a moment.

Mr. CRUMBACKER. I will withdraw the motion to lay on the table, provided the gentleman from Vigo will renew it.

Mr. COOKERLY. I will renew it. I concur fully in the remarks that have been made by the gentleman from Davies. It is high time that we had this question before the Convention. If my recollection is correct, it is more than a month since that question was committed to the select committee; and it is strange—I say, sir, it is passing strange—that that committee have not reported before this time. It is a very important matter; it is a question concerning which the people of the State feel a deep interest; and it ought not to be postponed until the Convention is about to close its labors. It is a matter that needs investigation, and I say the report of the committee ought to be made as speedily as possible. I will now say to the chairman of that committee that, if the report be not made before Saturday, I will introduce a resolution on that day compelling them to make their report. Sir, the Convention is not to be bamboozled in this style. I do not know the reason that this report has not been made. I do not know but, as the gentleman from Tippecanoe said in regard to another matter, there may be a cat in the meal tub—there may be something behind the bush—and I am determined to find it out.

Mr. STEVENSON said he trusted the section now before the Convention would be acted upon separately. The matter contained in it, and the question of the immigration of negroes into the State, were entirely different, and ought not to be blended together. He was as much opposed to the immigration of free negroes to the State as any man in the Convention; and he was for having early action upon the subject.

Mr. COOKERLY. I forgot my promise to renew the motion to lay the motion on the table. I hope the gentleman from Putnam will allow the motion to be made.

Mr. STEVENSON. I have very few remarks to make. And first in relation to the action of the select committee, as I am a member of that committee, permit me to say one word. The chairman of the committee has been absent, but he has now returned, and informs me that he intends to make a report next week. And, sir, there is no time lost. We have before us an abundance of work. I trust, then, that the subjects will be acted on separately; that the subject of negro slavery will be disconnected from the subject of negro immigration.

Mr. OWEN. I am also a member of that committee, and I suppose that the meaning of the cat in the meal tub is that it is desirable that those gentlemen who are candidates for any office should give their votes upon the question of free negro immigration. Now, if there is any such difficulty as this about it, I say in advance that I am in favor of inserting a provision in the Constitution prohibiting negroes from coming into the State. I do not care what effect this declaration may have upon any election that may take place. It has never been my course in life to conceal my opinions upon any subject. And these are my opinions in regard to this matter.

As to those negroes who are now here, I believe we ought to make little or no change in regard to the privileges conferred upon them. I shall not detain the Convention further, but will merely add this, that if there is any gentleman who has a vote to give, which vote will depend upon the opinions I entertain, he is at liberty to question me upon any subject: and now as to this matter itself, I can say because I know, there is on the part of all the members of that committee an earnest desire to get the matter before the Convention as early as possible.

Mr. COOKERLY. I will state that I had no reference at all to the gentleman from Posey, for I really did not know that he was on the committee, although I knew that he was in favor of prohibiting the immigration of negroes into the State.

Mr. FOSTER said he had been very much surprised that so much time had been permitted to elapse without having a report made from the select committee. He thought they had been altogether too dilatory in making their report; it was a matter of paramount importance. In his county it was considered a matter of more importance than almost any other. He trusted that the report would be no longer delayed.

Mr. BASCOM said he thought there had been enough of negroes and cats in meal tubs.

Mr. KENT said it was known, perhaps, to almost every member of the body, that no man here or elsewhere, had taken stronger ground than himself against negro immigration to the State. It was known, also, that for some time past two or three of the members of the convention had been absent, and it was due to those gentlemen and this Convention that they should postpone final action until their return. He had no doubt they all would be present in the course of the next week, and they would then be able to make a report.

Mr. COOKERLY. In accordance with a promise that I made to the gentleman from Lake, I move that the proposition of the gentleman from Daviess be laid on the table.

The motion was agreed to.

The section was then ordered to be engrossed for a third reading.

On motion by Mr. KELSO,

The Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the

#### ORDERS OF THE DAY.

The PRESIDENT. The next business in the orders of the day is report No. 21.

[This is a report from the committee on elective franchise, and apportionment of senators and representatives. It consists of two sections, the first providing that the Senate shall consist of thirty-four, and the House of Representatives of one hundred members. The second, that the General Assembly shall every sixth year after the adoption of the Constitution make an equitable distribution of the above named number of senators and representatives among the several counties and districts, &c.]

On motion, both the sections of the report were laid upon the table.

#### REPORT 22.

The PRESIDENT. The next business in order is report No. 22.

This is a report from the committee on the executive, the first section of which was read as follows:

"It shall be the duty of the General Assembly to provide by law that the county Auditor, or other proper officer of the several counties, shall annually furnish to the Secretary of State a report of the agricultural productions of each county."

Mr. SHOUP moved to lay the section on the table.

A division being called for on the motion, there were ayes 23, noes not counted.

And the section was not laid upon the table.

Mr. DOBSON. I must say that I was somewhat surprised at the motion made a moment ago by the gentleman from Franklin (Mr.



Shoup). This section appears to me to embrace a matter of far too much importance to be thus hastily disposed of. The kind of information for the collection of which this section provides is as important as any that can be collected. It can be obtained, too, with but little trouble and cost to the State, and will be always at hand for a variety of useful purposes connected with the legislation of the country. One reason that strikes my mind as a very forcible one why we should adopt this section is this: Some years ago when the western States failed to meet their liabilities, foreigners not understanding our mode of taxing property made loud complaints against us.

They said, These people have so many millions of acres of land taxable, why don't they pay the interest upon their bonds. Now in England they tax productive property only—in this country we tax all lands whether productive or not; therefore, complaints have been made, and bad feelings entertained, all of which resulted from the want of the information sought to be obtained by this section. If they had have known that only about one-third of the 23,760,000 acres in Indiana was taxable, and one-quarter of that only in cultivation, they would not have complained so much.

Now we tax all the land whether it be productive or unproductive. We ought, therefore, not only to know the productions of the soil every year, but the number of acres employed in the growth of wheat, the number in corn, the number in grass, &c., &c. This is worth all the other information that a man can have in regard to making up his mind in the passing of any law affecting these products. I have already said that this information can be obtained very easily and with little expense, and I do think it ought to be had.

Some gentlemen object to placing a provision of this kind in the Constitution; but I think that that is the proper place for it. In most of the neighboring States that kind of information can be obtained. I have in my possession a report made in the State of Ohio, showing the number of hogs, sheep, cattle, horses, mules, &c., raised in each county, together with the number of bushels of grain of every description, with a variety of other useful information. Why then should we not have a similar report of the products of the various counties of the State of Indiana, especially considering that it can be had with so little trouble and expense. I hope that the motion to lay this section on the table will not prevail, but that the Convention will adopt it as one of the provisions of the Constitution, feeling assured that, in value, for a variety of purposes, it will amply repay all the cost and trouble of obtaining it. When the report from each county is made the Auditor of State will report to the Legislature in a tabular form; that sheet will be published and distributed back to the citizens of each

county; in addition to this all the papers in the State will publish it, as a matter of course, for the benefit of their readers. Then every man in the State can be able to form a correct opinion of what the price of pork, wheat, corn, tobacco, horses, mules, cattle, sheep, &c., will be, as the merchant and trader can. Then they will get the full worth of their property. Now they do not for the want of this very information. The merchant knows they have to give up; that's the reason.

All the States should adopt such a plan, and the citizens of each would soon know the increase or decrease every year. They would know what each had to sell, and how much. If the crop of hogs was very large I would know that the price could not be high; if small it would be high. Just so in regard to every other product. And, sir, it is out of our products that we all live and prosper. That which is *dug* out of our soil, and nothing else, adds to our wealth as a State. All that the merchant makes is somebody's loss. Just so in regard to all other occupations—except mechanical and manufacturing. Then, sir, don't keep him who *tills* the soil, in the dark; let him know what his brother farmers all over the State are doing, what they are raising, how much they raise, what they have got to sell, and my word for it they will not sell their pork for \$2.00 per hundred, when at some other part of the State it is bringing \$4.00, as they now very frequently do. When it is up they will know it, when it is down they will know it, and so in regard to other products. No, sir, you can't fool them out of their crop and laugh at them afterwards.

MR. CHAPMAN. Mr. President, I have prepared no speech upon this subject, for I supposed that the sections would commend themselves at once to the mind of every gentleman present, without the necessity of any argument. I confess I feel a great anxiety that they should pass. Gentlemen know that some steps have been taken to establish an agricultural bureau at Washington city, as well as in some of the States, and I am anxious that we should adopt these sections, not only for our own benefit as a State, but also for the purpose of facilitating the progress of the agricultural interests. This will be better than anything which can be done by a Board at Washington. I consider this to be a matter of great importance, not only in regard to our domestic policy, but also, to the general character of Indiana as a member of the national confederacy.

Sir, there are some propositions the truth and propriety of which are so manifest on their very face that it is impossible to support them by any argument. This appears to me to be a proposition of that kind. I believe that the system can be established on an economical basis, and a simple form of blank returns, is all that will be necessary to demonstrate the products of the State, and to diffuse a correct

knowledge of them in their chief features. We can thus obtain at a cheap rate, not only all the statistics relating to agriculture, but also all those relating to common schools, which are now collected at a great expense, and under cumbersome arrangements, in other States. I propose to dispense with a State Superintendent who has to travel through the State, and perhaps look to very different objects, political or other, from those which he is ostensibly accomplishing. We will avoid all the expense and cost of this system of machinery, and will have the information direct from the people themselves. I hope therefore that the section will be adopted.

Mr. DAVIS of Parke moved to amend the section by striking out the word "annually" and inserting the word "biennially."

Mr. HOVEY. If I understand the call that led to the holding of this Convention, one of the most powerful reasons was that we might lessen the expenditure of the State. This provision if adopted would require one man in each county at least for about half a year to acquire the information necessary to the carrying out of this provision.

I will not war against the provision itself. It may be a very good one, and all the arguments that have been used by the gentleman from Marion (Mr. Chapman) may be true. But at the same time this is an experiment, and I think it should not pass as a Constitutional reform. There is no necessity for a provision of this kind being placed in our organic law. It would be almost impossible for any man to obtain a correct outline of the products of Marion county in less than six months. Here are all your hogs, cattle, horses, wheat, corn, potatoes, turnips, hay, &c., to be arranged in a schedule; and will require an amount of work which cannot be done in a short time, and will cost thousands of dollars to the State to collect it every year, while at the same time the benefits to be derived from it are somewhat doubtful. If gentlemen want to try the experiment, let them try it as a law. It would be as proper to make a Constitutional provision against murder or larceny as to embrace this section in our Constitution. It may be a very good thing in itself, but, sir, there are thousands of good things that should never appear as Constitutional measures. It may be very good; but I must say that I think it ought not to have a place in the Constitution.

Mr. PRATHER. In reply to the gentleman from Posey (Mr. Hovey) I must say that I think he is much mistaken in regard to the time that will be required in taking these agricultural statistics. They can be taken at the same time and by the same individual who takes the assessment, and will cost a very little additional expense. I hope the section will be adopted.

Mr. MORRISON of Marion. As Chairman of the committee which reported these sections,

it may not be amiss to give some of the views which induced the committee to report them to the consideration of the Convention. I feel, like my colleague from Marion, when I repeat what he has said that the excellence of such a provision is so apparent on its very face as scarcely to need an argument in support of it. In reply to the objections of the gentleman from Posey, I will state that the committee considered it would be but very little trouble to the tax collector each year to keep an extra book ruled in columns with proper heads to each, being directed by law to put certain interrogatories to each tax payer, and this with the information obtained by the assessor would make it complete. Or the law might provide that every individual should send a short certified statement of the products of his farm to some person authorized to receive such statements. This could easily be done, and I have no doubt whatever that such a provision of law would very readily be complied with by the people.

Sir, there is no interest in the whole country that is equal to the agricultural interest. From that interest we derive all those resources necessary for carrying on the government. To their productions we must look as a means of obtaining a revenue. It is useful in that point of view. So useful has it been considered, that the Congress of the United States, in the bill providing for the taking of the census, has made provision for obtaining very accurate information in regard to these matters. But this occurs only once in ten years. The object of this section is to record the products of the year preceding. It will be recollected that there is a wide difference in the products of the State even as between the years 1849 and 1850. In the year 1850, there were probably raised five hundred bushels of wheat to where there was one hundred raised in 1849. Sir, I regard this provision as being of immense benefit to the State in an indirect manner. We would have accurate and reliable statistics; and it would be a great incentive to the farmers of other States to come and settle within our borders, when those statistics show the vast quantity of grain which our soil is capable of raising.

Mr. COOKERLY. I would like to ask the gentleman from Marion how he would carry out such a measure, without great additional expense?

Mr. MORRISON. I propose to do it by making it a part of the duty of the assessor or of the collector of taxes. Very little additional time would be required to obtain the information, as either of these officers might be passing from farm to farm in pursuance of their duties.

Mr. COOKERLY. The county auditor will certainly charge for his labor, and it will take the assessor three times the length of time to make his assessment that it would otherwise do. As a matter of course, therefore, it would entail



a vast amount of expense, and I shall most determinedly go against every constitutional provision that is likely to impose additional burdens upon the people. I believe with the gentleman from Posey, that this is a matter which appertains solely to the Legislature. We have not come here to legislate, but to settle the basis upon which future legislation shall proceed. This is a matter purely of a legislative character, and I do believe that it ought not to be put into the Constitution of the State. I am in favor of the principle, but I say let the Legislature provide for it, if they think it is necessary or useful, or that the information thus sought can be obtained without too much expense. They are the proper judges of such a matter, and let us not, therefore, put it into the Constitution.

Mr. BORDEN. I would suggest to the chairman of the committee on the executive, that most of the States of the Union which have revised their constitutions have made a provision for taking the census of their respective States every five years, and have also provided for obtaining information of this kind at the same time. The U. S. Constitution provides for taking the census every ten years; and if we were to amend the section by providing that this information should be taken in the year 1855, and every tenth year thereafter, we would then have this information furnished to us in a perfect form, every five years. Such an arrangement would relieve the State of considerable expense in obtaining this information every year. I merely throw out this as a suggestion.

Mr. MORRISON. No expense is necessary at all.

Mr. DOBSON. In reply to the gentleman from Vigo, (Mr. Cookerly,) I would simply remark that the Legislature have had the power to provide for obtaining this information, but they have always failed to do so. I have again and again attempted to have some such law passed, and have as invariably failed. This is a matter of such importance that I think we ought to adopt a provision in the Constitution, in order to secure it. It is not going to cost so much as gentlemen imagine. The assessor has to go around and make his assessments anyhow; and the additional cost of obtaining this information through him would be very little indeed. Then, Mr. President, who will pay the cost? It will be the farming population themselves, when the assessor is collecting the information. And what will be the result of it? Why, sir, every year we shall have a published advertisement of the products of each county, and persons at a distance will know exactly to what particular county to go for any specific products they may desire to purchase. This will naturally produce competition. I know that it may seem to many gentlemen here a very small matter; but let me ask them if there is a single dollar of wealth in the State, except what is dug out of the ground by the farmer. Merchants advertise their wares,

and lawyers and doctors their professions, in the newspapers, and why should not those engaged in agriculture have the means of advertising the fruits of their labors? This, too, will only be once a year. It can be done very easily. The assessor might have a blank form, with appropriate columns. The farmers themselves would fill them up, and all he would have to do would be to carry the sheet away, and then have some person at the county seat to make an aggregate of the whole.

This, sir, is information, above all other information, that the people of this western country need and want. Our merchants, our lawyers and physicians, are all maintained by what is dug out of the soil by the farmer, and I am satisfied that they would be willing to pay all the additional expense, if there is any incurred. Now why do I make these remarks? Simply, sir, because when men have been engaged in a business, they are apt to talk about it. I have been engaged in raising stock, and I know that it is exceedingly desirable that persons buying either stock or any other agricultural produce, should know in what county they can most readily find what they want to purchase.

Mr. BASCOM. I have only a word to say in regard to this matter. I think that gentlemen are very much mistaken when they frighten themselves into fits about the expense of collecting these statistics. They can be taken without costing the country any additional expense. I am glad to see that our Governor, in his late message, has recommended a different mode of assessment throughout the country. I had a little observation in reference to this matter in the State of Ohio. I was there when the assessor was going round, and I know from experience that their assessments cost much less than assessments in the State of Indiana; and besides that they collect more information that is valuable to all the citizens of the State. They have a sheet printed in blank columns, which they leave with each farmer; and all that the man has to do is to set down how many cows, horses, &c., he has in that blank sheet. In ten days the assessor calls and obtains the blank thus filled up, and takes the affidavit of the person called upon as to its accuracy. By this means valuable statistics are obtained, and it takes no more time than it does to take the mere assessment. This provision, in addition to the assessment which must be taken, would hardly add a feather's weight to the expense, while at the same time it would furnish to the people of the State a vast amount of the best kind of information. I think we can do but little less than turn our attention in this respect to the agriculture of the State. Upon it we all depend for a livelihood. Upon it depends the prosperity of the State; and shall we not give in this Constitution one brief section—a few lines—for the benefit of the farming interest? Shall we not give the people a knowledge of

what they produce? By this means you would let men in one part of the State know what was produced in another part of it. By this means you have the products of the whole State before you, and I think it is due to the people of the State that they should have this information; and I am not only satisfied that it will not cost anything to obtain it, but that the people will not complain if it should.

Mr. SHOUP. The gentleman from Owen (Mr. Dobson) has said that notwithstanding all his efforts from year to year in the Legislature to have this plan adopted, that body refused to do so. That, sir, is a very strong reason to my mind why we should not adopt any provision of the kind in the Constitution. [A voice—"that's a fact."] If the people themselves have not called for it, certainly the Legislature need not force such information upon them; and if the people have not called for it, and the Legislature has not thought it necessary, why should we make such a provision?

The gentleman from Allen thinks that this information would cost but little. It will certainly cost a great deal. It will cost at least \$125 to each county, and perhaps \$10,000 a year to the State. Whenever the people think it necessary, they will request the Legislature to make such a provision. I therefore move to lay the section on the table.

Mr. WOLFE. Will the gentleman from Franklin withdraw that motion for a moment?

Mr. SHOUP. I will withdraw it, to accommodate the gentleman from Sullivan.

Mr. WOLFE. The gentlemen have been talking a great deal about farmers and farming, and I suspect they have been talking about that that they know very little about. I call myself a practical farmer. I was educated in a corn field, and it appears to me that the object contemplated by this provision is altogether useless. It will not make the produce of any farmer either more or less. These things, like water, all find their own level. If gentlemen want to come to the country to buy wheat they know the wheat country without having this information from the farmer, and if they want to buy mules, they know perfectly well where to find them [laughter]. It has been truly said that all the wealth we have in the State is dug out of the earth, or rather, is the product of the soil. But do you want to take away from the farmer all that he earns? I know very well that I can do without this information, and sell all that I have without any trouble. Sir, we are told that this information is to cost little—that it can all be obtained on a printed sheet—but who is to pay for the printing of the assessors' sheets, and the books, and the individual going twice over the county? It is the farmers of the country, the men whom this provision is intended to benefit. Sir, all this talking here is for Buncombe. I am a farmer at home, and I ask for no such thing as that. It may be ad-

vantageous for doctors and lawyers, and men who want to live by speech-making, to know who is solvent and who is not, and for those out of the State to see where they can best go to buy what they want, but it will be of no advantage to the farmer.

Mr. DOBSON [interposing]. The gentleman from Sullivan refers to lawyers who call themselves farmers, and men of education. I can tell the gentleman that I was educated in a corn field, or, rather, I was there when I should have been receiving my education.

Mr. WOLFE. I did not allude to the gentleman from Owen. If he thinks so I will take it all back. I know he is a good farmer. I am only speaking of the general feeling of what would be advantageous to the farmer. I can see no advantage to the farmer, and therefore I do not think it is worth while to detain the Convention with any further remarks. I believe gentlemen are all prepared to vote on the subject.

Mr. BADGER. Mr. President, I desire to say a few words on this section before the motion is made to lay it on the table. And I desire also to have the attention of gentlemen who are of opinion that this is a matter of so little interest to the good people of our young, but flourishing State; sir, I regard this as a matter of vital import, not to the farmer alone, but to the whole country. Yes, sir, it is of importance to the physician, to the lawyer, the day laborer, the mechanic, the merchant, to all; for in some things we have a common interest, and this interest has been too long overlooked by all. I ask gentlemen in what consists the wealth, in what consists the pride, the prosperity, and the future prospects, temporarily, of our country, but in a development of our vast resources. Politically, a nation's character is the sum of its splendid deeds—they make up one common patrimony, the nation's inheritance. Just so would we weigh or measure the character of the agriculturist, by the sum of the fruits of his enterprise and industry.

And as this is a subject, to which the public mind should be directed speedily, the necessity of recognizing it in the organic law, must be obvious to every gentleman on this floor. Some gentlemen object to this section on the ground, that it is to benefit the speculator at the expense of the farmer. Sir, the contrary view is the correct one. Give your farmers annually, the exact amount of hogs, of cattle, of mules and horses, and of produce of every sort in the various counties in the State, and your farmers will be less likely to be imposed upon by speculators whose business it is to gain this knowledge to the exclusion of others.

But the gentleman from Sullivan says he is a practical farmer, and that he does not wish to incur the expense attending these returns. Why, sir, if the pork feeders in the Wabash valley, had been favored with correct informa-



tion in relation to the number of hogs compared with former years, they would have received for their pork this fall and winter, enough to have paid the expenses of these reports for the next ten years, over what they have received. I should be much pleased to see the time, sir, when like our sister States, we shall have an agricultural fair, annually, when we shall feel proud to come up to the capital of the State, with our stock, and our produce, and greet each other as the sovereigns of this heaven-favored land.

In relation to the amendment proposed by my friend from Parke, who sits on my right, (Mr. Davis,) I am willing for the present, that it should be adopted, leaving the matter to be further acted upon by the Legislature.

Sir, as the farming interest is the interest of all, as agriculture is the source of true wealth, and the true source of all wealth, and it has been so long neglected to the injury of all, may I not be allowed to express the hope, that in the adoption of this section, the subject will receive an impetus, that it may be the means of brightening the hopes of the hard-fisted yeomanry of our country, that it may be a beginning of better days, the dawn of a new era in the history of our State. I close by expressing the hope once more, that this section may not be laid on the table.

Mr. EDMONSTON. I think I and my constituents have some interest in this matter. I myself, have been raised a farmer, and I believe I am in some measure, at least, acquainted with their interests. The farmers of my section of country, do not require this information at the expense which is to be incurred by it. Now, I ask if your census takers are not paid by the day? Certainly they are. And it will take twice as much time to take down all these statistics in relation to the productions of the country as it would to make a mere assessment, or to make an enumeration of the population. Sir, it will not cost less, on an average, to each county, than two hundred dollars a year. Is not this a considerable sum to abstract from the farmers of the country merely for the purpose of informing stock-jobbers where they may purchase the best stock, and get the best bargains? I think it is, and I am, therefore, opposed to it. I do not believe that the people of the country ask for it, or desire it; and I hold that it is not right to tax the farmers for the purpose of obtaining this information without their consent, for the benefit of others. I never raised anything which I could not readily sell in my own neighborhood, and that, too, for a fair remunerating price; and why then should we tax the people to obtain information merely for the benefit of strangers?

Mr. COOKERLY. The gentleman from Putnam makes a sweeping declaration and says that when gentlemen vote to lay this section on the table, they are giving a vote that will deeply

affect the farming interest of the country. This, sir, is not the case in the sense in which that gentlemen implies; because I do not believe, that there is a single gentleman on this floor that would try to depress the farming interest, either in this or in any other State. I, sir, would not wish to be understood, in giving my vote to lay this section on the table, as militating against the farming interest of the country. I shall give that vote, because I desire to protect them in their rights. Sir, I came here as an economist, and not for the purpose of making Constitutional provisions to increase the burdens of the people. This section, sir, has no business to be adopted in the organic law of the State. I said it before, and I say it now, that I do not care how much gentlemen denounce those who vote to lay this section on the table, or who vote against it, I shall certainly give such a vote. I am a farmer myself; I raise everything which I require to eat, and I should be the last man in this Convention to do anything which would be likely in my opinion to injure the farming interest.

Mr. PEPPER of Ohio. I propose to amend the section by striking out the word "annually" and inserting "every fifth year."

Mr. FARROW. This report contains but two sections; one in relation to having a return of the agricultural products of the country, and the other to the education of children. The former section refers to that kind of physical training that men are engaged in as farmers, and I am happy to say that the county I represent would perhaps have as little interest in the adoption of this section as any other. It is now undoubtedly the interest of Putnam county, that the traders in stock should know that a great amount of stock is raised there. And it is not because the farmers of that county are influenced by any very highly constitutional feelings that they desire to see this provision in the Constitution, but because they have taken the question of raising stock in advance of other counties. They have devoted their attention to it; and having done so, the probability is that they will realize a much larger profit from the products of the soil in that county than they will in many other of the counties. Notwithstanding this, however, it does seem strange to me that there should be any opposition to voting so small a portion of the Constitution to the farming interest.

Gentlemen complain of the expense of the arrangement. If, however, they will consider for a moment, I think they will come to the conclusion that if there should be a small additional expense incurred in obtaining this information, it will, in a very short time, be more than ten-fold repaid, by the advantages which will accrue from it. This information would be sent abroad, through the newspapers and by other means, so that each county would have a partial advertisement of its staple products, not

only without any cost but with great advantage to the producers. I know that Putnam county first increased her stock by an agricultural fair, and just so long as she continued to keep up her operations in that matter, so long she continued to improve in the stock of the county; and from that small beginning we have secured perhaps a better stock, or at all events a stock equal to any that can be found in the State. If, then, you adopt a provision in the Constitution directing the attention of the Legislature to the subject, you will increase an interest in all matters appertaining to agriculture, in which the farmers of the country will doubtless acquiesce. I am in hopes that this matter will not be disposed of in such a summary way as has been proposed. When I first noticed the section, it appeared to me to be one of such importance, one that I thought would require so little argument in its support, that I could not but believe it would be adopted by unanimous consent, and without a single objection.

Mr. SPANN. The second section of this article has a special reference to the common school law of the country, and it appears to me that that provides for everything that is necessary. It has no reference to anything appertaining to the farming interest; because, whether a man is a farmer or a mechanic, or a lawyer or anything else, it is all the same to him, so far as this provision is concerned.

In relation to the first section I cannot but regard it as wholly useless, even if it were incorporated into the Constitution. If a man has anything to sell, there are usually markets enough in which he can sell it without the necessity of his going to the expense of advertising the whole world that he has it to dispose of. Sir, I think that the committee who reported this section, misconceived the true interests of the farmer; for I think it is not in any way material for him that the number of his horses, or cattle, or sheep, or hogs, should be known. When they are taxed they are always found, and he is always ready to give an account of them. If a person comes from Ohio to Indiana to purchase stock or wheat, he generally knows where to go to obtain what he wants. If the whole object is to give the citizens of Kentucky and other States an opportunity of knowing what we produce, such a provision is evidently for their benefit and not for ours. So far from the farmers of this State having any interest in such a provision, I think it is a decided mistake. Besides, sir, this is a question which, in my opinion, is strikingly legislative; and for that reason alone, if for no other, it ought not to be incorporated in this Constitution.

The question was then taken on the motion to amend, by striking out the word "annually" and inserting "biennially."

The amendment was not adopted.

Mr. HAWKINS moved to amend, by striking out the word "annually" and inserting "in the year one thousand eight hundred and fifty-five, and every tenth year thereafter, and to add thereto the number of inhabitants."

Mr. H. said that when the United States first took the census, provision had been made for obtaining a vast amount of statistical information in relation to agriculture and other products, and if the Convention were to put the matter in the shape in which he had suggested, they would have every fifth year, a full statement not only of the aggregate wealth of the State, but also that which was a matter of equal importance, a reliable statement of the increase of population. If there was no other advantage to be gained beyond a mere matter of State pride, that, in his opinion, ought to be sufficient to prompt the Convention and the people of the State, farmers, lawyers, physicians, and every other class, to require information of this kind. Such a provision is not only worthy of the character of a great people like the people of Indiana, but it is worthy of a place in their organic law.

Mr. MOORE moved to lay the section and amendment on the table.

Mr. PRATHER moved a division of the question.

The question was taken, first on laying the amendment of Mr. Hawkins on the table, and a division being called for, there were yeas 51, noes 30.

So the amendment was laid upon the table.

The question then recurred on laying the section, as reported by the committee, on the table.

Mr. CHAPMAN demanded the yeas and nays.

The yeas and nays were ordered.

Mr. MOORE. I will withdraw my motion to lay the section on the table.

The PRESIDENT. It is too late now to withdraw the motion.

The question was then taken on the motion to lay the section on the table, and resulted as follows:

YEAS.—Messrs. Alexander, Allen, Berry, Blythe, Bright, Brookbank, Butler, Carr, Chandler, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Conduit, Cookerly, Crawford, Edmonston, Elliott, Fisher, Frisbie, Gibson, Gootee, Gordon, Graham of Warrick, Haddon, Harbolt, Hardin, Helmer, Hitt, Hugin, Holman, Hovey, Huff, Johnson, Jones, Kelso, Kent, Kilgore, Lockhart, Mather, Mathis, McLean, Milligan, Moore, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Pettit, Hariden, Read of Clark, Ristine, Ritchey, Robinson, Shannon, Shoup, Sims, Smiley, Spann, Tagué, Tannehill, Trimby, Watts, Wolfe, Zenor, and Mr. President—66.

NAYS.—Messrs. Anthony, Badger, Ballingall, Bascom, Beach, Beard, Bicknell, Biddle, Borden,



Bourne, Bowers, Bryant, Carter, Chapman, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Farrow, Foster, Garvin, Graham of Miami, Hall, Hamilton, Hawkins, Howe, Kinley, Maguire, March, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Murray, Nofsinger, Owen, Prather, Read of Monroe, Schoonover, Sherrod, Snook, Smith of Ripley, Steele, Stevenson, Taylor, Thomas, Thornton, Wheeler, Wiley, Work, and Wunderlich—61.

So the section was laid upon the table.

#### EDUCATIONAL STATISTICS.

The PRESIDENT. The next question is on section No. 2 of the same article.

[The section was read by the Secretary.]

Mr. SMILEY moved to lay the section on the table.

The motion was agreed to.

#### REPORT NUMBER TWENTY-THREE.

The PRESIDENT. The next business in the orders of the day is report No. 23, on its second reading.

[This is a report from the committee on matters pertaining to criminal law, and contains two sections—the first defining the crime of treason, and the second prescribing on what evidence persons charged with the crime shall be convicted.]

Mr. PETTIT moved to amend the first section by inserting the word "only" after the word "shall," so as to make it read:

"Treason against this State shall only consist in levying war against it, and in giving aid and comfort to its enemies."

The amendment was adopted by consent.

The section was then ordered to be engrossed for a third reading.

The question then being on the adoption of the second section, it was adopted without amendment, and ordered to be engrossed for a third reading.

#### REPORT TWENTY-FOUR.—THE BANK QUESTION.

The PRESIDENT. The next business in order is report No. 24. The Secretary will read the first section.

The first section was read by the Secretary, as follows:

"The business of banking shall be free to all, on such terms and restrictions as the Legislature shall impose in general laws for such purpose, including the following principles, which shall be obligatory upon all persons, associations, or corporations acting under such general laws."

Mr. HALL. I move to amend by striking out the section and inserting the following:

"Sec. —. The General Assembly may authorize the establishment of a new State Bank,

with Branches, to go into operation after the expiration of the present Bank charter, under such regulations as may be prescribed by law; but in no case shall the State be a partner, or have any interest therein, or any branch thereof, except as may be occasioned by the investment of any trust funds of the State therein as loans; and the safety of any funds, so invested, shall be secured by their preference in payment, in case of insolvency, over the stocks of any individuals in the Bank; *Provided*, That each Branch shall be mutually bound for the debts and liabilities of each other."

Mr. H. said that, at the present stage of the question, he would refrain from offering any observations in regard to the amendment.

Mr. RARIDEN. I am not disposed to go into the discussion of this isolated proposition; but I should be very glad to discuss the whole subject of banking, so far as the State of Indiana is therein concerned; not its philosophy of this time, but its use compared with its rival project. It will, however, be utterly impossible for me to do any kind of justice, either to the subject or to myself, in the short space of fifteen or thirty minutes.

The PRESIDENT. The Chair would remark to the gentleman from Wayne that the rule is now thirty minutes.

Mr. RARIDEN. Then I will say as much as I can in that thirty minutes. ["Consent."]

As this is probably by far the most important subject that will be discussed before this body, I would much like that the thirty minutes rule should be suspended. I believe that the time of the Convention would be saved by it; and also because it is known that, when a man speaks against time, he cannot arrange his ideas in that form, or express them in such language as he would desire, and I would like if some gentleman would move to suspend the thirty minutes rule, so far as it applies to the subject of banking.

Mr. COOKERLY moved to suspend the rule.

The question being taken, it was decided in the negative, and the rule was not suspended.

Mr. RARIDEN. I am well aware that, even in thirty minutes, I could not make myself intelligibly understood; and I shall have to move the indulgence of the Convention to be allowed to continue, otherwise I shall have to stop in the middle of my remarks. I am going to discuss the whole subject as it presents itself to me. I am going to take a view of the State Bank system as it now exists, and as a parallel with the free banking system, for the purpose of showing that the people of the State are better secured under the charter of the State Bank, than they could be under the free banking system. I say nothing of the benefits of the present Bank— [much noise.]

The PRESIDENT. The Chair would respectfully ask the Convention either to repeat

the eleventh rule or to observe it. The rule is as follows:

"Whilst the President is putting a question, no one shall walk across the room; nor whilst a member is speaking enter into private discourse, or pass between him and the Chair."

Gentlemen must be well aware that it is exceedingly painful to the Chair to be under the necessity of continually calling order; but with so much conversation going on, and so many gentlemen constantly walking across the floor, it is impossible that the speaker can be heard, or the business of the Convention attended to as it ought to be. It is very unpleasant to have to make this remark, but gentlemen cannot fail to see its propriety; and the Chair would again ask of gentlemen either to observe this rule or to repeal it.

Mr. RARIDEN (resuming). Now, Mr. President, I lay it down as a positive fact, that it is not within the power of this Convention, nor of any legislative body, by their action, to exclude from the State of Indiana a paper currency, or to increase the quantity of precious metals that circulate as a currency. It is not in the nature of things that that can be done by legislation. If we do not supply a paper medium of circulation, it must come from the other States around us—Ohio, Kentucky, and all those States with which we have connection in trade. They are pledged to the continuance of a paper currency. It is with these habits, and in these institutions, and must continue. It is admitted that the present State Bank, with its present capital, is entirely insufficient to supply the demands of trade; and, in consequence, I take it that other States supply us with a paper circulation of at least two millions of dollars, at a cost of at least 7 per cent.; and I believe, further, that the State of Illinois is supplied with a circulation of five millions of dollars of foreign paper. Upon that two millions of dollars, we necessarily pay to persons out of the State the regular interest at which such institutions discount money.

Another thing let me premise before I proceed, and that is as to the contraction and expansion of currency so much complained of, and about which the banks are so much blamed. It is not their fault; if they could, they would at all times consult their interest, and keep up the circulation at their highest point; but they cannot; it results from the laws of trade. With us we have our seasons for investments, and when the demand is great and the supply small, there is great disposition to adventure. Everybody wants money, and the banks, to please their customers, as well as to advance their own interests, loan freely to the last sou, and those loans upon the main staple are generally made upon time. Bills payable east, with a view to accommodate the trade of another class of customers who will want at the maturity of those time bills. Well, it very frequent-

ly so happens that men were mistaken in the demand for the subjects of these investments, and when it gets to market they either sell at a loss, or hold on for a rise, and in each case they fail to meet these bills. Then the trader applies for relief and delay, which, if they grant—and they generally do—requires a calling in of means around them to meet the liabilities which those bills were expected to meet. Besides this, the periodical seasons of investment and sale would account for the expansions and contractions upon a principle very just and natural, that in the growing and producing season half the amount was not wanted that was in the winter and selling season, and therefore the expansion and contraction.

I assume, then, that we must ever have a circulating paper medium; and if we do not furnish it for ourselves, our neighbors will undoubtedly furnish it for us.

That the State Bank of Indiana has done well—that it has afforded a secure medium of circulation, and has had the confidence of everybody—that its paper was at all times convertible into specie, excepting at that time when there was a universal suspension of specie payments—I am not going to deny. Nor am I going to discuss the causes which produced that suspension. It is sufficient for me to know that such an event having occurred once, it may occur again. At all events, we live in the midst of a community pledged to a paper currency, and it is a law of currency, that where there are two mediums of circulation, one of which is cheaper than the other, and that one only will answer every possible purpose of trade, that one will go where it is wanted for those general purposes. It must necessarily go to the great points of trade, while the other medium, made to answer local purposes, will be confined to those localities for which it was designed, and where it answers all the purposes of local trade. Hence, I say that the banishment of banks from among us cannot be the means of increasing the circulation of specie, or the expulsion of paper. I have not time now to discuss the merits of the State Bank; but I will merely say that it has answered all the general purposes for which such institutions are desirable. It has made to the State of Indiana not less than a million of dollars. It has made eight hundred and seventy thousand dollars belonging to the school fund, the greater part of which the State has appropriated to its own use. It has associated capital in such a form, and as a subject of taxation, as to make the State from eight to ten thousand dollars per year. It is taxable as individual capital, and is thus made visible as a subject of taxation on which the State has laid its hands, and realized an annual tax that will amount to the sum of perhaps two hundred thousand dollars or more.



Mr. HAMILTON. I think that was for school purposes.

Mr. RARIDEN: The charter says that until an *ad valorem* system of taxation be established, there shall be only a tax of twelve and one-half cents a year, per share, for school purposes. That tax has been regularly paid, besides the *ad valorem* tax as upon other property; and I believe it amounts to between five and ten thousand dollars a year. It is a convenient way of having a tax. It is so fixed that whatever capital the State has in it is protected by the whole amount of individual stock. That is protection enough from the guaranty of the individuals that manage the concern, to look well to the interests of the State of Indiana, as well as to their own interests.

But I wish to speak of a charge that has been made against that institution, for taking more than the legal interest through the instrumentality of bills of exchange. It may be that they trade in bills of exchange. If they do, it is for the interest of the Bank as well as of the community to do so, if it can be better and cheaper done through that than through other means. And if the Bank did not do it, instead of its costing its customers from one to a half per cent to carry their money to eastern cities, it would cost them double per cent, besides the risk. This, sir, is for the convenience, as well as for the interest of the customers of the Bank. Let me give an example. Here are flour and pork, which are staple articles. If I wish to become a pork packer, I apply to the Bank, and the banker says, "I will let you have money upon a bill payable in Philadelphia, or New York, or Boston." Well, say he charges me no discount upon that bill, except the interest till its maturity; the pork packer receives the money here; he invests it in hogs; he gives his bill payable at the place where the sale of the pork when packed is to be made; he deposits that much to the credit of the institution here, and the merchant here going east to buy goods takes the bill of the Bank drawn on that fund, and has no hazard in carrying his money there. Now this is a simple process through the medium of trade by which bankers are enabled to transfer their funds from one point to another, to suit trade, and at little cost. It is a matter of convenience, and one of the best methods that can be devised. Some gentlemen will say that when you go to the Bank to get money on your bill, they will not give you their own issues, but perhaps a draft on some other bank, on which you will have to pay half or one per cent. premium, and that in order to obtain convertible funds you must lose half or one per cent. This results from having more exchange than the market required, and if it gets rid of it in this way, it is only doing as any other trader would do. This State Bank, then, has answered all necessary purposes for which it was intended; it is perfectly secure,

and is the only enterprise which the State of Indiana has embarked in that has made money for the State. That is enough to say in the present instance in regard to the Bank of Indiana.

Mr. President, my ears have been assailed with the universal cry of wide spread free banking. Now, what does that mean? I made a little sortie, not long ago, by offering a proposition to exclude from the General Assembly all Presidents, Directors, &c., of railroad or banking companies. For offering that proposition I was called a demagogue, and charged with catering to vulgar appetites. I did not see proper to repel that charge then, and I am now going to explain what kind of demagoguism it is. I now repeat, whatever gentlemen may say in regard to railroads and other improvements, all of which I regard as a great benefit to the State and the people, and I applaud the enterprise that has brought them to what they now are; yet I say that men embarked in interests of this kind, have a single eye to those interests, and ought to have, and that, in the Legislature, they would endeavor to have such laws passed as would make them more profitable and more useful to themselves, without much regard to public interest. These men would be joined together in one common tie of interest, and would be moved by one common impulse. The pressure that is put on at head quarters, would be felt throughout every part of these great works, and the whole would answer to the rudder.

Now, sir, one word more about my notions of monopolies. It is not the Constitution or the Legislature that constitute monopolies. It is the power of money. If I have a million of dollars, I am able to monopolize a great portion of the trade. Men of money, too, act with a common impulse. Now, when I proposed to exclude Presidents and Directors of banks and railroad companies, I showed the reason why I would exclude them. I said that they would be associated together, and, under the control of the master work; and that one of these works now constructed had a revenue superior to the whole revenue of the State Bank of Indiana, and that every railroad connected with that line would be necessarily under its peculiar influence, and would be compelled to act as it might direct, and would yield loyally to its wishes.

Now for the free banks. I tell you whatever can be done to obtain a system of free banking, will be done. Gentlemen say that we are going to have the best kind of security in the world in these free banks, by founding them upon State or United States stocks. Let me examine this for one moment. I say to gentlemen that the great object of the advocates of free banking, is to found the system upon railroad stocks; and they design to do it in this way: Our State stocks pay an interest of, say, five per cent. The dividends on railroad stocks amount

to ten per cent. What individual holding State stocks would not be willing to pledge them to the free banking company?—in other words, the "Railway Banking Company"—if they could thereby obtain more interest, and a pledge of the road stock as security for the bonds. The owners of the railroads must necessarily own and direct the free banks, and they will, consequently, own the State bonds. The receipts of these railroads will not be less than two thousand dollars per day. Let the State receive their issues as tax, and the road receive it as toll, &c., it will be a perfect security. That very paper squeezed out of the State bonds, will be loanable at six per cent., and at the same time, will pay five upon the bond.

The PRESIDENT. The gentleman's time has expired.

Mr. MAY. I move to suspend the rule.

The rule was suspended.

Mr. RARIDEN (resuming). This system of free banking affords the very best opportunity for the owners of the railroad stocks to enrich themselves. The foundation of this system is said to be State or United States stocks, paying five per cent. interest. They will make their issues, and with these issues they will buy up the produce of the country. This will be giving them five per cent. for using the money. But this is not all. I say that the men who own the railroads and free banks, when they loan out their money to be invested in the produce of the country, will direct where that produce shall be shipped to, and to whom, and storage, commission, insurance, and storage will be added to interest. They will control the whole issue, as well as the road. One other thought. The price of produce must depend upon the demand, and the amount of money in circulation; and when there is a combination of all these interests, having the control of the circulation, they, having also the control of the roads and transportation, will be able, by a diminution of the circulation, to put down the price of produce at just what they please, no matter how great the demand for it, and thereby make immense profits.

Now one other word in reference to this free banking. I am going to speak from Gubernatorial authority—the best kind of authority, which is neither democratic nor whig, but the truth, and half between the two. It is a matter of documentary history and official information, and it gives us information of where this great amount of free banking capital is reposing, but which, for some unknown cause, has not found a place on the tax-books. But hear Governor Wright, in his communication of useful information to the Legislature, made only yesterday. He says: "While the property of the man of moderate means, the farmer, the mechanic, and the day-laborer, is, from its very character, exposed to the eye of the assessor, and is such as to enable him to estimate its val-

ue with accuracy, it cannot be doubted, that a large amount of taxable property, consisting of corporation stocks, moneys, and credits, entirely escape taxation."

He then instances, that the estimated value of property in New Albany, is three hundred thousand dollars more for corporation than State tax; in Madison, five hundred and sixty-five thousand four hundred and seven dollars more, and in Indianapolis, six hundred and fifty-seven thousand nine hundred and ninety dollars more. How does this come, among the people-loving and money-making inhabitants of those places of trade? Is this the free bank capital which wants employ, but is too proud, or too diffident, to step forth on the tax-book and be rated like poor men's effects? Yet my word for it, the owners love poor men, farmers, mechanics, and everybody else. But then this free bank capital could not find its way upon the tax-books, and they are not to be blamed. I hope they will not be offended with the Governor for revealing it, or limit his discounts, when it finds its proper place, in a haven for free banking.

Mr. MORRISON of Marion. I will explain this to the gentleman from Wayne, if he will allow me. The citizens of those towns have a right to make for themselves an assessment on what they assess, for a municipal tax. The assessment is made on a totally different basis from that for the State tax.

Mr. RARIDEN. Oh! if that is all the explanation, I may admit it.

Mr. MORRISON. Compare those counties around, and these assessments.

Mr. RARIDEN. I shall make no such comparisons, nor have any altercation. I am discussing a great principle, as well as particular features in the human character, in pursuit of gain—which is but another name for the pursuit of power over their fellow men. To make money more profitable to its possessors, is the object of this free system, and all other systems that I have ever heard or read of. The old and present plan of banking, is through incorporations. There the law creates the body, and gives it all its powers; none can be exercised except what is granted. And it being a creature of law, is under the supervision of law, and answerable for any excess over, or departure from, delegated powers. The free system is based upon the natural rights of man, under the idea that what may be done by man as a citizen, may be done by him as a banker. Its friends say they only want to negative certain powers and rights in that branch of business. It is said further, that this business is to be left open to all—to be free as air—no monopoly about it; that whoever will produce State bonds to the State, and pledge them, with some other ceremonies, becomes a bank of discount and deposit, himself, or themselves, and that the State gives its certificate of power, as



a passport to the paper, and sends it out into the world, to make its fortune, or the fortunes of its godfathers. This is called free to all. Do not gentlemen know, that when you require a deposit of State bonds, to fifty or a hundred thousand dollars, before beginning, you interdict a majority of men, as fully and absolutely as if it was done by a decree of heaven?

We are told, that no frauds can be perpetrated, under this perfectly free system. Indeed, sir, when I looked through our revenue laws, I could not see how any frauds could be committed upon them. It did not occur to me, how this free banking capital could conceal itself from taxation. And yet it did so conceal itself, and such things pertain to the sly and insidious character of such capital. The disposition which the Governor shows, to unhouse and unscreen this capital, I have no doubt increases its desire to creep into State bonds, which cannot be taxed as capital, and then to have a currency squeezed out of them, that might be loaned out at interest, or employed in any other way that real capital could be employed, and avoid taxation. The Governor speaks of this matter, as something appertaining to his knowledge, and he gives it in charge to the Legislature, as a great fraud and abuse, which ought to be looked to by those who have sympathy for tax-payers. We have here an evidence of the affection of the owners of this capital, for the people. Their money wants to be employed in free banking, for the benefit of the people; to expand their currency, to stimulate their industry, and to reward their labor. But it is not to be taxed, as theirs is, and its owners are the men to whose integrity, wisdom, and love of justice, must be confided the whole subject of currency. If we embark in this enterprize, upon the basis of State bonds, which, I again repeat, will come through the railroad companies—not because their holders would be unwilling to form partnerships here, and furnish the bonds for bank capital, and thereby have six per cent. per annum added to the interest of his bonds, which would come off the people—but because they could still do better by furnishing the bonds to the railroad, which has the whole carrying trade, besides a credit, which would give perfect confidence to the bond-holder, under all contingencies. And that the Madison road will control all others that are connected in any manner with it, is as certain as that heavy bodies fall and light ones rise, or that inferior force is subdued by superior. Then they will all harmonize. They will, if this system is adopted, dole out the money, to purchase the produce, and fix the price upon transportation; and if they do not look to their own interest, it will not be because they have not the power. Perhaps those patriots who may turn free bankers, and who boast of always being near the people, when their interests are in danger, may still stand, like guardian angels, by them, to

save and shelter them, for that will be their only hope.

Gentlemen say they are not willing to embark in this new system of money making, until the hands of the State are tied, lest it might break in and spoil the whole field of business. They don't want competition, and I don't want to try the experiment, without leaving the State at liberty to enter the field and drive them out, if they turn out to be severe task-masters, as I fear they will. There is no use of such a restraint upon the State, for I tell you that no State bank can stand up against such an institution as a free bank connected with, and acting in harmony with, the railroads.

Then, why should we tie up the hands of the State? Why should we say to posterity, "we see clearly what is for your best interests and therefore, we leave you no control in the matter?" I say let the State come into competition; and let it have the power of putting down these institutions, if it should be found necessary to do so for the good of the people. Gentlemen say, when the people are to be effected, they are always very near to the people.

Sir, this is getting *near* to them in reality—it is getting into their pockets. If they repudiate the idea of any connection between the railroad companies and the free banks, all I say, is, wait for the future and see what time will develop. Men of money will adopt just such a system as will make their money produce the most to them. If they can control the people so as to be able to supply the circulating medium, they can expel from the country all other circulation, by raising the price of transportation, should produce get so scarce from the scarcity of money to buy it.

Sir, I feel much exhausted, not being in very good health. When the subject shall have been discussed, and gentlemen shall have spoken all they have to say upon the subject, then I will take up their bantling as they may exhibit it, and, if I do not show them that the inevitable result of their free banking system, as they design it, is to make the rich richer, and the poor poorer, then I will confess myself no prophet, and blind to the future. [Applause.]

Mr. DOBSON. It is now growing late, Mr. President, and as this is a question of great importance, I much fear whether gentlemen will listen with any degree of patience or attention to any remarks I have to offer. [Cries of "go on, go on, go on."]

Mr. President, where has all this noise about free banks sprung from? In what direction has it come? On what breeze was it bourne? Has it the smell of *salt water* upon it? I would like to have all these questions answered. Will gentlemen answer them?—we shall see. Let us look at the matter.

Some twenty odd years ago, we were told that the General Government must engage in an extensive system of internal improvements

—it was to make us all rich, very suddenly, and no mistake. A stop was put to this system, by Andrew Jackson vetoing the Maysville Road Bill.

Then, sir, what next. Why, the States undertook, each for itself, to construct works of internal improvements. Well, sir, the system broke down by its own weight and its own inherent defects. When the crash came, the astounding fact was published far and near, that the States had sold bonds to the amount of two hundred millions of dollars, and that these bonds were owned by foreigners. Many of the States failed to pay the interest on their bonds. What next, sir? Why, sir, a splendid idea—just the thing exactly; it was that the General Government was to assume the payment of all these bonds. Do you know, sir, where that scheme had its origin? Well, it was not in this country. It was in England. A fearful struggle ensued in Congress and in the State Legislatures, and at the ballot box this scheme finally failed. The General Government refused to assume the debts of the States. I, for one, was opposed to it. What next, sir? Why, those holding the bonds of Indiana came forward and proposed a compromise,—they were willing, if they could not get money, to take property at its appraised value. [Laughter and applause].

Well, the compromise was made, and they took the Wabash and Erie Canal, and the lands obtained for its construction, for half the debt, and we issued new bonds for the other half, bearing 5 per cent. interest—4 per cent of which we were to pay semi-annually, until 1852, the other 1 per cent. to be added to the principle at that time, and after that we were to pay the interest as it fell due. Well, sir, what next? Another new idea—aye, sir, a splendid, a glorious idea. Now I ask the gentleman from Wayne, (Mr. Rariden,) if it is not possible that these foreign bond holders are willing, not only to make and manage our canal for us, but to do all our banking for the next fifty years, if we will only permit them? What *kindness; disinterested kindness.* [Laughter.]

How much do we owe, sir? Say seven million. At what interest? Five per cent. Now the great object of the friends of free banks, as they tell us, is to bring home our bonds, so that the interest may be paid at home, instead of sending it abroad. Ah, that's the idea, is it? [Applause.] Now that is a plausible argument; but let us examine it and see how it will work. Suppose the bonds at home are deposited in the Auditor's office,—free banks in operation all over the State, in full blast, the bonds will still draw the 5 per cent.—the people will have to pay it by taxation. The banks will make from 6 to 10 per cent. on their issues. Who do they make it of? Our people, of course. Who gets it?—Where will it go to? Now there's the rub. [Cries of "that's the question," and applause.] Our people will not get it,—do you ask me why?

Why, sir, for the very best of reasons; they have not the money to buy the bonds. Will any man pretend to say that the citizens of Indiana have seven millions of specie to spare? Sir, the idea is preposterous—the money is not here—you can't raise it. Then I ask again, who is to own your bank and get the profits? Foreign capitalists. [Cries of "that's the idea," and applause.] Yes, sir, that's the idea. They will then draw from the labor of this State from 12 to 15 per cent., instead of five;—they now get 5—they want 15—will you give it to them? [Cries of "no, no, no."] Gentlemen say no. I say no. Then resist this free banking system. But it is said that we will get clear of an odious monopoly, by putting down the State Bank and adopting this new idea, (or, more properly speaking, this *foreign idea*, as I should call it). Yes sir, get clear of a monopoly, by embracing a greater one,—like the live eel in the frying-pan, finding the place rather too hot, hoping to improve his condition, squirmed himself out of the pan into the fire. [Laughter and applause].

History teaches us that bankers, like other men, use all the means at their disposal to advance their own interests, and they, of all others, perhaps, are the most unscrupulous in regard to the interests of others. Bankers will control this government, if they can. What has been done in other countries, may be done here, if the people are not watchful. It has been said that eternal vigilance is the price of liberty. If so, we should be vigilant, and, to use a common phrase, *not be caught napping.*

There are five brothers on the other side of the Atlantic (I allude to the Rothschilds), who control the whole money operations of Europe. Their father, who seemed to have a most peculiar faculty for acquiring money, left an enormous amount to five sons, advising them on all occasions to act as a unit. By their means the old and tottering Governments of that country have been upheld. One of them in Paris had the ingenuity to dodge the public indignation, and come out on the side of the people. Yes, sir, these men command crowned heads, and they shut their mouths. The oldest brother has his bank at Frankfurt-on-the-Main, one of them has his in London, one in Paris, one in Vienna, and the other in St. Petersburg, and they act as a *unit*.

Now it has been said that these men are the owners of nearly all these stocks. Now if this change should be made, and these stocks should be brought home and made the basis of banking in this country, I ask you whether these men would not control the monied affairs of this as well as of the old countries? They have been able to control England, and one of them by the influence of the five brothers has been able to take a seat in the British Parliament, despite the laws which prohibited men of his religious opinions from sitting there. Yes, sir, *proud England's Queen bowed to the money King!*



Now with regard to the power to tax stocks, I will not take up the time of the Convention to discuss it at present. I do not know that these views have been taken by another living soul of the Convention, but when the subject was first presented to me, the first idea I had was, that foreign capitalists had a desire to do our banking, and that they had baited a hook and thrown it out among us, and that certain theorists had took the bait. Yes, sir, they are caught. [Applause, and "that's the fact."] I am not disposed to give up that much power. That idea I had in my head when I wished to exclude presidents, directors, &c., of banks and railroads from a seat in the General Assembly. You refused to make such a provision, and they will consequently take their seats. And if a man from a foreign country cannot himself take a seat, I ask you, sir, if his agent who he controls will not represent foreign interest and be subject to foreign instruction!

Yes, sir, they wish their agents to be in your Legislature, they wish to do your banking, and your legislation also. [Applause.] The individual holding a seat in the Legislature here will not only receive his instructions from those who vote for him, but will occasionally get a letter from Wall street, New York, that will express the wishes and desires of men somewhere else, which he will consider instructions, and will obey them. I do not believe myself—although I am not the advocate of the State Bank—that by breaking down that institution you will be able to substitute a better one. I prefer, however, a State Bank to free banks; and in doing away with the State Bank in order to get rid of a monopoly, I am conscious that the State of Indiana would never regret it but once, and that will be all the time.

But the question now evidently is between free banks and no banks. I said I considered the question as to a State Bank as settled when that section of the Constitution was adopted prohibiting the State from borrowing money for any purpose whatever, even though the people by a unanimous vote should wish to do so.

Now I apprehend that one reason, and perhaps a very just reason, which has created a prejudice against the State Bank, is, that it has not one-fourth or one-fifth of the capital which the business of the country now requires. I can account for it in no other way. True there are other objections to it, but this is the principal one. If I have four or five neighbors who want to borrow my axe, and I have only one, I cannot lend it to them all at once. The first that comes will probably get it, and the balance, being disappointed, may think that I am surly and unwilling to accommodate them. They might think that I acted with some partiality. Well, sir, I believe that banks always become partial. I believe the gentleman from Hancock was pretty near right when he said, the other day, that every man acts the dema-

gogue as far as he has capacity [laughter], and I think that in money affairs a man is very apt to cut the length of his knife. I have no doubt that at banks, as well as in every other place where money is concerned, every man has his favorites. It is natural; we all have our friends, and I doubt not, sir, if your honor had money to lend, you would give your particular friends a wink or a nod, so that they might come in time and get it.

Now I have said about all that is necessary to say at present. I may take up the subject again; that will depend upon circumstances yet to transpire. I suppose we are going to have these free banks; that is the system which this Convention will adopt. But I want the Convention to know from whence the thing comes; let the screen be raised that all may see the Elephant. It is customary with those who exhibit menageries through the country, to bring the Elephant through the principal street of the village, so that he may attract the attention of the boys, so that they may judge the balance of the animals by the size of it. Now all I ask is to give us a peep at your Elephant before we pay our money. Don't pull the wool over our eyes; tell us at once all about it.

On motion,

The Convention adjourned.

FRIDAY, JAN. 3, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. LONG.

The Journal of yesterday was read and approved.

#### LOCAL LEGISLATION.

Mr. NEWMAN, from the committee on special and local legislation, reported back the section which confers the powers of local legislation upon county boards, with a recommendation that it be laid upon the table.

Mr. BORDEN said, he trusted the Convention would not concur in the report, but that they would adopt the section, and for this reason: It appeared that by another provision in the Constitution, they were about to deprive the Legislature of the State of the power to pass laws of a local character. This power must be vested somewhere. To whom, he would ask, could it be confided more appropriately than to a board of county commissioners? Many of the new States had adopted this system. He thought it highly expedient that a provision of this kind should be adopted.

Mr. STEVENSON remarked that this section had been introduced by him. The object was to give to a county board legislative power in small and local matters. But if the Legislature could invest the county boards with the power of legislating for local purposes without having such a provision inserted in the

Constitution, he would be entirely satisfied without insisting upon the adoption of the section; but he thought it indispensable that the power of legislating for local purposes should exist somewhere.

Mr. NEWMAN said, the opinion of the committee was that it was desirable to avoid, as far as possible, all local legislation, and that if a constitutional provision were adopted conferring legislative powers upon county boards, they would be running the risk, at least, of doing what would be more dangerous than for the Legislature to retain the power to legislate for local or special purposes. The committee apprehended that there would be danger of an infraction of the rights of citizens of the different counties. The objection made by the gentleman from Allen might be obviated by having general laws passed to apply only where they were applicable, and such laws would stand upon the statute book, so that every citizen might know when he violated an enactment. Even if county boards were to be constituted to exercise the power of local legislation, the Legislature would have the power to confer upon them the necessary jurisdiction, but when they came to legislate upon matters affecting the rights of the citizen, he thought they ought to be controlled and restrained by the Legislature of the State, otherwise we should run the risk of falling into worse error. If the enactments of the county boards were to have the authority of laws it should only be after a recognition of them by the Legislature. He thought it was greatly preferable that the law should be a general one, to be passed by the General Assembly, and to be acted on or not, to be adopted or not by the county board, as the exigencies of the particular county might require.

Mr. BORDEN said, the Convention would observe that the section did not prescribe that the Legislature shall confer such authority on the county board, but that they *may* do so, leaving it discretionary with them to do so or not, as they pleased. He supposed it was contemplated by the Convention to restrain the Legislature from passing local laws. He supposed there would be a provision declaring that all laws should be of a general nature—that they should be general in their application. If such a provision were to be adopted, then this power of local legislation could not be exercised by the State; and he knew of no better tribunal—one upon which this matter of local legislation could be more properly conferred—than the county board. He was in favor of bringing legislation as near to the people as practicable. It was the doctrine of Thomas Jefferson that everything that could be done in the county ought to be done there, and not entrusted to the Legislature. He would add that everything that could be done by the township authority, and not by the county authority, and all the business

that can be as well done by the county should be done by it and not by the State. He was not very solicitous as to what disposition might be made of this section, but he hoped that before the Convention adjourned, a provision would be adopted conferring the power upon the county boards to legislate for county purposes, or else to authorize the Legislature to pass general laws to be applicable only when adopted by the constituted authorities of the several counties.

Mr. CHAPMAN. I move the following amendment—

The PRESIDENT. The question is upon concurring in the report.

Mr. CHAPMAN. I move then that the report be concurred in with the following amendment:

Add these words "under general laws."

The question being on concurring in the report with the proposed amendment,

Mr. PETTIT said, he understood this to be a proposition to create ninety Legislatures.

A VOICE. Ninety-one.

Mr. PETTIT. Ninety-one small legislative bodies—one in each county of the State. If gentlemen could point out one thing that required legislation which was not of interest to the whole State, then he would consent that there should be as many legislative bodies as they chose to have.

Gentlemen were undertaking to adopt the very thing which the people had sent them here to abrogate, viz.: local legislation. He was for having the laws uniform, so that wherever the Indianian sets his foot, he might be governed and protected by the same laws, and liable to the same obligations. There was no necessity for such a provision as this. What local legislation did gentlemen want? Why not create a local Legislature for every township as well as for every county? Carry it down to sections, if they please, or have an independent Legislature for every forty acre lot. There was no need of any such thing. One Legislature was enough over one people. There should be but one authority—one sovereignty to rule all.

Mr. WOLFE said he was not going to advocate the principle of establishing county boards; but he had a few words to say in reference to local legislation. It was impossible to do without it altogether. It was like entering up judgment in court. There must be an act to meet every case. There were many circumstances connected with one case that did not appertain to another. It was impossible that one act could cover all the cases that might occur. In reference to the public highways, for instance, he had seen a great deal of difficulty arising in the Legislature in reference to these matters. The same enactments in reference to roads would not apply to all counties alike. The soil of one county was different from the soil of another. It was not requisite to make all roads of equal width. In some of



the counties, the soil was of such a nature that, if they had wide roads, they would become almost impassable at certain seasons of the year. He thought that some provision like this was indispensable.

Mr. CHAPMAN said that those county boards which it was proposed to create would correspond in some degree with those local governments called municipal—city corporations. It was possible, and he hoped it would be the case, that the Legislature would pass a general law prescribing certain municipal regulations; but he thought it impossible that they could prescribe all that would be required in the different towns and counties. The towns and counties bordering on the river would require a different sort of legislation from those in the interior. There must be a certain degree of legislative power given to city corporations to pass ordinances to suit themselves, because the State Legislature could know nothing about their wants. One thing was very certain, and it was that, in New England, where, from time immemorial the power of local legislation had been conferred upon county boards, it had been found to work well. Those boards acted under general legislation; but, in their enactments, they established regulations respecting a thousand different particulars to which general law could not specifically apply. But there should be restrictions. They should not be permitted to go beyond a certain point. He thought it would be good policy to follow the course pursued by New England in this respect. There it was the practice to submit the project of a law to the people, and call upon them on a certain day to go to the polls and vote for or against such measure. If they approved of the measure, it became a law; if not, it was a nullity. He thought there would, at all events, be no harm in conferring this power. His opinion was, that it was best to bring legislation as near to the people as possible—to let men govern themselves as much as possible. This, he thought, was the correct principle: that laws passed by the Legislature should be general, and only touch upon great leading points; that they should mark out boundaries within which these county boards should legislate. It was the true policy of all free governments to accommodate the people as much as possible, instead of tyrannizing over them.

Mr. MATHER said he hoped the recommendation of the committee would not be concurred in. If, said Mr. M., we refer to the report of the committee on local and special legislation, we find that they have provided that a variety of matters shall not be the subject of local legislation, but shall be governed by general laws. Now, it does appear to me that it will be highly necessary that we should place the power of local legislation somewhere else when we take it away from the Legislature of the State. I have examined the sections reported by the

committee on special and local legislation with much attention, and with an earnest desire to vote for some provision contained in them; but before I can do so, some measure must be provided by which the business which is thus taken away from the Legislature can be done somewhere else. To say that local legislation is unnecessary, and that the people do not demand it, is, it appears to me, going further than the facts will warrant. We have had a great deal of it in this State—too much, perhaps, for the benefit of the people, for whose benefit all laws ought to be passed.

Now, so far as taxes for State and county purposes are concerned, it is right enough; and so far as relates to township and road purposes, some general provisions should undoubtedly be made by the Legislature that should extend throughout the whole State, according to the circumstances of the different counties. But if the Legislature should declare that the same tax should be levied in one county as in another, for county purposes, it cannot operate well. If the road tax, for instance, were to be made sufficiently high to keep the roads in repair in one county, it might be much too high, or too low, for another county. There is no other way of regulating these matters as the people want them, and as they ought to be regulated, but to give the power to the people of each county to regulate them for themselves.

Mr. DUNN of Jefferson moved that the further consideration of the section be postponed until the sections reported by the committee on special and local legislation should be taken up.

It was so ordered by consent.

#### PLURALITY OF OFFICES.

Mr. DOBSON reported back the section which provides that no person shall hold more than one lucrative office at the same time, with a proviso that counties having less than one thousand polls may elect the same person clerk, auditor, and recorder, with a proviso that postmasters, whose annual income is under ninety dollars, may hold State offices.

Mr. SHOUP moved to re-commit the section, with instructions to strike out the proviso.

Mr. BORDEN suggested that it was not in order to instruct the committee to strike out the proviso, the Convention having heretofore instructed the committee to insert the same.

The PRESIDENT overruled the point of order.

The question being put on the motion to re-commit with instructions,

The yeas and nays were demanded, and they were ordered, and being taken were—yeas 40, nays 94—as follows:

YEAS.—Messrs. Allen, Anthony, Ballingall, Bascom, Bracken, Brookbank, Carter, Clark of Hamilton, Colfax, Conduit, Crumbacker, Davis of Madison, Dobson, Foster, Gootee, Haddon.

Helmer, Holman, Hovey, Johnson, Kelso, March, May, McClelland, Moore, Morgan, Mowrer, Nave, Newman, Rariden, Robinson, Shannon, Shoup, Snook, Tague, Tannehill, Thornton, Wallace, Walpole, and Wiley—40.

**YAYS.**—Messrs. Alexander, Badger, Beach, Beard, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Bright, Bryant, Butler, Carr, Chandler, Chapman, Clark of Tippecanoe, Clements, Coats, Cole, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hitt, Hogen, Howe, Huff, Jones, Kilgore, Kinley, Maguire, Mather, Mathis, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Sherrod, Smiley, Spann, Steele, Stevenson, Taylor, Thomas, Todd, Trimble, Watts, Wheeler, Wolfe, Work, Wunderlich, Zenor, and Mr. President—94.

So the section was not re-committed.

Mr. MURRAY remarked that there seemed to be a very strong objection against the provision rendering postmasters eligible to office, but it seemed to him there was no very good reason why they should not be eligible. The case of a postmaster was very different from that of a justice of the peace. The duties of the office of postmaster could be discharged by deputy. But this was not as in the case of justices of the peace. It appeared to him that the objection should not prevail against the passage of the section.

Mr. DOBSON said that the reason which the gentleman had assigned in favor of the eligibility of postmasters was the very reason why he was opposed to it. It was an office that was held at the will of the Executive. The postmaster might be turned out of office at any moment, by the Postmaster General. He had been in the Legislature, and had seen postmasters in that body exercising their franking privilege, and sending documents all over the country. He was in favor of equality among the members of the Legislature; and the very fact that postmasters were under the control of the existing administration was the reason why he wished to exclude them. He wanted the Legislature pure and uncontaminated by extraneous influences. He wanted them to act under no other influence than a desire to promote the interest of the public. He wanted no man in the Legislature who could make use of the privilege belonging to a postmaster, for the purpose of disseminating the political views of those under whom he held office.

Mr. WATTS said he was opposed to the section, but he did not see in it the great bug bear in regard to postmasters which seemed to

terrify the gentleman from Owen. The gentleman, he thought, was somewhat mistaken about the franking privilege of postmasters. He was under the impression that it extended only to the business appertaining to the post office.

Mr. DOBSON. I have seen them franking political documents frequently.

Mr. WATTS. Well, sir, I will not contend with the gentleman on that point; but I am opposed to the section because it will disqualify a great many citizens of Indiana from being elected to office, although the people may desire to elect them. If a man accepts the office of justice of the peace, and the people wish to send him to the Legislature, I am of opinion that they ought to be permitted to do it. I shall vote against the section.

Mr. McCLELLAND. I move to strike out the proviso relating to postmasters. It seems to me that if any class of men ought to be excluded it is postmasters. If the proviso be stricken out I shall support the section, but if it be retained I shall vote against it.

Mr. OWEN. It does appear to me that the position of the gentleman from Owen is not a correct one. I ask the gentleman if there is a single postmaster who receives but ninety dollars a year who is not obliged to do something else for a livelihood? He must necessarily do something else, for the receipts of his office would not support him. It is not for the sake of the receipts of the office that the postmaster accepts the office, but for the accommodation of the neighborhood. It is wrong then, in my opinion, to deprive them of the right to be elected to the Legislature.

Mr. WOLFE said it appeared to him that gentlemen were making this thing a matter of more consequence than it really was. He thought they were going too far in the way of disfranchising individuals. Who were the people to find capable of representing them in the thinly populated counties if they did not have the privilege of selecting from among those who were considered competent to discharge the duties of justice of the peace, or postmaster, &c.

Mr. MAGUIRE was in favor of retaining the proviso.

Mr. DAVIS of Parke moved to strike out the word "postmaster," and insert "the holder of any office the fees of which do not exceed sixty dollars per annum."

Mr. BRACKEN. It appears to me that the point here is that money disqualifies a man for holding office. I maintain that if fifty dollars incapacitates a man, one dollar is a part of the same incapacity. We have declared that justices of the peace shall be ineligible. But there are many justices of the peace who hold their offices not on account of any emolument arising therefrom, but for the benefit of the neighborhood. Yet they are to be excluded; and we



are proposing to fill the Legislature with men who are bonded together in one common interest, and who upon every change of administration, as is well known, lose their appointments. If a man takes an office let him be content with that office. Or if he wants another let him resign the first. I do not know how many postmasters there may be in this body, but when you touch upon the question of office holding, you find men bounding up on all sides in defense of a plurality of offices. For my part I want to see men act consistently.

**Mr. MURRAY.** I suppose the question before us is designed to involve two principles: first, to proscribe men who may be supposed to possess an undue influence from the circumstance of holding high offices, men of means and of talent, that they may not exercise an improper and overpowering influence upon legislation; and in the next place, to diffuse offices as much as possible, so that all may take part in the making of the laws, or that all may share in the benefits of office. Now it may be very proper to carry out these two objects, but no one will contend that an office, the profits of which are under ninety dollars a year, is such an office as would induce any man to accept it for the sake of what it produces. Such an office will not support any man. The office is usually accepted for the accommodation of the people; at least, so far as relates to the part of the country which I represent, there are many who hold the office of postmaster solely for the benefit of the neighborhood. It is desirable that the principle of proscription should not be carried too far, otherwise it might be extended into all the walks of life. There is no man who goes to the Legislature who does not expect to procure some law, or carry out some measure that will promote the views of those for whom he acts; and if you carry out your principle of proscription, you must proscribe every man in the State.

**Mr. STEELE** replied briefly to the remarks of the gentleman from Rush. He thought the gentleman was making a great ado about a small matter. He was not in favor of conferring several important offices upon one individual, but if they were going to make the holding of a small and unimportant office a disqualification, he had no hesitation in saying that it would do a great injury to the country. His doctrine was, that in regard to the minor offices, the county offices, the people ought to be left free to give more than one to one man, if they considered him capable of discharging the duties appertaining to them. When more than one office was conferred upon a man by the people it was evidence to his mind that he must be a man of talent and of integrity—a man in whom the people could safely repose confidence.

Whenever the people got hold of a man that was honest, if they gave him half a dozen little

offices, it would not hurt him. ["Consent," and laughter.]

**Mr. GORDON** moved the previous question.

The previous question was seconded, and the main question ordered to be now put.

The question being first on the amendment of the gentleman from Parke,

The amendment was rejected.

The question then being on the re-commitment of the section with instructions to strike out the proviso in regard to postmasters,

It was decided in the negative.

The question being, Shall the section pass?

The yeas and nays were taken, with the following result—yeas 85, nays 41—as follows:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Beach, Beard, Beeson, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Bryant, Butler, Carr, Chandler, Chapman, Clark of Tippecanoe, Clements, Cole, Cookerly, Dick, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Jones, Kilgore, Kinley, Lockhart, Maguire, Mather, May, McClelland, McFarland, Miller of Gibson, Milligan, Milroy, Mooney, Mowrer, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Taylor, Thomas, Trimble, Wolfe, Work, Zenor, and Mr. President—85.

**NAYS.**—Messrs. Badger, Ballingall, Bascom, Bracken, Brookbank, Clark of Hamilton, Coats, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Duzan, Elliott, Foster, Holman, Johnson, Kelso, March, Mathis, McLean, Moore, Morgan, Morrison of Marion, Nave, Newman, Rariden, Robinson, Shannon, Spann, Tague, Tannehill, Thornton, Wallace, Walpole, Watts, Wheeler, Wiley, and Wunderlich—41.

So the section passed and was referred to the committee on revision.

No further reports from committees being made, the Convention proceeded to the consideration of the

#### ORDERS OF THE DAY.

**Mr. NILES.** I rise, sir, to make a motion, though I fear that at the moment it may not be very well received. It is in relation to our rules: I am solicitous, sir, that the question of banking and currency shall be thoroughly discussed. It is true that I have my own opinion at the present moment in reference to this question, but I am by no means sure that that opinion may not be modified in some respect in consequence of the arguments which may be advanced. It is undoubtedly our purpose to meet on the best possible grounds, and I appre-

hence that whether the Constitution we are forming shall be rejected or accepted by the people, will depend as much upon the manner in which the bank question is settled as upon any other thing. There may be many days' discussion in regard to this question.

The PRESIDENT. What is the gentleman's motion in regard to the rules?

Mr. NILES. It is this, that for a certain period, say to-day and to-morrow, the half-hour rule be suspended, that the experiment may be tried, and that—

The PRESIDENT. The Chair would remark that the gentleman's motion will amount to an amendment of the rules. A suspension of the rules can only be moved for a particular occasion.

Mr. NILES. A motion to suspend the rules for a certain time, it appears to me, does not amount to a change of the rule.

The PRESIDENT. The Chair is of opinion that a suspension for two days would be a virtual change of the rule, and that one day's notice of such a motion would be requisite.

Mr. MORRISON of Marion inquired whether it would not be in order to suspend the rule while this particular subject was up for discussion.

The PRESIDENT. The Chair has just decided that it would not.

#### MILITIA.

The sections in relation to the militia, providing that white male inhabitants between the ages of eighteen and forty-five shall be liable to perform military duty, (persons conscientiously scrupulous excepted.)—that the militia shall be organized into companies, regiments, and brigades, and providing for active and sedentary militia, &c., were read a third time.

Mr. NAVE moved to re-commit the sections with instructions to strike them out and insert a provision to the effect that the Legislature may organize the militia in such manner as they may deem expedient, not inconsistent with the Constitution and laws of the United States, and may provide for the discipline of the officers, and for the organization of volunteer corps.

Mr. CLARK of Hamilton moved to amend the instructions, so as to exempt persons having conscientious scruples against bearing arms, from liability to do military duty, or to pay an equivalent therefor.

Mr. PEPPER of Ohio said he hoped that the section that had been reported by the committee would not be re-committed, unless the Convention were satisfied that the substitute that had been offered was much better than the section. For his own part, he did not perceive that the substitute proposed by the gentleman from Hendricks, contained anything that would tend to secure the organization of the militia, or which would render them subject to be called on by the Com-

mander-in-chief, in case of invasion, or to suppress riots and insurrections. He conceived, that as they had already provided that the Governor should be Commander in-chief of the militia of Indiana, the militia, when organized by the Legislature, should be under his control, as well as under the control of the officers immediately commanding them.

The section reported by the committee, continued Mr. PEPPER, provides, in the first place, that the militia shall be composed of a certain description of inhabitants: those over eighteen and under forty-five years of age. That is the provision of the first section. The second section provides that persons having conscientious scruples against bearing arms, shall not be compelled to enrol themselves in the militia. The third section provides that the Governor shall appoint the Adjutant, Quartermaster, and Commissary General. The fourth section provides that the militia officers shall be commissioned by the Governor, and hold their commissions no longer than six years. The fifth section contains a provision, which the committee believed indispensably necessary, in compliance with the law of the General Government, in order to obtain the quota of arms, to which the State is entitled; and that is, that the General Assembly shall fix by law the method of dividing the militia into brigades, battalions, companies, &c.; and the sixth section contains a provision, which is not imperative, however, that the militia may be divided into sedentary and active militia, in such manner as may be provided by law. These provisions, if the Legislature should carry out, would be the means of establishing effective volunteer companies. The last section, and, as the committee conceived, not the least important, provides that all the present offices in the militia, shall be abolished. This will leave the field open for young men to aspire to higher offices in the militia, and will infuse a degree of spirit and enthusiasm into the organization of those active companies. I hope the section will not be re-committed; and if gentlemen have any amendments to propose, they may offer them, and the Convention can act upon them.

Mr. PETTIT. Let me ask the gentleman one question. I understand he proposes to abolish the present militia offices. Does the gentleman intend to deprive them of their titles? [A laugh.]

Mr. PEPPER [laughing]. Not at all. They may assume a title of a higher grade, if they wish.

Mr. NILES said he had hoped that the article, as reported, would have been stricken out, and the provision only left, which designates the persons liable to perform military duty. The sections were re-committed, and brought back in a simpler form. He opposed the instructions, because they added to the section under consideration. He was glad that the motto, that he had seen in his boyhood, on the knap-



sacks of soldiers, that "in peace we should prepare for war," was getting out of date. The feelings of peace and universal brotherhood were taking the place of warlike preparations.

Mr. SPANN said he was glad to see the cultivation of a spirit of peace; but the day had not yet arrived, when we should disregard the warning voice of the Father of his country, who used the language quoted by the gentleman from LaPorte.

Mr. HITT demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be put.

The question being first on the amendment to the instructions, it was decided in the negative.

The question recurring on the motion to recommit, with instructions, it was decided in the negative.

The question then being, Shall the sections pass?

The yeas and nays were taken, under the rule, with the following result—yeas 81, nays 33:

YEAS.—Messrs. Alexander, Allen, Badger, Bascom, Berry, Bicknell, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Chandler, Chapman, Clark of Tippecanoe, Clements, Coats, Crawford, Dobson, Dunn of Perry, Duran, Edmonston, Elliott, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Helmer, Hendricks, Holman, Howe, Huff, Johnson, Maguire, March, Mathis, May, McClelland, McFarland, Milligan, Mooney, Morrison of Marion, Mowrer, Murray, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Todd, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—81.

NAYS.—Messrs. Anthony, Ballingall, Beach, Beard, Borden, Brookbank, Clark of Hamilton, Cole, Colfax, Conduit, Davis of Madison, Davis of Parke, Dick, Farrow, Harbolt, Hardin, Hawkins, Hitt, Hugin, Jones, Kilgore, Kinley, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morgan, Nave, Newman, Rariden, Smiley, Thomas, and Wheeler—33.

The remaining sections, which were ordered to be engrossed on yesterday, were read a third time and passed.

#### BANKING.

The Convention resumed the consideration of the article reported from the bank committee—the pending question being on the amendment offered on yesterday by Mr. HALL, in favor of a State Bank and Branches.

Mr. GRAHAM of Warrick said it was evident to him, that the question should first be

settled, whether there should be banks or not. He was opposed to the creation of any bank; but should it be determined to have banks, then the question would naturally arise, what kind of banks we should have? He had an amendment he would like to offer, in opposition to any bank.

Mr. HAMILTON said:

Mr. PRESIDENT, I do not intend to discuss this subject, as to the utility or necessity of having Banks, or authorizing them to issue paper representing money. It seems, taken as a settled question, that public opinion demands such a circulating medium—one that can be easily converted into or redeemed in gold or silver coin, at the standard value. As a member of this Convention, I desire to present a very few practical views on the subject.

The question first to be settled is, will we have a bank or banks? If decided affirmatively, which I cannot doubt, then another question arises—what kind will we authorize?

On this last inquiry, the committee on currency and banking widely differed, as their several reports show. A majority favoring banking under a general law, and reported the section now under consideration, in pursuance of their views. A minority favoring a modified form of a State bank, with branches in which the State would not be a partner, but to which the trust funds might, if thought safe, be lent, under well and properly guarded restrictions; with, as in the present Bank, the State retaining a direction in the board of control, caused a section to be reported in pursuance of these views. These two sections, authorizing private banking under a general law, on the deposits, with the proper officer of the State, of the stock of this State or the United States, at their market value, and not above par, having at the same time a sufficient specie basis to redeem the paper as fast as it would return for payment, in gold or silver; that of the majority and that of the minority authorizing a State Bank and branches, in which the State should not be a stockholder, embrace the views I entertained, and as I thought most likely to reconcile the conflicting interest. That the Legislature would have the power to adopt either or neither, as their judgment might direct or the public will demand. That I was for leaving much to future legislative action, with such guards and restrictions as to insure the redemption of the issues, in gold and silver, is beyond the shadow of doubt.

Two other minority reports were made; one by the gentleman from Perry, the other by the gentleman from Johnson, which I doubt not will command the attention of this Convention.

The next inquiry, Mr. President, is, can these two kinds of banks exist together, or will they be antagonistical? I am decidedly of opinion they will work well together in this State—that our leading business men will connect them—

selves with both. Was there abundant capital in our State to create a State Bank and branches, connected by a common interest, bound for the redemption of all the paper issued by them—that would be able to meet the business wants of this State, then there might be danger of a conflict of interest. This is not the case. On the contrary, I fear it will be very difficult to procure a sufficient capital for banking purposes, even during the continuance of your present bank charter, should banking now be allowed under a general law, in conformity with the committee's report now under consideration. What then will it be, when you wind up your present bank, and pay the capital vested in it.

Mr. President, to make banks useful, they must be established on a solid basis and command public confidence. To effect this, the issues, if of private banks, must be predicated on a deposit with some officer of State, the stocks of the United States, or of this State, with a sufficient specie basis on hand to redeem such notes as are returned for that purpose, the stocks at their market value, and not above par, on which all notes should issue, be countersigned and registered by the officer, then to an amount not to exceed a dollar, for a dollar par value of the stock, should be surrendered to be signed by the proper bank officers for circulation. To give that public confidence which alone would enable private banks to be useful, they must be managed by men who are trustworthy. Another feature to render banks useful, and not mere shaving-shops, is that their notes be received at the banks throughout the State. Should this not be the case, it would be a great inconvenience to our business transactions and to the public generally. The circulation would be very much circumscribed and return speedily for redemption. Perhaps it would be well to inquire how far private bankers would have an interest in receiving each other's paper at par, in payment of debts and on deposit, could they make it profitable to do so. Should they not so receive it, they could command no circulation for their paper, beyond the neighborhood of the bank; it would at once return for redemption in specie, thereby prevent their aiding our business men by loans to export our vastly increasing products or in aiding and fostering infant manufactories where we have any among us—the only legitimate business of banking. It strikes me, Mr. President, that it would be so. It would be the mutual interest of bankers to receive each other's paper at par. It would by that means command a more extended circulation and remain longer without returning for redemption.

Our present State Bank is now in its existence something like sixteen years, and since that period, (except when the surrounding banks stopped specie payment, thereby forcing ours in self defence, to do the same,) has given to the people of the State a currency that always com-

manded their confidence and meets their wants. Yet, Mr. President, it is agreed that our present State Bank is a monopoly—I grant it. The branches have too much restrictive power and have improperly used it for selfish ends, in refusing to establish other branches, as provided for by an act of the General Assembly, thereby preventing an increase of banking capital, at points where commerce demands it.

Let me ask, Mr. President, is not every citizen of the State a party to this monopoly. The State holds about one-half the stock of the Bank; the profits arising from which, after paying off the capital loaned for banking purposes, goes to the common school fund. Is not then every individual deeply interested in the success of our Bank. However, this feature of monopoly could be remedied to some extent—as well as many other defects—which our present bank charter contains. Among them and not the least is the fact, that whatever real estate the Bank is forced to receive in the payment of debts, the moment it becomes the Bank's, it is not taxed for State or county purposes; it is so much withdrawn from taxation, thereby increasing the taxable burthens of the property held by individuals. This is wrong, and should not be so. I never as a citizen could consent to a charter being again enacted without taxing the stock and all its property, however held. There are other defects, which I could point out; yet, sir, this is not necessary; all of which, with those I have enumerated, could be provided against in a new bank charter, or prolonging the present one to within three or four years of the time when we must pay off our bank bonds. Mr. President, let me ask, if private banking—to which when properly guarded, I am not opposed, but should favor, in connection with a guarded and modified form of State Bank, as I before remarked—will not in some measure be made a monopoly? What shall we then require? A deposit of stocks of the United States or of this State to an amount at least of the paper we deliver for circulation, besides a sufficient specie basis, for the immediate redemption of such paper as is returned for that purpose. How then will private banking be carried on, when it will require a capital in stocks and specie of at least one hundred and thirty thousand, for every one hundred thousand of paper they receive for circulation. I have no doubt it will be largely monopolized by our non-resident bondholders and their friends, as few among us can command sufficient means, without their aid, to commence the banking business. Mr. President, all banking from its very nature is a monopoly. True, all having funds can avail themselves of a general corporate law authorizing that species of business. To this I offer no objection; indeed I favor it, as I have already remarked.

It is also objected to the present State Bank,



that most of its branches adopt a mode of loan by which they charge a greater amount of interest than would be allowed on regular discounts. I fear this is true. This could also be remedied in a new organization. Will it not require to well guard any charter granting general banking powers? There are restrictions in the charter of the present State Bank, to which we in a great measure are indebted for the soundness and safety of our present State Bank. First, sir, there is an annual report to the Legislature of the actual state of the Bank. Semi-annual examination of each branch bank by an officer of the State Board—a meeting of the directors of the State Board every three months to regulate discounts, issues, and deposits, and a bi-weekly report of each bank, to all the others and to the State Board, together with the mutual liability of each branch for the others, seems to be such checks and guards as to insure the solvency of this institution, even beyond a doubt. Doubts have been expressed of the State Bank being as prosperous as presented. To all who entertain those opinions I refer to the price of the individual stocks in the branches, constantly sought after by the directory and business men: well conversant with the affairs. What must the value be of the Stock of the State, which in case of failure would not pay a cent until every dollar of individual stock, would be exhausted? Mr. President, let me ask gentlemen who so much oppose a State Bank of any kind, and complain of its mismanagement, how they are to guard private bankers from running into excess? Where will be their reports, examinations, and wholesome restrictions by a State Board, controlling deposits, loans, and on what those loans are predicated? I confess, Mr. President, while I would cheerfully admit of private associations under general laws on the securities I have named, and shall sustain the ingrafting of such a provision in our Constitution, yet, sir, as this with us is an untried experiment, I would also authorize the Legislature to charter a State Bank properly restricted, similar to that named in minority report number three.

Another matter with me, Mr. President, is to know what the people desire in this matter. Are they divided on this subject? I am inclined to think they are. What then is our duty? Is it not to agree on such amendments to our organic law, as the people will approve of, when they come to act upon it? It seems so to me. Will not those of our fellow citizens favoring a State Bank, find its paper answer all the purposes of gold and silver, preferring it to any other mode of banking, vote against your amended Constitution if you preclude the Legislature from ever chartering one? On the other hand, if private banking is excluded, those favoring that mode will vote against amendments you may submit in your organic law to their consideration. It strikes me they will. Why not

then leave these matters to future legislative action, throwing around them proper restrictions. It does seem to me this would be prudent; none could be established but such as would be safe, if thus guarded, and public opinion would call for such as was the people's choice. We would thus occupy a middle ground. Constitutions are matters of compromise.

Mr. President, we have in this State, a paper circulation of something over seven millions of dollars; one-half of which belong to our own banks; the residue to other banks—the whole is not sufficient to meet our business wants. If we then require at this time seven millions of currency, to meet our present wants, how much will we require when your present Bank withdraws the three and a half millions she has now, and will, in all probability have out, when the time to cease active banking business arrives. Another question arises—will we do the banking business ourselves, or will we pay tribute to the surrounding States, by leaving this field for bankers, other than our own? Or, will we try to occupy it ourselves? I trust we will do the latter. We can better judge of the solvency of banks among us, than those at a distance. And, if occupied at all profitably, we ought to prefer those profits realized by those who live among us and have a community of interest. To create an issue of seven millions of dollars of private bank paper as restricted in the section under consideration, we would require seven millions of stock, to be held as collateral, on which the bank paper would be issued, a sum of two and a half millions, at least, of specie on hand, to redeem the paper, as it was demanded; in all, a sum of money, it strikes me, that cannot be had by individuals in this State; without a serious withdrawal of means from other active business pursuits. The question would naturally arise, what would you propose? I would admit of private banking, under a general law, restricted as I have described. I would also admit the chartering of a new State Bank and branches, embracing the mutual liability, each for the other, with a proper Board of Control, to which, if good and ample security was given, I would lend our trust funds, to the amount of one million of dollars, requiring a similar amount from individuals, which should constitute the capital stock—on which three and a half millions of paper might be safely put into circulation. This bank to go into operation at the close of your present bank charter; then a much less amount would be required for the purpose of private banking. Or I would admit of private banking at once, granting the Legislature power to continue the present State Bank, under proper modification, until about 1862, a few years before we are bound to pay our bank bonds;—on those loans we are only paying five per cent., while we are realizing large profits for the common school funds of the State. Will we then pay off prematurely, those bonds,

and realize no more profits on their investment? or will we modify some defects in the charter—extend it a few years, until a reasonable time, before the bonds are due; thereby increase largely our educational funds? are questions of expediency, worthy of our most serious consideration. Then, Mr. President, why not leave some discretion to the Legislature. For, should the private banking not meet the wants of trade and commerce, (and to us it is an untried experiment,) the law-making power could then give us the modified form of a State Bank. Is there not some danger in our going too far? Does not prudence demand that we should, in our amended Constitution, throw around those corporate powers to be granted, such guards and restrictions as will secure the bill-holders from all contingency, and prevent, under any circumstance, the suspension of specie payments. Leave all else to the good sense and sound discretion of future legislation, to adopt such as their judgment points out, or the public demands. As I have heretofore remarked, I am for permitting private banking, under a general law, predicated on stocks as collaterals, with proper restrictions. I would, at the same time, permit a modified form of a State Bank, well guarded and restricted as to interest, issues, and deposits, with the mutual liability clause, with a Board of Control; believing, as I do, that those two plans can be made, as in Ohio, to harmonize, and act in concert; for I cannot, Mr. President, conceive, even with the aid of the trust funds of the State, where we are to get a sufficient bank capital to meet the wants of this vastly increasing productive State.

All the banks we can thus establish will have every facility of loaning every dollar they can command to the active, solvent, business men around them. These cannot, in the nature of things, as they now are, have a surplus capital; consequently, there could be no inducement to hostile feelings of interest between these two different kinds of banks.

Mr. President, I have no favorite exclusive plan; I think we ought to meet in the spirit of mutual concession. I trust that the subject will be discussed with calmness—with forbearance. Let us act as becomes practical men, on this practical subject. If we do, I trust we can agree on some middle ground, giving as much satisfaction to the majority of the members and to the people, as could reasonably be expected.

Mr. President, I have, in a plain way, given my views—stated some facts. I now leave the further discussion of this question to gentlemen more accustomed to debate than I am. It is a question of vital interest to the people—no less than that of deciding what shall be their currency for years to come. Will it be one of our own formation, or will we take it from institutions formed by surrounding States? It is for this Convention to propose, and the people—when our labors are submitted to them—to de-

cide. I shall further discuss this subject. I may, in the progress of our deciding, offer some amendments, if others do not; contenting myself by a mere explanation of their import.

On motion by Mr. NILES,

The Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day, the pending question being on the amendment offered by the gentleman from Gibson (Mr. Hall).

Mr. CHAPMAN moved a call of the Convention.

The motion was not agreed to.

Mr. BORDEN. Would it be in order, Mr. President, to move to postpone the further consideration of this subject until Monday next, with the view of taking up another section?

The PRESIDENT. The motion will be in order.

Mr. BORDEN. Then I desire to move that the further consideration of this subject be postponed until Monday next in order that the Convention may take up a section from the table in order that we may complete the business as we proceed. It is the first section of report number three, providing that the credit of the State shall never be loaned, &c. This section was laid upon the table, and I move that it be first taken up and disposed of before we proceed with the further consideration of the section now under debate. [Cries of "no, no."]

The question being taken on the motion to postpone, it was decided in the negative.

[Messrs. NILES and READ of Clark made some remarks, which will be published hereafter.]

Mr. NAVE. All I have to say, Mr. President, in regard to the question now under consideration, is, in the first place, that I regret exceedingly that the gentleman from Gibson has introduced this proposition. I, for one, am disposed to meet this free Banking proposition upon its own merits or demerits. I do not wish to propose any thing in lieu of the proposition reported by the Committee, but I desire that the Convention should consider the proposition in reference to free Banking, and determine whether the people should have such a proposition imposed upon them or not. I shall, therefore, ask the gentleman from Gibson (Mr. Hall) to withdraw his proposition, and let the Convention take a vote upon the section as reported by the Committee.

Now, sir, we have heard much about this debt of a million of dollars, which was entailed upon the people of Indiana. But, Mr. President, admitting all that has been said on this subject to be true, let me ask if this is any argument in favor of free banking? Does that prove that we should resort to a more odious system—a system that has nothing to found itself upon by which the people can be secured in the issues



of their banks. I insist that if we adopt the free bank system in lieu of the State Bank system, we shall do nothing more than increase upon the people of the State an odious issue of irresponsible paper. I ask you to say whether the issues of the State Bank have not been redeemed—whether they have not answered all the purposes for which they were issued? Is it upon the principle that they were not responsible, each branch for the issues of the other, that the State Bank is objected to? Is it that each individual branch was not responsible for the amount of its own issues, and, therefore, had not answered the purposes for which they were designed, that gentlemen have charged all the evil consequences which they alledge have resulted from the State Bank system, and have therefore concluded that the free bank system will answer a better purpose? Sir, this is no argument at all. It proves nothing whatever. Let me, for a moment, examine this free bank system. Before I proceed to that, however, I must take occasion to say that I differ from my friend from Laporte (Mr. Niles) in saying that the State Bank is a monopoly. I say, on my credit as a lawyer, that it is no monopoly; because, a monopoly is nothing more nor less than that which confers a right upon an individual, or a corporation, to the exclusion of every other person in the State. Then, sir, I hold that the State Bank has been charged wrongfully as to its character.

But let us look for a moment to the workings of this new-fangled machine, and that is the only way in which we can test the practicability of the thing itself. The gentleman from Laporte says that an individual, or an association of individuals, may establish a bank in one town, and that another individual, or association of individuals may establish another bank in the same town; and so on throughout the entire State. Now, let us put this machine into operation; let us have a "free bank" operating in every village throughout Indiana—four or five of them at Indianapolis, ten or a dozen at Madison, and as many at New Albany; let us put the whole machine into operation and what will be the result? Why, sir, each of those banks will issue its own paper, and what is to be the responsibility? Why, gentlemen tell us U. S. stocks, or Indiana stocks, or the stocks of other States, and upon no other security. Now, they issue their paper; it goes into circulation; each one of these banks is responsible only for its own issues, and the moment you travel out of the village in which such bank is located, your money depreciates, because it is the interest of the banks in the adjoining town or county to have it depreciated; and a man with such money cannot travel out of the State without being shaved some fifty times. This, sir, will be the result of the free banking system, and under this system if a man had to pay debts at the East, he would have no means of

doing so without purchasing bills at a high premium. These free banks I hold to be utterly irresponsible; and if a run should be made upon them for specie what have they to pay with? Why, gentlemen tell us they have United States and other stocks, but they have no silver or gold, and consequently the banks must lose their credit and go down. This has been the case in every age of the world in which free banking has been resorted to. It has proved, in past experience, an entirely worthless operation, by which the industrious portion of the community have been prejudiced, and not those operating in banking. Take, for example, the argument of my friend from Clarke, (Mr. Read) who has just taken his seat. He tells you that no matter what may be the condition of banks, they invariably report themselves as solvent, even if they should go to the wall the next day; and more than that, that those engaged in them never fail to take care of themselves. Then, sir, I am for meeting this proposition for free banking now—not as a substitute for the reported section, but as an independent system, and I hope the Convention will vote it down.

Pending the question on the amendment offered by Mr. HALL,

The Convention adjourned.

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Mr. READ of Monroe offered the following additional section:

"The Legislature shall not grant to any citizen or class of citizens, privileges and immunities which upon the same terms shall not equally belong to all citizens."

Mr. RARIDEN. My greatest objection to incorporating this section in the new Constitution, grows out of the fact of not knowing what will be the effect of that provision exactly. If other gentlemen can trace out that result, they are more highly gifted than I am. It is not true, sir, that in every state and condition of society, equal justice can be done to every individual in it and the true interests of society at the same time be maintained. Individual rights must sometimes be sacrificed to public good.

Another objection is, that we cannot see the ten thousand circumstances that may and ought to influence the Legislature hereafter; we do not now know what will be requisite for the interests of society in the future, or the thousand contingencies that may arise. A case strikes my mind now, that illustrates my position. Here we have what is called the Falls of the Ohio river, and every man conversant with the interests of the State of Indiana knows that if a canal was constructed around, on this side of the river, at those falls, it would be a measure of permanent interest and glory to the State of Indiana, and the whole upper country.

It would not only afford employment for capital and labor, but it would remove the hazard and danger now attendant upon the river commerce. It would be a work of great public good, and great expenditure as well as profit. This, then, is one of the enterprizes open to the world, if we shall allow it upon just terms. And do you suppose for a moment, that a company would engage to construct that work if the State of Indiana were to reserve to itself the power of authorizing the construction of another canal along side of it, to destroy its profits? The idea is absurd.

If the State of Indiana decides that it will prevent the concentration of capital in enterprises for any useful purpose, let it be so; but if not, then throw open the field of competition to all. But what capitalist of any sense would engage in such a work if he is not to have the enjoyment of it when done? If an enterprise turns out profitable the State reserves to itself the right to destroy, by constructing another work alongside of it. And what man of any judgment will consent to it?

The Legislatures that assemble hereafter, should be presumed to have some little wisdom in regulating this subject, and I am opposed, therefore, to making any reservations that will bind their action for the future.

SATURDAY, JAN. 4, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BADGER, a delegate from Putnam county.

The journal of yesterday was read and approved.

Mr. CHAPMAN, from the committee on accounts, made a report upon Mr Sheets' account. They deemed the account reasonable, except the price of the carpet. This they thought too high, inasmuch as the Hall was used on evenings for other purposes than those of the Convention, which caused an additional amount of wear and tear.

It was moved that the account be laid upon the table, upon which motion the Convention divided—ayes 45, noes 28.

So the report was laid upon the table.

Mr. LOCKHART asked and obtained leave of absence for his colleague, Mr. Hovey, on account of sickness in his family.

RESOLUTIONS.

The Convention took up the resolution presented by Mr. MILROY on the twenty-eighth instant, relative to instructing the committee on phraseology, &c., to leave all Latin words out of the revised Constitution and substitute English words, conveying the same meaning, in their place.

Mr. SMITH of Ripley moved that the resolution be laid upon the table, upon which ques-

tion the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 36, nays 86—as follows:

YEAS.—Messrs. Allen, Anthony, Beach, Beard, Bourne, Bright, Bryant, Clark of Tippecanoe, Clements, Cookerly, Crawford, Davis of Madison, Dunn of Jefferson, Frisbie, Gibson, Gootee, Gordon, Helmer, Huff, Kelso, Kilgore, Murray, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Robinson, Schoonover, Smith of Ripley, Tannehill, Todd, Wallace, Wiley, Zenor, and Mr. President—36.

NAYS.—Messrs. Alexander, Allen, Badger, Ballingall, Bascom, Borden, Bowers, Bracken, Brookbank, Butler, Chandler, Chapman, Clark of Hamilton, Coats, Cole, Colfax, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foster, Garvin, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Hitt, Hogin, Holman, Johnson, Jones, Kent, Kendall of White, Kinley, Lockhart, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Mowrer, Pepper of Ohio, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Spann, Steele, Stevenson, Thomas, Thornton, Trimby, Walpole, Watts, Wheeler, Wolfe, Work, and Wunderlich—86.

So the resolution was not laid upon the table.

The question being, Shall the resolution pass?

Mr. CLEMENTS offered the following amendment:

"Except so far as the same has a definite legal meaning."

On motion of Mr. DUNN,

The amendment was laid upon the table.

The question recurred upon the passage of the resolution.

Mr. McCLELLAND thought there could be no difficulty about this matter. He did not deem it necessary to make any exceptions whatever; it was obvious that the meaning can be expressed in English. The Supreme Court of this State, speaking of the term "*ex post facto*," said: "The words *ex post facto* have a definite technical signification. The plain and obvious meaning of this prohibition is, that the Legislature shall not pass any law after a fact done by any citizen, which shall have relation to that fact, so as to punish that which was innocent when done; or to add to the punishment of that which was criminal; or to increase the malignity of a crime; or to retrench the rules of evidence, so as to make conviction more easy." 1 Blackford, p. 193. Scott, J. Again, the United States Constitution forbade the States to pass any "*ex post facto* law," which was defined to be "one which renders an act punishable in a manner in

which it was not punishable when it was committed." 6 Cranch, p. 138.

Again: The term was defined in 1 Bouvier, p. 534, in the following words: "*Ex post facto*. This is a technical expression, which signifies that something has been, after another thing, in relation to the latter."

It seemed to him that the term in the English language very fully expressed what was intended to be expressed. And it should be borne in mind that in the Constitution this prohibition against passing "ex post facto laws," applied exclusively to criminal or penal cases, and not to civil cases. When gentlemen said that this language could not be rendered into English, all he would say was, that they should go and consult their dictionaries. Any law book in the State Library would prove conclusively that the term could be intelligibly rendered into English.

Mr. GORDON. I did not design saying a word in relation to this matter, but the conduct of some gentlemen seems to be so inconsistent that I cannot refrain from offering a remark or two.

It is but a few days since gentlemen expressed their willingness to receive into our midst tens of thousands of foreigners, and after a short residence amongst us, to place them on an equal footing with the native born hoosiers; but the very moment they happen to light upon a foreign word in our Constitution their antipathies are excited, and they demand that it be expunged. They have a great love for foreigners, but great hatred for foreign words. If this is not "buncombe" I do not understand the meaning of the term.

Mr. President, two thousand years ago our ancestors were barbarians, roaming through the forests and among the marshes of Europe. Their language was as barbarous as their manners and customs. As they became more civilized, by coming in contact with the more enlightened inhabitants of southern Europe, their language became more refined and their vocabulary more enlarged, by incorporating into it foreign words. It was by this means that the rude and barren language of our ancestors has become one of the most copious and refined of the living languages. There are many ideas coursing through the brains of American citizens, that could not be expressed in the language of our ancestors a few centuries ago; now there is scarcely a shade of thought that the mind can conceive, but can be expressed in appropriate words by us. This cannot be done by using only such words as our ancestors originally used, but it is accomplished by making use of any word that conveys the proper meaning, whether it be a Latin, Greek, or French term. Our language much resembles ourselves. We are a nation composed of parts of many nations, and our language contains words of many languages.

If, Mr. President, you will open Webster's Dictionary, you will perceive what a large amount of words of foreign origin there is upon every page of it. Many of them differ from the original words only by having a letter or two added to them. I suppose this is done for the purpose of concealing from English gentlemen with squeamish taste, their alienism under a native garb, and to sound more smoothly to their English ears. I do not pretend, Mr. President, to be much of a scholar, but I have heard persons say that to dress a foreign word in an English costume, is to anglicize it. The learned gentleman from Randolph (Mr. McClelland) the other day called it "Englifying" the word; and as he is *some* for the pure English, I suppose "Englifying" is the proper word. These words, such as *habeas corpus* and *ex post facto*, that this same learned gentleman is so much at a loss to comprehend the meaning of, have, by long and continued use, become part and parcel of the English language, and if he will take the trouble to look into Webster's dictionary he will there find them, and their definitions; but the word "Englify," which he uses, was unknown in the days of Noah Webster, and is not to be found in his dictionary.

I have no great preference of one word over another, and care but little what may be done with these words if other words can be substituted in their place that will convey the same meaning. But this cannot be done without great circumlocution, and I therefore think it would be as well to retain them, as their meaning is as well understood by the people as one half of the words in the English language. At least I think it would be well enough to leave this matter to the good sense of the committee of revision, without instructions. I shall be satisfied with their judgment in the matter, whatever it may be.

I have no fears that the foreign population among us will injure the purity of our institutions, nor do I fear that foreign words we use will impair the purity of our language. If gentlemen wish to make "buncombe" out of this thing they are welcome to all the good it can do them, but as I am not a political aspirant I shall not condescend to make use of it.

Mr. DUNN of Jefferson. It seemeth to me, Mr. President, that some Latin dog hath bitten my friend from Randolph (Mr. McClelland). [Laughter.] For fear that he may die of Latin-phobia we ought to adopt the resolution as soon as possible, hoping it may operate as a mad stone to draw the virus from his veins. [Laughter.] We are giving too much consequence and wasting too much time on this subject. I voted to lay the resolution on the table because I believed the committee on revision is composed of men of sense, who will do all the resolution requires without any instructions on the subject. As the resolution was not laid on the table I shall vote for its passage, as the readiest

mode of disposing of the subject. I voted against the section adopted by the Convention on the motion of the gentleman from Marion, (Mr. Morrison,) because I did not deem it proper that this Convention should set itself up as a schoolmaster to instruct future legislators about so obvious a duty. I would as soon think of voting to require the Legislature to observe the rules of grammar in the composition of the laws, as to direct them, as far as possible, to avoid the use of all Latin and technical phrases. Their own good sense would teach them to do this without any instructions on the subject from us, and I have made it my rule to vote against the insertion of all unnecessary provisions in the Constitution. They can do no good, and may do much harm.

Mr. BADGER. Mr. President, I am neither a linguist nor a lawyer. I make no pretensions to any thing higher than to a reasonable amount of that very necessary ingredient in our organization, which we call "common sense," by the aid of which I wish to say a few words, for the benefit of those gentlemen who seem to be so much troubled at this effort to expunge from our Constitution those absurdities and technicalities which have so long proved a barrier with the masses of the people to an understanding of their own Constitution.

I had hoped, sir, that some gentleman of the bar would have arisen in his place and defended this proposed reform, as numbers of them favor it; but they seem not disposed so to do, as on other occasions.

I hope it is not because some of their brethren manifest a disposition to ridicule the amendment, not because they are fearful of being treated with contempt; I say, sir, I hope this is not the reason, for I am proud to know that we have not a few, who are not only willing, but desirous that these reforms should be made, even among our best lawyers. Yes, sir, even though the personal interests of that part of the brotherhood called pettifoggers should be sacrificed upon the altar of public good, and though the sacrifice should be made to bleed at every pore, knowing that its blood cannot be shed to seal a better cause.

Common sense requires this reform, the spirit of the age, and the interests of the people alike demand it. One of the arguments used by gentlemen in favor of retaining these technical terms is that they have been long in use, and that they are universally understood. Now, sir, this is an assertion, and it is but an assertion, for sure I am that it is a mistake in gentlemen, a gross mistake.

I have the honor to represent as intelligent a constituency as any gentleman perhaps on this floor, and I must say that they are not familiar with these phrases, and they demand the change.

Some gentlemen cling to these terms as if

their hopes for future employment were suspended upon retaining them.

Mr. President, I could speak to the end of my limit on this subject, but I think it unnecessary, at least upon the pending question and at this time. I may perhaps say more in future should the circumstances demand, when the question of law reform is presented as reported by the committee.

At present I close by requesting that we have the yeas and nays on laying this resolution upon the table.

Mr. NILES. I protest against the insinuation thrown out by the gentleman from Putnam (Mr. Badger). There is no lawyer whose practice will be diminished to the amount of one farthing by this proposed change of law terms. If it has any effect, it will only tend to increase litigation by substituting new and undefined terms instead of those which have been in use for a thousand years, and the meaning of which is ascertained and certain. The proposition to use the simplest and most intelligible words in framing a Constitution and laws, nobody disputes. And I have this to say, that though I believe it not worth while for us to undertake to act the school master for those who may come after us, or to introduce needless and useless innovations, yet I shall make no opposition to such propositions as that now submitted, where it is evident that the only effect would be to subject my motives to misconception.

Mr. KELSO. I do not think there is a lawyer on this floor opposed to the passage of this resolution. And if the gentleman from Putnam supposes they are clinging to these phrases as though they constituted a prop of the profession, as a part and parcel of their practice, he is as much mistaken as he was when he attacked the gentleman from Posey. There is no great consequences attached to these phrases; hence we gain nothing by the retention of these words. In place of four or five words, the English meaning of some of these phrases would take up four or five lines, as has been remarked, yet I do not see as there can be any reasonable objection to it.

The gentleman from Putnam speaks of not understanding these Latin phrases. Now, sir, I do not understand Latin, yet I understand those phrases. But take that gentleman in his own profession and give him a Latin or Greek Bible, and he will not understand one word of it. Take the Christian world, and they differ as to the correct translation of the Hebrew Bible. The different translations, the different sects, would die fighting for them, although not one in a thousand might be able to translate a line of it correctly for himself. Let the gentleman at it himself, and I am prepared to say that he cannot make as good a translation as the old one. Why, sir, the Mormons have, or think they have made the discovery, that the original

translation only contained about half enough, and with all the enthusiasm of pretended inspiration they have furnished the balance, and have published it in English; and my friend from Putnam will now admit that he does not understand the Mormon Bible, notwithstanding it is as plain as any other Bible. But he disbelieves its history, and therefore does not understand it. But you cannot have a more effectual plan of salvation than the two Bibles furnish, when taken together. The gentleman's Bible has come down to us through the Latin language, and one of the great difficulties about it at this day is, whether the English has been correctly or incorrectly copied from the Latin. Then, sir, if the original tongue is the more correct, why not suffer the very few maxims which are to be found in our statute books, especially when they are easier and better understood than they ever will be when rendered into English? I advise the gentleman to study his Bible and go to work and learn the Latin and Greek languages, and perhaps by the time the next State Constitutional Convention meets he will be able to explain these Latin phrases satisfactorily; and in every case where he can render them into good English and it does not take more than three times as much room to record it, I will go with him, provided it shall be my fortune again to meet him here.

But, sir, one thing is certain: that whenever he learns what I have required of him to learn, he will by that time know that the change of those phrases from the Latin to the English, the French, the German, or the Pottawatamie, will not the least affect the interest of the legal profession. I shall vote for the resolution, because it leaves the matter to the sound discretion of the committee; and with them I am content to leave the whole matter.

LICENSE.

The resolution heretofore offered by Mr. ROBINSON, providing that a section should be reported against the Legislature passing any law permitting license for the sale of spirituous liquors, and which laid over under the rules, was taken up for consideration.

Mr. R. said, having introduced this resolution, before the question is taken upon its adoption, I desire to have the attention of the Convention to a few words I wish to say in regard to it, I am one of those individuals who bow, and always expect to bow to public opinion, when that public opinion is right—when it is sound, when it has for its object the effecting of a good purpose. What the result of such a section as I have proposed if incorporated in the organic law will produce, I admit I am not at this time prepared even to decide. Some of the friends of the great cause of temperance here and elsewhere differ with me as to the probable results that will follow from

the insertion of this section in the Constitution.

I would remark, sir, here, that I am not so much influenced—in offering for adoption this section—by my own feelings, as I am by what I conceive to be public opinion on the subject. We know that when we first convened here in the capacity of a Constitutional Convention, we had petition after petition presented to us from both ladies and gentlemen, engaged in the very important and wholesome reform now going on in the community on this subject. And when the Legislature first assembled, petitions of like character were presented to that body, asking them to prohibit, in future, the granting of license to retail ardent spirits. This has convinced me of one important fact, that whatever may be feelings of gentlemen in this hall upon this subject, the people abroad, who are engaged in this important reform, think that the section should be incorporated in the organic law, prohibiting the Legislature, in future, from granting any license, whatever, for the vending of spirituous liquors, leaving that traffic entirely without the sustaining arm of the law, subject only to the law of a correct public sentiment.

Those who wish to vend ardent spirits cannot complain of this law, for it gives them an open field, and relieves them from the burden of a taxation for license. We say to them that we place no restriction of law upon your traffic; we only desire that the State should not receive one farthing of the profits accruing from your accursed business, and that for countenance and support you shall stand or fall in accordance with public sentiment.

We say to the community at large, to the philanthropist and the Christian, the field is clear, gird on your armor, harness yourselves for the contest; go forth, and if you can, with the great lever of public opinion, level to the ground every grog shop in the country, let it redound to your eternal praise, and let future generations rejoice in the glorious achievement.

[Here the Chair announced to the gentleman from Decatur that his five minutes were out.]

Mr. ROBINSON. I yield, sir, to the rule.

Mr. PEPPER of Crawford, moved to lay the resolution on the table.

On this motion the yeas and nays were demanded and ordered, and the Secretary reported the following result: yeas 78—nays 44.

YEAS—Alexander, Anthony, Badger, Barbour, Bascom, Beach, Biddle, Blythe, Bordon, Bourne, Bright, Butler, Chandler, Chapman, Clark of Tippecanoe, Clements, Coats, Colfax, Cookerly, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Helm, Helmer, Hendricks, Howe, Huff, Jones, Kelso, Kent, Kendall of White, Leckhart, Maguire, Mathis, McLean, Miller of Fulton, Mooney, Moore, Morrison of Marion, Murray,

Nave, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Ristine, Richie, Schoonover, Shannon, Sherrod, Sims, Snook, Spann, Stevenson, Tannehill, Trimby, Wheeler, Wolfe, Wunderlich, Zenor, Mr. President—78.

YAYS—Anthony, Ballingall, Beard, Bowers, Bracken, Brookbank, Bryant, Clark of Hamilton, Cole, Conduit, Crawford, Davis of Madison, Dunn of Jefferson, Farrow, Foster, Frisbie, Hawkins, Hitt, Hogin, Holman, Johnson, Kilgore, March, May, McClalland, McFarland, Milligan, Milroy, Morgan, Newman, Read of Clark, Robinson, Shoup, Smiley, Smith of Ripley, Steele, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wiley, Work—44.

So the resolution was laid on the table.

INTEREST ON MONEY.

Mr. THORNTON offered a resolution which was in effect that a select committee of five be appointed to inquire into the expediency of providing a section in the new Constitution relative to the interest on money, and that no forfeiture or penalty shall accrue where a rate not exceeding ten per cent. is charged, if designated in the note or obligation.

Mr. T. said: I have suggested a select committee because I was at a loss to know to what appropriate *standing* committee the resolution could be referred. I have named a committee of five, but if any gentleman think the number not sufficiently large it can be increased. It was remarked the other day by my friend from Putnam (Mr. Farrow) that the Legislature in 1831 repealed all the laws upon the subject of interest, and left the matter without imposing any penalty for exacting more than the legal rate. They soon afterwards repealed that act. My friend remarked that a great many bad consequences followed the enactment of that law. I might say with truth that those consequences were brought about more by the repeal, than by the origination of the act.

I have always believed, and that opinion is sustained by that of the most eminent statesmen, and able writers on political economy of the age, that the loan of the use of money, should be left upon the same footing as any other saleable commodity. Out of deference to the moral opinion of mankind, I would say that we ought to fix a restriction; something of the kind which I have suggested in the resolution ought to be adopted. I may say without fear of contradiction that our State bank, managed no doubt with a great deal of propriety, realizes from ten to fifteen per cent., although they cannot directly loan for more than six per cent., yet by dealing in bills of exchange they can realize a much greater profit. My object is to induce something like competition on the subject—to invite money into our country. I would be disposed to throw off all restrictions, though I know that might not meet with favor

from this Convention, or perhaps from a majority of the people of the State. I do not know, sir, that there is anything in the Scriptures which forbids a man to make use of his money as he would any other article of merchandize; but I will not enter into any argument on the subject now. As I before remarked, I did not know what committee to refer this resolution to, so I named a select committee of five, and hope, as it is a resolution merely of inquiry, that it may be suffered to go to such committee accordingly.

Mr. PEPPER of Ohio. I will vote for the resolution which has been offered by the gentleman; and I wish to give a few reasons, in addition to those already given, why I shall vote in favor of it. That we have a State Bank which has vested rights, and is legally authorized to take a higher rate of interest than is taken by private individuals, I say is true. And, sir, I think no one will contradict the statement that a very large amount of the capital of the State of Indiana, belonging to the farmers, is vested in the city of Cincinnati. Why, sir, is our capital vested there?—because the farmers can get ten per cent. for it there, while they can get but six here—a very material difference. I say we ought to grant facilities to our own citizens to invest their capital amongst us, and not be obliged, as they are now, to send their capital elsewhere for investment. I know, in my own neighborhood, of \$50,000 being loaned in Cincinnati, by the farmers. What is the consequence? Independent of the other losses to which I have adverted, we lose the revenue which would accrue to the State, were that capital invested here, for it would then be subject to taxation. It strikes me that, under the restrictions proposed, it would be very proper to introduce such a principle into our organic law.

Mr. KILGORE. I move to amend the resolution by striking out the words "not exceeding ten per cent. per annum." It will thus leave a man free to make his own bargain in regard to the loan of his money. It will require the Legislature to pass a law fixing the interest upon judgments; but as between party and party, it will leave them, as I think they ought to be left—entirely free in this matter. Individuals in this State have been restricted to six per cent. The State has been, in point of fact, a great usurer; for she has realized on the funds over which she has control, much more than six per cent. The consequence has been that capital, instead of being put in circulation amongst us, has been invested where the trade in it is less restricted. The object which I desire to effect is to get the capitalist to invest his funds here as best he can.

Mr. KELSO. Does that fix the limitation at ten per cent.?

The PRESIDENT. The original resolution does. The amendment of the gentleman from

Delaware, is, to strike out the words "not exceeding ten per cent."

Mr. KELSO. Then I move to lay that amendment on the table.

Whereupon the Convention decided so: ayes 45, noes not counted.

The question was declared to be carried.

So the amendment was laid on the table.

Mr. CLARK of Tippecanoe moved to amend by striking out "ten," and inserting "seven."

He would vote against the resolution. He thought, unless the Convention intended to sit here until the 1st of May, that they ought to reject all propositions that proposed to bring in new sections. This was as wide and as difficult a question as the subject of banking itself. He proposed "seven" per cent., which was the highest amount fixed by law that he knew of, in any of the States of the Union. Every nation that had arrived at any degree of eminence in a commercial point of view, from the dawn of civilization down to the present day, had found it necessary to establish fixed rates of interest for the use of money. It was one of the first duties of a commercial people. He contended that money was not an article of property so much as it was an instrument of exchange. He maintained that the Convention ought not to entertain propositions which were purely of a legislative character; and he would take the occasion to say that the principle embraced in the resolution would not be placed in the Constitution without encountering his most earnest opposition.

Mr. RITCHEY moved that the resolution and pending amendment be laid upon the table; upon which motion the yeas and nays being ordered and had, resulted—yeas 84, nays 39—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Biddle, Borden, Bracken, Bright, Brookbank, Butler, Carter, Chandler, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Farrow, Fisher, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hardin, Hawkins, Helm, Hitt, Hogin, Holman, Howe, Johnson, Jones, Kinley, March, Mathis, May, McLean, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Nave, Newman, Niles, Pettit, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Spann, Stevensen, Tannehill, Todd, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—84.

NAYS.—Messrs. Ballingall, Beach, Berry, Bicknell, Bourne, Bowers, Bryant, Chapman, Conduit, Crawford, Dunn of Jefferson, Edmonston, Elliott, Foster, Frisbie, Gibson, Helmer, Huff, Kelso, Kent, Kendall of White, Mather, McClelland, McFarland, Milroy, Morgan, Mor-

rison of Marion, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Shoup, Sims, Steele, Thomas, Thornton, Trimble, and Wheeler—39.

So the resolution and pending amendment were laid upon the table.

Mr. COLFAX offered for adoption the following resolution:

Resolved, That the Convention meet hereafter, at 8½ o'clock, A. M., instead of 9 o'clock, A. M.

I will state the reasons why I offer this resolution (said Mr. C). It must be evident to every gentleman that we ought to work a little longer in the day, if we expect to get through by the 1st of February. By meeting at 8½ o'clock, we could get through the routine of business by 9 o'clock, and at that hour proceed to the orders of the day. I think the members of the Convention could get here by 8½ o'clock without any inconvenience to them whatever.

Under the rule, the resolution lies over for one day.

Mr. GORDON moved that the Convention do now take up the orders of the day.

The Convention refused to take up the orders of the day.

Mr. McCLELLAND offered a resolution relative to the expediency of providing that hereafter no local law shall be passed, unless it cannot be provided for in a general law.

The resolution was adopted.

Mr. HAWKINS presented a resolution in relation to the expediency of taking an estimate of all agricultural, manufacturing, and products, every ten years; which was adopted.

Mr. MILROY offered the following resolution, which was not adopted:

Resolved, That the committee on the practice of law and law reform, be instructed to inquire into the expediency of abolishing all distinctions in the character of evidence that may be admitted or rejected in courts of justice, on account of interest in the subject matter of the suit.

On motion,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the section in relation to banking.

The pending question being on Mr. Hall's amendment authorizing a State Bank, &c.,

Mr. CLARK of Tippecanoe. There is no subject, Mr. President, in which my constituents feel a deeper interest than they do in this question of banking; and, sir, I feel it my duty, however incompetent I may be, and however intricate the subject may be, to present their views to the Convention in as brief and succinct a form as possible.

I will premise, sir, that I am in favor of banks, and I think it is necessary that this Con-

vention should recognize them. They are essential to all commercial people, and it is useless for us to say that we will not adopt a provision in relation to banks in our organic law: for whether we provide for them in our Constitution or refuse to recognize them, they will grow up, they will exist in some shape. It is not a question in which party is concerned; it is not a question in which the form of government is involved; it is not a question which appertains either to free or to despotic governments; but it is one which belongs to all commercial people; it is one which will be regulated by them. And it may be said in this connection, that in this government, where men are freest, where they are allowed, with the least restraint on the part of the government, to exercise their powers and faculties in a way that is most conducive to their interest. Where there is the most commerce, there will be found all the facilities which commerce requires. This is so emphatically the case that the red Republicans of France at this day are advocating a proper currency for the purpose of ameliorating the condition of the people of France. I say this to avoid the conclusion which some gentlemen may be inclined to draw, that this is a question appertaining to one form of government more than to another. It is not a party question, though there may be questions arising out of the system upon which parties will be divided, yet parties have always been compelled to recognize currency in some shape or other.

Now in all governments it is an attribute of sovereignty to have power over the currency. It is granted to our General Government. They have power to establish a currency; they have power to coin money and regulate the value thereof. In the exercise of this power the General Government has declared that nothing shall be a legal tender in the payment of debts except gold and silver; and they have exercised the power of regulating a currency in the shape of paper money, from the necessity of the case; and without stopping to inquire whether it is Constitutional or not, we have admitted that such authority is vested in the State Government.

Now I undertake to say that from the very nature of things banks and banking must be recognized by our government. The people, or the government, which is the same thing, must exercise authority over the subject, and it is far wiser that we should at once meet the question when forming our Constitution—as it is one over which we must exercise control—than to leave it to the fluctuating decisions of the Legislature.

Now it may be said that this is emphatically a commercial age of the world. Commerce, sir, consists in the interchange of the products of nations. It is carried on by individuals, and money is the instrument by which those products are transferred from one nation to another,

and from one individual to another; and it is the medium by which the value of those products is measured. And, sir, it is hence a matter of national as well as of individual concern. And so multiplied are those products that gold and silver are found to be insufficient for the wants of commerce. Commerce requires the building of steam ships to carry over products to market. To this end money is necessary, and money is made a labor saving machine in the transfer of values between trader and trader, and between nation and nation. By means of commerce, Mr. President, the labor of men is brought to minister to the comfort and advancement of the happiness of all; and the various products of all nations are placed within the reach of men everywhere, and competition and energy and the products of skill of every sort are brought together everywhere where commerce exists. Thus the labor of all contributes to elevate and advance all. This is the history of the well-being of our race; and it would be going backward if we should seek to trammel this intercourse anywhere—if we should contrive any means by which, where nation is separated from nation, the light of one may be hindered from diffusing itself all over the world as it does at present. The advancement of science and knowledge is brought everywhere to bear upon the advancement of the happiness of mankind.

Now, independently of the advantages which I have just mentioned in a general way, which renders it necessary that it should be made an instrument of commerce, there is another advantage which is peculiar to paper money, which does not belong to gold and silver. Banks issue money: they increase the amount of money at the time when it is needed—at the time when it is necessary that men should be enabled to carry the products of their labor to market. When a farmer has his wheat and pork ready to carry to market there must be money with which to transport those articles, as well as roads and canals by which to convey them to market. Now it is clear that there can be no more gold and silver in the country than has been procured by the sale of those commodities which the country produces. But by means of banks a circulating medium is advanced upon the value of those commodities, and it is based not upon a fictitious value, but upon the value of labor already performed in the producing of wheat and other products of the farmer; and for the transfer of which to market banks are needed. Now banks can perform this duty, but gold and silver never can perform it, because the expense of the transportation of the precious metals is considerable. The trader borrows money from the bank, the bills of the bank being the representatives of actual value; he buys the produce of the farmer with these bills, which answer as money; he collects the produce and carries it to market; and

when he sells it he brings back actual money and pays the bank. Now this is a transaction that is not based upon an ideal thing, but upon an actual and existing value. Now this is one great office of banks which cannot be performed by the precious metals.

I said that my constituents felt a deeper interest in this subject than in any other that ever came before the Convention. So far as I know they are in favor of a system of free banking; not because they are particularly averse to a State Bank, but because they are satisfied that the necessities of the State require another system of banking. Gentlemen who have preceded me in this debate have shown to the Convention that one great objection to a State Bank is, that it is a monopoly. The State Bank would never have been organized had it not been that the necessary banking capital could not be raised unless it was borrowed by the State. Individuals did not possess the necessary capital. The State had to borrow money for her own use, and she had to borrow money and advance it to individuals for the purpose of creating a banking capital; and sir, there could not have been a better system of banking than that, at the time it was put into operation. It has fulfilled all the expectations of those who created it. But, sir, it has outlived its era. We have reached a new one. We have reached an era which requires a different system: when the ability of the people has increased, and they are prepared to carry on banking operations upon a different system. I will, without detaining the Convention, illustrate the notice of this monopoly a little farther. Originally, in each branch of the State Bank, the State had a capital of eighty thousand dollars; individuals having a like amount. This proportion has been changed in some of the branches by an increase of individual stock. Bills to twice the amount of capital may be issued by each of the branches, under certain regulations to be established by the State Board. Now, the individual stock in one of the branches may be owned by ten or twenty of the individuals; it is now owned by a small number, and they have the power to increase the amount of individual stock to four hundred thousand dollars. And they have the control and direction of the branch bank. They elect seven directors, while the State elects but three; so that they have the entire direction of this whole amount of capital. They have the power to enlarge their capital to two and a half times its original amount, and having the power to control the whole capital stock of the branch bank, both individual and State capital. They thus multiply their capital four-fold; and, although gentlemen may say that the State has a supervisory control over the bank, yet, practically, it is not so. The State elects four directors and a President, and each of the branches elects a director for the State Board,

so that not only in the branch itself, but in the State Board, individuals have the control of this vast machinery. Now, the objection that my constituents make to the State Bank is to this feature of it. This monopoly may not only extend, but I may say it does extend, beyond the power of making money by loans and discounts. They have not only a monopoly of the money, but a monopoly of the farmers of the country. Where the products of the country are collected in great quantities to be purchased, there is no means of paying for these products except by borrowing from the bank, or going abroad to other States to borrow money. Now, the most of the men who are stockholders in the bank, are also dealers in produce; they are merchants, and they make loans of money to themselves in preference to others; and, sir, the business of banking is so arranged, by means of bills of exchange, that they charge about thirteen per cent. per annum upon their capital. They charge, nominally, six per cent.; but reckoning the three days of grace, it amounts as near as may be to seven, and they charge interest on the bill of exchange at the rate of six per cent., so that the money borrowed actually costs the borrower thirteen per cent. They have, to start with, an advantage of six per cent. in the purchase of produce, and they have this other advantage over every competitor in the market; if they should loan to an individual a bill of exchange, they demand that he shall make immediate payment when it falls due, whatever may be the state of the market, and this forces him to sell to them upon their own terms. This gives them a monopoly in the market upon the sale of the commodity.

If there should be but one bank it will be an equal monopoly with the State bank. The same competition which sprang up with them in the business of merchandise would lead them to establish another bank. Here you would have competition, one set of men would be competing with another, and both in the purchase of the produce of the farmer and those connected with them in the sale of it, and the monopoly not only of the money but of the produce market would be destroyed in that way. This is not only of advantage to the traders, but equally so to the producers; because by this competition the highest prices which produce will admit of would be insured by a competition among the buyers.

Now, Mr. President, I will as briefly as possible examine the comparative security of the two systems of banking. The gentlemen who advocate a State bank say that it is far more secure to the bill holder than any system of free banking can be. Now what is the security of the State bank? What security does it offer to the bill holder? They have a capital stock amounting to \$160,000 in each branch to redeem a circulation of \$400,000. They have

only this security apart from the responsibility of the stock-holders. Now the ability of the stock-holders depends upon the ability of the bank to pay their notes, and nothing more. It is true, as gentlemen say, that the State stands, as a stockholder, responsible for the ultimate payment of all debts that may be contracted by the individual directors of the bank. But if they admit that to be a sufficient security, the system which we propose is equally secure; because we propose to provide that the corporations under the free banking system shall deposit State bonds equal to the amount of all the notes issued. Now if the State bonds are good and sufficient security for a State bank, why are they not equally good and sufficient for a free bank? Can they have any greater security? Suppose that the bill holders should all come upon the State with their bills; how could the State redeem them except by the issue of new bonds, and sending them into market to be sold? So with a free bank. You have the bonds there, and you direct them to be sent into market to redeem the bills. Thus in the free banking system you have all the security which you have under the present system. You have the State bonds dollar for dollar to the amount of notes issued, and besides that the responsibility of the individual stockholders, as in the stockholders of the State bank; and how then can the security be less under the free bank system than under the State bank system.

But gentlemen say that the branches of the State bank are all bound together, and that consequently they are more likely to stand together than would a system of banks not tied up together. I grant you that they are compelled by their present charter to hold up the falling branches, yet when a crisis does come, the whole system has to fall at once, and then the evil is infinitely greater than under the system of free banks. Under that system a bank might fail here, and another at Wabash, and yet the great commercial business of the country would not be interrupted, because each would not be dependent upon the other, but each would be standing by itself; and the same system of watchfulness which the branches of the present State bank exercise over each other would be exercised under the free banking system. They would have to exercise the same degree of vigilance and watchfulness which traders do in inquiring into the condition, and capacity, and solvency, of their neighbors engaged in like business, and to whom they have to extend credit. They would find out in a moment if the bills of a bank were suspected to be unsound, and would immediately throw them out of circulation.

Some gentlemen say that this is a new system; and they object to try what they call "experiments." Sir, it is not a new system except in this country. It is demonstrated as the only true system of banking by Adam Smith, who

was the first expounder of the true doctrines of political economy. He has demonstrated that this is the only true and safe system of banking. He wrote that book to break down all monopolies—all those systems of restraint by which the nations of Europe had trammelled the business of commerce as well as the rights of individuals.

Now in regard to the location of a State bank we all know that that is a matter which is determined by questions purely political. This is not so under the system of free banking. Its capital will seek out and find that place for its operations where it is most required. It will be invested in those products and to those amounts which the business of the country may from time to time require, and will adjust itself to the commercial wants of the times. Whereas, under a State bank, all this has to be regulated by political rule, without regard to the commercial interests of the State; and this is another advantage which the free banking system has over the State bank system.

The PRESIDENT. The gentleman's half hour has expired.

On motion, the rule was suspended.

Mr. CLARK (continuing). The gentleman from Hendricks (Mr. Nave) I think offered this as an unanswerable argument against free banks. He said that the paper of the free banks would not be received in the eastern cities in payment of debts. Now I will admit that the paper of these banks will not probably pass much beyond the borders of the State. The same argument, however, applies to our present system of banks. Paper is constantly sent from Ohio to circulate in Illinois, but the moment they have banks of their own in that State, all such paper will be immediately sent back again. But the moment the gentleman from Hendricks reflects that the paper of our own State Bank is at one and a half per cent. discount in the east, I think he will see that there is no force in his objection.

I will admit that under the system of free banks, our paper would not be received at par in New York or Boston; but it would certainly be worth as much as our present State Bank paper is worth now. All negotiations of this kind in regard to the value of our paper in the east would have to be conducted through the medium of bills of exchange, and the free banks would undoubtedly sell them as cheap as the State bank does now; so that this argument operates equally against a State, as against free banks. I do not think it would be possible with any system of local banks to provide any paper which should have a uniform value all over the Union; and the transmission of funds from this to distant States, must be managed, as heretofore, through the medium of bills of exchange.

Now with reference to the exercise of control on the part of the State over banks, I will venture to say that if you permit the power of the Legislature to alter their charters, you will have the most complete control that you can exercise over such an institution. The reason why gentlemen dwell so much on the control which the State exercises over the State Bank, is that the State Bank is placed beyond the reach of Legislative power. You cannot change the charter, and the only way in which the State can exercise control is by appointing a portion of the directors. But if you reserve the power to change and modify or alter the charters of the free banks, you have a more complete authority over them than you would have by appointing two or three commissioners to inspect their transactions.

Well, sir, with reference to the interest which the State ought to have in banks, I say that it is not safe for her to have any interest in them except it be to preserve the citizens from loss. It ought to be the business of the State when it authorizes a corporation to issue what is called money, to see that there is sufficient security for those bills. When she has provided that there shall be sufficient security for all the bills issued under her authority, she has done all that she can do. The rest must be left to the course of trade and the exigencies of commercial operations. Now my friend from — (Mr. —) informed us that the only security which existed in Scotland is the individual responsibility of the directors of the banks. But, sir, this is by no means sufficient in the present condition of the country. We have not the same rigid and uniform laws for the collection of debts which prevail on the other side of the Atlantic.

And until we have the same system of laws for the collection of debts, it would be wise that there should be a better security than that of the individual stock-holders. If we had a perfect system of credit, we might trust the issues of these banks upon State bonds or other collateral security. But it must be evident to all that we will not arrive at that condition for half a century to come; and we must accommodate our system of banking as well as we can to the circumstances in which we find ourselves, and the times in which we live.

Mr. President, I have now said all that I purpose to say at present on this question; and without detaining the Convention further, I will conclude by thanking gentlemen for the patience with which they have listened to these remarks.

Mr. CARTER. I am aware that, on account of my youth and legislative inexperience, I should not enter largely in the discussions of this body, composed, as it is, of the talent and wisdom of the State; but I hope to obtain the indulgence of the Convention while I state my convictions in relation to the subject before us.

Among the honorable delegates of the Convention, I find a diversity of opinion; some favoring the present system, some, free banking, and others, again, opposed to all banking. Sir, I have been raised in a radical school; I have been taught that all banks were monopolies, and that all monopolies were wrong in the administration of government, and that the Government was walking out of its proper sphere, when it would lend its aid or encouragement to anything of the kind. I know that the party favoring no banking is in a minority here; and, in accordance with that belief, I am only left to adopt the most unexceptionable plan that may be proposed, and, if possible, at the same time, carry out the wishes of those who sent me here. Their preference, as I understand it, is State Banking, under stronger restrictions than those now imposed. But, sir, no currency can ever be so perfect as the one which has been the longest in use—that will be liable to less fluctuation. I mean the currency of gold and silver; but even upon this currency, age after age, attempts have been made to build a fictitious one, and, in every instance, the attempt has been more or less ruinous. And to prove this position, I need not pass the borders of our country for facts.

During the Revolutionary War, the most memorable period in our history, because producing results the most memorable the world ever witnessed, no less than three hundred millions of dollars worth of bills of credit were put in circulation, causing the most terrible results. Private bankruptcy became common, and the public credit was destroyed; soldiers fought in rags, and the blood of naked feet marked their course to victory; but to return home with only an appearance of money, which would neither add fuel to the fire, or meat to the table, or clothing to the body. In a period of twenty-two years, from 1817 to 1839, we have had no less than fifteen or eighteen revulsions or stagnations, caused by our system of banks. The most memorable was the one which occurred in 1837. By it arose bankruptcy, poverty, a suspension of labor, and universal distrust. The widow lost her savings, the laborer the result of his toilsings. Nor was it confined to individuals—States and Governments felt the shock, and through them again returned to paralyze the people. Bankruptcy and repudiation—poverty, aye, and legalized crime, in the absence of a sound currency, became the legal tenders of the day. Such, sir, is a short but truthful history of banking in the United States, thus far.

Now, sir, in these revulsions, who is the loser? Is it the capitalist or the speculator? No, sir; no! It is the mechanic and the farmer, and the man of ordinary means. Capitalists and speculators are the masters of every pecuniary revolution; they "ride upon the storm, and direct the whirlwind." It is true

that they may sometimes be crushed by their own machinations; but, forever whirling on the wheel of fortune, if they are down from some cause to-day, the same cause brings them up to-morrow. Thus it is that we always find capitalists and speculators, not farmers and mechanics, who are daily crying for more banks. Sir, there is no reason in giving to fifty or one hundred men preferences and privileges which the law withholds from private individuals. No set of men have any more right to act than the most humble individual; but such is the effect of all charters for banking purposes, call it what system you may. All banks are created for gain, in which the rich can alone enlist; and their tendency is to elevate that class at the expense of all others—to give to a favored few the privilege of making enormous profits of the many who have not the means to enter in the same schemes.

I have said, sir, that all banking is a monopoly; and I add that it is a legalization of a business, which, from its operations, is unjust. It necessarily must be so. The bank issues more paper than it has specie. By many economists that is considered a safe bank which issues three paper dollars to one in specie. Now, if it is indeed safe, the bank just triples its capital; and if a bank was not established on a principle similar to this, there would be a comparatively small inducement offered for banking; for then dollar would only issue for dollar, leaving only a comparative profit. But, sir, under the principle of banking of which I have just been speaking, that of issuing three times as many paper dollars as the bank has specie with which to redeem them, the operation of a bank must be unsafe, for the simple reason that it promises every day to do that which it knows itself utterly impossible for it to do, if it "promises to pay" were at any time presented for redemption. In such an event, a suspension of specie payment is inevitable, unless banks have a new mode of liquidating their debts with only one-third of the necessary means. I know that banking men say that the interest, discounts, and deposits of the banks are always at hand, with which to redeem the paper. But here I still see a difficulty. If I understand the nature of deposits, they do not constitute the true capital of a bank, and if used by it, they form only a fictitious capital. Deposits consist of money or articles of value left in the hands of the bank for safe-keeping. Now, suppose, in the case of a rush on the bank, it uses these deposits. It may redeem all its paper, but the depositors suffer, so that it only changes the locality of the evil—saving the body of the people harmless, and injuring a few individuals, who have unwisely reposed confidence in the concern. If the bank does not use the deposits, it must fail; or, if still sound, the result of the argument is no less unfavorable to the creation of banks. It has left

nothing but interest and discounts with which to redeem, so that we find again the bank making an enormous profit. But, however great the profits of banking may be—and however safe banks may be in their operations—still I regard them as monopolies fraught with evil. And, sir, I do not believe in the soundness of banks under the old system. I believe that, if a concerted run should take place against almost any bank, from the effect of an alarm, a panic, or a rise of specie, say for exportation, the bank must stop, and wind up as best it can, leaving the people to recover from their reverses as best they may.

Banks can contract or expand the circulating medium at pleasure; and they hold in their hands the entire control of the currency of the country, by now issuing and conferring favors largely, and now withdrawing their money from circulation, and refusing accommodations. This power is one of the arguments against banks. When they expand their currency, as a matter of course, a depreciation of money takes place. If depreciated, creditors, in the payment of their dues, are injured; while, on the other hand, if a contraction occurs, the very reverse is the effect. It is true, this does not destroy the aggregate capital of the country; but it does injure private individuals. And, sir, the banks, having in their power the expansion and contraction of currency, have often the opportunity, and always the desire, to speculate on the community through this very medium which they have themselves created. To accomplish this purpose, the banks can easily combine. They will enlarge their discounts; they and their speculators will enter the market and buy and sell. A sudden contraction takes place, property falls, and the bankers pocket the profits, and the people are robbed and swindled. Again the bank will refuse to accommodate its old customers, but will loan to the directors and their particular friends. Those customers must have money; they receive it from these men at higher rates than the bank is allowed to loan, and the bank indirectly, through the agency of its minions, makes another swindling operation.

The capital of banks is not only fictitious, but it gives to others capital of the same character—men who themselves own nothing.

So long as we have a paper currency, so long will specie be driven from our State. No banking paper that we can give to the people will be found good in a foreign market, and the result is, that we must use paper at home, and send our specie abroad; or, what is worse, have it locked up in the vaults of our banks. Sir, a hostility to all banks was the best political lesson I was ever taught; and I pray that the day may soon come when gold and silver may be the only circulating medium known to the country, and that this State, above all others, will withhold powers and privileges from corporations, which have neither "bodies to be

kicked or souls to be damned," while it refuses the same privileges to private individuals.

But, sir, I apprehend the effort most strong here is to establish the system of free banking. The arguments in its favor are most plausible, and it comes to us clothed in the enticing garb of freedom. Sir, I love freedom. The idea which it conveys is sublime. It is the watchword of our nationality. But, sir, I know no freedom, no true independence to the people of this State, in such a system, unless it be indeed a freedom from its existence and its evils. We are told that free banking is a part and parcel of the democratic doctrine of free trade. I think not. Free trade and free labor is a privilege which every citizen should possess and exercise in the ordinary pursuits of life, but it is a thing totally different from the monied monopolizing of free banking. The freedom of manufacturing paper money at will, I have yet to learn to be part of the democratic code. The appellation of free to anything aristocratic, or any monopoly, is a contradiction in terms, and a prostitution of the noblest word in the English language.

Free for whom! The rich monopolist—for a poor man cannot bank under any system. Free for what! For the establishment of the same evils of which we now complain; free for the same exactions, unless it be in the shape of interest, that the gentlemen so strongly condemn in the operations of the State Bank; and if the system is adopted, we will find the same profits made on bills of exchange and the discounting of notes. The main difference between free banking and any other system is that it only opens the door, to let the "stealings," become general, to establish fifty or one hundred monopolies instead of fifteen or twenty.

Sir, I see many objections to the establishment of free banking. The system is altogether in favor of aristocracy. A rich man can engage in the business, but a man of ordinary means must necessarily be excluded. The former can go and buy State stocks drawing interest, deposit them with the proper officer, get his bills, loan them, and make discounts on his neighbors, and thus draw at least double interest—a thing which no private individual dare do under our law.

This aristocracy can control the money power of the State, and the State itself; for "money is power." They have always in all States made their influence felt, if not why have bankers had, and why do they continue to demand, so much partial legislation?

And a strong argument against the free banking system is that many of the old chartered banks of New York were quite anxious to surrender their charters and operate under the general law. It could not with them be a matter of conscience, but a hope of gain. Establish free banks, let them exist in numbers, the result is, they must have officers. It cannot

be expected that they will have the same practical skill and knowledge that those possess who have the management of larger concerns, so that the danger in this view becomes greater just in proportion as you enlarge the number of banks.

If you establish free banking, the tendency for expansion and contraction of the currency becomes proportionably greater to the number of banks established. Where there are few banks, as a matter of course the danger is smaller. And now, let us have ninety banks in this State—let a revulsion take place—and the evil resulting will be inconceivable; let a combination between these banks be formed, and a heavy demand for money exist, and they have it in their power to swindle at will.

And, sir, nothing can be a greater curse to a community than the creation of small banks: and of necessity those established here must be small, for we have comparatively little ready capital in this State, it being all invested in land and internal improvements. Now, sir, these small banks will be established in small places—every town and village will cry for a bank. They will exist where capital is not turned more than once or twice in a year. Continued inducements will thus be held out for men to obtain favors who do not need them, and which, if obtained, would do them a positive injury. And, sir, let me here remark, that some of the enemies of the State Bank are those who do not succeed in obtaining their wants from her, and it is a pity that they do not know that the Bank is thus doing them a favor.

Sir, we are an agricultural community. In the Eastern States the case is different. They are built up by commercial and trading men. Here we rely on the products of the soil. And, sir, I have always understood that the friends of banking say that it is especially adopted for the benefit of the commercial portion of community. Then establish a bank in one of our inland towns, where capital is turned but once or twice a year, and our merchants and farmers get favors from the bank—let some unfortunate change take place in the circulation, and the result will be most unfortunate to the citizens of that town. Merchants must break and farmers mortgage their homesteads.

Sir, the more banks you establish the more bills must issue. They will be of every description, and the counterfeiting of bank bills is no small item in calculating their disadvantages. Their bills will be counterfeited, and the crime will be more extended in proportion to the number of banks. Yet they lose nothing by the rascality, neither do the money operators and the speculators, for they are well skilled in detecting; but the hardship and the loss falls on the laboring portion of community, the farmer and the mechanic, who have not made steel plates and signatures their whole study, but

who have engaged themselves in the more honorable occupations of life.

If you establish a free banking system, you will at once flood the country with a paper currency, running down to the lowest denomination. Every county, village, and family, will be flooded with one dollar "promises to pay," which will drive away from circulation all specie, leaving only a paper currency. That done, let a revulsion come and we will have the scenes of eighteen hundred and thirty-seven acted over again; we will have an anarchy; not of government, which the will of the people or a strong arm can overcome, but an anarchy in banking and currency, carrying with it consequences so ruinous to every hamlet and village, that time itself cannot wholly destroy. And, sir, we have not yet recovered from the effects of eighteen hundred and thirty-seven.

But, sir, a bank of some kind must be established. I believe it is the wish of the majority of this Convention, and the wish of my constituents. We are hedged in by our sister States with banks; if we have no paper currency we must use theirs, over which we have no control and of the safety of which we can know but little. We will be liable to be deceived and to be injured, without having any redress. Imperious necessity, then, compels us to guard ourselves against any such result, by establishing a banking system of some kind. And, sir, as I said before, I would have felt myself bound by the wishes of the county I represent, to favor a system of State banking, notwithstanding the eloquent reading of Jackson's farewell address by the gentleman from Monroe (Mr. Read). And, sir, I regret I was not here when the article reported by the gentleman from Gibson (Mr. Hall) was acted on, which destroyed one of the main features of the present State Bank; but a mournful and imperious necessity called me from the exciting scenes of this Convention to the fireside of home, to perform a too mournful duty. In favoring a State banking system I do not wish to be understood as the friend of the State Bank as it now exists. Such is not the case. I would throw around it all the stringent restrictions that could be imposed.

But, sir, I must speak of one of the propositions that has been proposed to this Convention. It is called a State Bank, divesting the State of all interest in the concern, but making the State responsible for all the debts of the bank. A more ruinous system could not be devised to rob and beggar the treasury of the State of Indiana. Why should the State be its endorser, responsible for all its acts, and still obtain none of its profits, or but a small portion of them! From such banks may the treasury and the people of the State of Indiana be delivered.

Since the State has hereafter to have no interest in any bank as a stockholder, by the act of this Convention, I wish some other

good system. I wish a State Bank and branches in which the State shall not be a partner, except as may be occasioned by the loan of the trust funds, to be amply secured, by their preference in payment in case of insolvency. This is my plan:

"Sec. 1. The Legislature may authorize the establishment of a State Bank and branches thereof, to go into operation after the expiration of the charter of the present State Bank.

"Sec. 2. The State shall not be a partner or have any interest in said bank or any of its branches, except as may be occasioned by the investment of trust funds of the State therein as loans, which funds shall be secured by their preference in payment in the case of insolvency, over the stocks of any individual in the bank.

"Sec. 3. Neither the bank or any of its branches shall, either directly or indirectly, receive any more interest than shall be allowed by law to persons loaning individual money.

"Sec. 4. The Auditor of State shall register and counterign all bills or notes issued or put in circulation, and security shall be required for their redemption in specie.

"Sec. 5. The billholders shall be entitled to preference of payment over all other creditors, in the case of insolvency.

"Sec. 6. The stockholders shall be individually responsible to an amount in proportion to their respective shares of stock, for all the debts and liabilities of every kind.

"Sec. 7. No authority shall be given sanctioning the suspension of specie payments in any manner.

"Sec. 8. The capital of said bank and branches together, shall not exceed five millions of dollars.

"Sec. 9. The bank and branches shall not issue more than dollar for dollar on the amount of security deposited,

"Sec. 10. The stock of said bank and branches shall be taxed, as other property, for State, county, township, and corporation purposes.

"Sec. 11. The branches of any bank which may be established under this article, shall be mutually bound for each others liabilities.

"Sec. 12. The Legislature shall provide in the charter of said bank, a supervisory control of the same.

"Sec. 13. The Legislature shall not extend the charter of the present State Bank, or allow it more privileges than it now possesses."

This proposition embodies nearly my views on the subject, and if an opportunity offers, I will submit it to the consideration of the Convention, though I have no doubt it will undergo many modifications. It yields one point to those who are opposed to any connection between State and corporation; but at the same time, in the shape of loans of trust funds, gives the State a direct interest in seeing that the operation of the bank is safe, while it also gives

to the State a supervisory control of the banks, as she now has over the old State Bank. It has another good feature of the present bank, that of making each branch liable for the acts of the others, which will be a strong point gained. It is one of the great safe-guards of the present system. By the plan proposed by the friends of free banking, and which is now under consideration, we have no such provision. By the section now under debate, each bank stands disconnected from all others. The people cannot know of the safety of ninety banks as well as a few. The same is true of the banks, and the result is, that each bank will be distrustful of the others, and thus become mere shaving shops. But adopt the other plan, and all the banks will operate in harmony, mutual reports will be made, each bank will know the operation of the other, and the people will have a confidence in the system.

I also propose to increase the capital of banking in our State, and still place a limit. Five millions of capital will be sufficient for the purposes of the State, and no greater amount being allowed, we will be saved the danger of the State running riot in banking. The plan has, too, all the good qualities of free banking; individual liability, and security first made, being incorporated in the plan. It limits the issue of the bank to dollar for dollar, and makes the stock liable, as individual property, for all kinds of taxation. The plan proposes all the good qualities of both systems, and at the same time avoids all their evils. And at a proper time I will submit it, if a more acceptable plan is not proposed. I have only one desire—to have a good sound currency, in which the farmer and mechanic, the banker and the capitalist, shall be secured, and, at the same time, limit the profits of banking.

Mr. MAY proposed to amend the amendment by striking out all after the words "General Assembly," and inserting the following:

"The General Assembly shall not hereafter establish any bank, or corporation with banking powers, nor continue beyond the term of its present charter any such bank or corporation already established, unless upon and after the separate submission to the people, at some general election, of the question of "bank, or no bank," a majority of all the electors of the whole State voting at such election, shall vote in favor of banks."

Mr. HALL. As I am in favor of adopting some system of banking, I am anxious that we should adopt the best system we can get, and at the request of several gentlemen, I have agreed to withdraw the amendment which I offered yesterday, in order that the whole question may have a fair start. There are several delegates on this floor, who are opposed to all banking, and they say that it is proper, before the question is taken whether there shall be this or that bank established, the Convention should first

decide the question, whether or not there shall be a bank at all; and if that question is decided against them, they will then have an opportunity of making up their minds whether they will go for a free banking system, or for the maintenance of the present State Bank. I ask leave to withdraw my amendment.

The PRESIDENT. It is too late. The gentleman cannot withdraw his amendment.

Mr. HALL. The amendment has not been acted upon in any way, I believe; and if I am correctly informed, I can yet withdraw it.

The PRESIDENT. The amendment is now the property of the Convention, and there is an amendment to it pending.

Mr. MAY. It is not my intention, Mr. President, to detain the Convention with any lengthened remarks, but I must be permitted to say, that I am one of those who believe that a bank, such as we have now, in this and the adjoining States, is entirely unnecessary. I am not now prepared to give, in detail, the reasons which have operated upon my mind, to bring me to this conclusion; but I will say, that the gentleman from Wayne, (Mr. Rariden,) in his convincing argument the other day, satisfied me that free banks are very undesirable; and the gentleman from Laporte (Mr. Niles) has satisfied me that a State Bank is not what is needed in this community. I hope, sir, that some gentleman will follow me, who will give, more conclusively than I think, has been shown, by any gentleman who has yet spoken upon the subject, the reasons why we need those institutions which we have so long had. If there are no gentlemen who are able to do this, it seems to me that that side of the question certainly lacks that kind of argument which will satisfy a reasonable mind. I believe that there are many on this floor, who think, with me, that no banks are needed; and if none, I will say, that I am ready to defend the proposition I have now submitted to the House.

Mr. CHANDLER moved to lay the amendment, and the amendment to the amendment, on the table.

Mr. MAY demanded the yeas and nays.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Barbour, Beach, Beard, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Bryant, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Frisbie, Garvin, Gootee, Gregg, Hall, Hamilton, Harbott, Hawkins, Helm, Helmer, Hugin, Howe, Huff, Jones, Kendall of White, Lockhart, Maguire, Mather, Mathis, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morgan, Mowrer, Murray, Newman, Niles, Nofsinger,

Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Robinson, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Watts, Zenor, and Mr. President—89.

YAYS.—Messrs. Bascom, Berry, Borden, Brookbank, Chandler, Chapman, Dunn of Perry, Fisher, Foster, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hardin, Hendricks, Hitt, Holman, Johnson, Kelso, Kent, Kilgore, Kinley, March, May, McClelland, Milligan, Mooney, Morrison of Marion, Nave, Pepper of Ohio, Read of Monroe, Ritchey, Schoonover, Sherrod, Tannehill, Wallace, Walpole, Wheeler, Wiley, Work, Wolfe, and Wunderlich—43.

So the amendment to the amendment was laid upon the table.

The **PRESIDENT**. The question now is on laying the amendment of the gentleman from Gibson on the table.

The reading of the amendment being called for, it was read by the Secretary.

The question was then taken on the motion to lay the amendment on the table, and it was agreed to.

Mr. **READ**. Is there anything now before the House?

The **PRESIDENT**. There is—the original section of article number twenty-four; and the question is, Shall it be engrossed for a third reading? [Loud cries of "no, no, no."]

Mr. **SHOUP** proposed to amend by striking out the section, and inserting the following:

"The business of banking shall be free to all, on such terms and conditions as the Legislature shall impose in a general law for such purposes, subject to the following restrictions:"

1st. No banks shall directly or indirectly charge or receive any greater rate of interest than individuals shall be allowed to charge or receive.

2nd. The bills or notes of all banks shall be registered by some proper officer of State, and ample security, readily convertible into gold or silver, taken for the redemption of the same.

3d. The stockholders or owners shall be individually responsible for the debts of such bank.

4th. The bill holders shall have preference in payment in case of failure.

5th. No law authorizing the suspension of specie payments shall be granted.

Mr. **EDMONSTON** If no gentleman wishes to discuss this proposition, I propose to lay the section and amendment on the table.

The yeas and nays were demanded, and ordered.

A division of the question was called for, when

Mr. **EDMONSTON** withdrew his motion to lay the section and amendment on the table.

Mr. **HAMILTON** desired that the amendment of the gentleman from Franklin (Mr. Shoup) should be read.

The amendment was accordingly read.

Mr. **HAMILTON** said that his only objection to the amendment was that no security was named.

Mr. **BASCOM** proposed to amend the amendment by striking it out and inserting the following:

"There shall not be established or incorporated in this State any Bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer."

Mr. **B.** said, I have but a few words to say upon the subject—that the amendment I have offered is part of the old Constitution which has been praised so much in the Convention; and I hope we will retain that portion of it. But, sir, I offer this amendment at this time more for the purpose of obtaining an expression of the sentiments of the anti-bank party in the Convention. If the vote given on the motion to lay the amendment of the gentleman from Steuben (Mr. May) on the table be any test of the state of parties here, then it is clear that the anti-bank party have the power by their votes to decide which system of banking shall be adopted—the free banking system or a continuation of the charter of the State Bank; and I do not know but it might be well for us to hold a caucus, especially when we know that both the other parties have held caucuses.

Mr. **COOKERLY** (in his seat). You have a perfect right to do so.

Mr. **BASCOM**. I am obliged to the gentleman for his information. I believe I knew that much before. But, sir, if we are to have banks of some kind or other we shall then know where to place ourselves; for if this Convention is going to create banks, I for one must do all that I can by every vote I can give to restrict them to the utmost. I want to throw around them the strongest guards which the human mind can invent, and for this reason I desire to find out what kind of banks we are going to have, or whether we are to have any banks at all.

But, sir, I want no better proof with which to go before the people to show that all banking should be abolished, than the speeches that have been made upon this floor; for if they have not been made out to be the veriest swindling shops in the world then I am much mistaken. One party advocating the free against the State bank system makes that system out to be a perfect monster, which is continually gnawing at the very vitals of the State; and the State Bank party on the other hand make out the free banks nothing better than so many swindling shops. Now if both parties speak the truth, then I say let us abrogate the whole system. I hope we may first have a test vote, so as to

know whether or not the Convention have determined to have banks in some shape, or no banks at all.

Mr. DUNN of Jefferson. In order to accommodate the gentleman with an opportunity of recording his vote on this question, I will move to lay his amendment on the table. [Loud cries of "no, no, no." "Let us have a direct vote."]

I would simply ask gentlemen whether in attempting to abolish banks they can abolish all paper from the State; and finding that this cannot be done, I would ask them further, whether it is better to have bank paper circulating among us the securities for which we know are deposited at home, or whether we shall have the paper of foreign States without knowing much of its means by which its redemption is to be secured?

Mr. KENT moved to lay the amendment offered by Mr. Bascom on the table.

The yeas and nays were demanded, and ordered, and, being taken, resulted as follows—yeas 89, nays 43:

YEAS.—Messrs. Alexander, Allen, Badger, Ballingall, Beach, Beard, Bicknell, Biddle, Blythe, Bourne, Bowers, Brookbank, Bryant, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Edmonston, Elliott, Farrow, Foley, Fisher, Garvin, Gibson, Gootee, Gordon, Gregg, Haddon, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Huff, Kent, Kendall of Wabash, Kilgore, Lockhart, Maguire, March, Mather, Mathis, Miller of Gibson, Milroy, Morgan, Mowrer, Murray, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Read of Clark, Robinson, Shannon, Shoup, Sims, Snook, Smith of Ripley, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wunderlich, and Zenor—89.

NAYS.—Messrs. Anthony, Bascom, Berry, Borden, Bracken, Bright, Chandler, Chapman, Dobson, Dunn of Perry, Duzan, Fisher, Foster, Graham of Miami, Graham of Warrick, Hall, Hardin, Holman, Johnson, Jones, Kelso, Kinley, May, McClelland, McFarland, Miller of Fulton, Milligan, Mooney, Moore, Morrison of Marion, Nave, Prather, Read of Monroe, Ritchey, Schoonover, Sherrod, Smiley, Tannehill, Wheeler, Wiley, Wolfe, Work, and Mr. President—43.

So the amendment was laid on the table.

Mr. KELSO moved that the Convention adjourn.

The Convention did not adjourn.

Mr. KILGORE moved to amend by striking out the section and inserting the following:

"There shall not be established or incorporated in the State any bank or banking company,

or monied institution for the purpose of issuing bills of credit or bills payable to order, or bearer, unless it be a State Bank and branches, not exceeding one branch for each county in the State, to be established at such place or places as the Legislature may prescribe, or the directors of the State Bank may select; provided there be subscribed and paid in specie on the part of the individuals, a sum equal to two hundred thousand dollars; Provided also, that nothing herein contained shall be so construed as to prevent the General Assembly from adopting the present State Bank and branches, with such additions and restrictions as may be deemed proper."

Mr. K. said he did not wish to argue the question, for he was not prepared to make a speech. He merely offered the amendment for the purpose of testing the strength of the friends of the Bank. I am aware that there are three parties here—the State Bank party, the free bank party, and the no bank party; and, sir, as we have now been discussing the subject for two or three days, I am anxious to ascertain what is the strength of each party. It is for that purpose that I offer the amendment.

Mr. COOKERLY. I move to lay the amendment upon the table.

Mr. KILGORE. I ask for the yeas and nays on the motion.

The yeas and nays were ordered.

Mr. KELSO. Before the call is proceeded with I will move that the Convention adjourn.

The Convention refused to adjourn.

The yeas and nays being taken on the motion to lay the amendment offered by Mr. Kilgore on the table, they resulted as follows—yeas 75, nays 57:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Berry, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Carr, Chandler, Chapman, Clark of Tippecanoe, Coats, Colfax, Conduit, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Edmonston, Elliott, Fisher, Foley, Gibson, Gordon, Graham of Miami, Gregg, Hamilton, Hardin, Helm, Hendricks, Holman, Johnson, Jones, Kent, Kendall of White, Mather, Mathis, May, McClelland, McFarland, Miller of Fulton, Milroy, Mooney, Morrison of Marion, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Sims, Smiley, Steele, Thomas, Thornton, Todd, Trimble, Walpole, Wheeler, Wiley, Work, and Wunderlich—75.

NAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Bicknell, Bowers, Brookbank, Carter, Clark of Hamilton, Clements, Cole, Crawford, Davis of Madison, Dobson, Dunn of Perry, Farrow, Foster, Frisbie, Garvin, Gootee, Graham of Warrick, Haddon, Hall, Harbolt, Hawkins, Helmer, Hitt, Hogin, Huff, Kelso, Kilgore, Kinley, Lockhart, Maguire, March,

Miller of Gibson, Milligan, Moore, Morgan, Mowrer, Murray, Nave, Newman, Prather, Rariden, Robinson, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tannehill, Wallace, Watts, Wolfe, Zenor, and Mr. President—57.

So the amendment was laid upon the table.

Mr. PEPPER of Ohio. I move that the subject in relation to banks be re-committed to the committee on banking. [Loud cries of "no, no, no."] If gentlemen prefer to have another committee I have no objection to refer the matter to a select committee. My own opinion is, that the committee on currency and banking, might put the thing in such a shape as would enable the Convention to act upon it in a more speedy manner than any other committee or even we ourselves can do.

Mr. WATTS. I hope, as a member of the bank committee, that this section will not be re-committed to that committee.

Mr. BIDDLE (interposing). Let it be a select committee of five.

Mr. WATTS. The majority of the committee it is true were able to report in favor of one proposition, and that was, that we would have a bank of some description, but without chalking out any particular features which that bank should sustain. I hope it will not be re-committed to that committee.

Mr. RARIDEN moved to amend, by instructing the committee to report a proposition favorable to the establishment of a State Bank.

Pending the question on the amendment of Mr. Rariden,

On motion of Mr. COOKERLY, the Convention adjourned.

MONDAY, JAN. 6, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BABE.

The journal of Saturday was read and approved.

Mr. READ of Clark presented a memorial, embodying resolutions adopted at a meeting of the citizens of Jeffersonville, Clark county, relative to free banking. Mr. READ said, as the committee on banking have made their report, and the subject is before the Convention, I move that the memorial be laid upon the table, which was agreed to.

Mr. MORRISON of Marion. The committee on the "Executive" department, to whom was referred the second section of the article upon that subject, relative to the veto power—with certain instructions, have had the same under consideration, and instructed me to make the following report:

The Secretary then read the report; it was as follows:

"Mr. PRESIDENT: The committee to whom was re-committed the 23d section of No. 17, with instructions to strike out all in the 113th and 114th lines, after the word "Houses," and insert the 22d section of the present Constitution, prefixing the "and" before the same, have amended the section, as instructed; it reads—'And every joint resolution shall be presented to the Governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be re-passed by a majority of all the members elected to both Houses. And every bill which shall have passed both Houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon the journal, and proceed to re-consider it. If, after such re-consideration, a majority of all members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be re-considered, and if approved by a majority of all the members elected to that House, it shall be a law. But in such case, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered upon the journals of each House, respectively. If any bill shall not be returned by the Governor, within five days—Sundays excepted—after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general adjournment prevents its return—in which case it shall be a law, unless sent back within three days after their next meeting.'"

Mr. MORRISON. Mr. President, it will be discovered by gentlemen, that the section just read is essentially, literally, and positively, the section contained in the old Constitution. And, inasmuch as that section, in my opinion, is not calculated to answer the purpose, as it ought to do, under the new regulations which we shall have to make, in reference to biennial sessions, I shall offer an amendment to it. I do not ask the concurrence of the Convention in that report, for the reason that I now move to concur in the adoption of the section, with an amendment, which amendment is, to strike out the section and insert the following, as a substitute in full.

The PRESIDENT. The Chair would remark to the gentleman from Marion, that there is no question of concurrence. The committee have amended the section under positive instructions from the Convention, and through their Chairman have reported the same back. The question will be upon its passage.

Mr. MORRISON. Then, sir, I move that the section be re-committed, with the following instructions: "provided that bills vetoed by the Governor, may be passed by a majority of all the members elected to the two Houses, to be

determined by yeas and nays. Bills to become laws unless returned within three days, unless a general adjournment prevents a return, in which case it shall be a law, unless the Governor, within five days after such adjournment, shall file the same, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session, for action, in the same manner as if it had been reported by the Governor."

I will call the attention of the Convention to the alteration which I make. We provide, in the new section, that the Governor shall have but three days instead of five, at the close of the session, to consider bills presented to him. And there shall be no new bills presented to him, during the two last days of the sessions, so that he will not be permitted to pocket a bill, but must decide upon it, one way or the other. If he have not time to examine a bill and return it to the Legislature, previous to the close of the session, he can file it in the office of the Secretary of State, to be presented to the next Legislature, whether the session be a called or a regular one. By this means, there can be no skulking. So far as the veto power is concerned, under the operation of this provision, it will be nothing more than a mere revisory power—nothing but what can be controlled by a majority of the Legislature. Again, in regard to joint resolutions, the proposition contains simply a provision that all joint resolutions which require the signature of the Governor, shall go through the same formula as bills. That is sufficient to indicate to the Legislature, at all times, the course to be pursued in regard to resolutions of this character. I hope the Convention will re-commit, in order to make the change which I have suggested.

Mr. SPANN inquired if the amendment was in accordance with the instructions which had been given.

Mr. MORRISON. I will reply to the gentleman, that I have literally complied with the instructions given to the committee, and reported the section so amended, but now move again to re-commit, with the instructions I have read.

Mr. SPANN. It strikes me that we have no rule permitting such a proceeding. If this Convention give positive instructions, we have no right to disregard them. The mere fact that they failed to make a report, [A VOICE. They have made a report,] the suggestion to re-commit again, with instructions, appears to me to be improper. I have no opposition whatever to the proposed amendment; I merely view it as an informal proceeding.

The PRESIDENT. The Chair will remark that the Convention re-committed this section, with instructions. This morning the committee reported the section amended, according to the instructions given by the Convention, and the chairman of the committee now moves to

re-commit the section, with other instructions, which is proper and formal.

Mr. WOLFE. It appears to me that the first motion would be to concur in the report. Would it be proper for the Convention now, whether concurring or not, to re-commit?

The PRESIDENT. There is no question of concurring. The Convention directed an amendment to be made and the committee merely did its bidding, and it comes back in the manner directed.

Mr. MAGUIRE observed that he had no particular objection to the proposition, except to that part of it which provided that no bill should be sent to the Governor during the last two days of the session. He did not see what use there was in having the Legislature in session if it were not at liberty to send bills to the Governor for his approval, until the end of the session.

The question recurred upon the motion to re-commit, with instructions.

Mr. GORDON. Is it in order to amend the instructions now?

The PRESIDENT. It is, sir.

Mr. GORDON. Then I move to amend, by striking out the words "by a majority of all the members elected," and inserting "by three-fifths of all the members elected to that House."

I wish just to say a word in relation to this amendment. If this amendment be adopted, it will not place in the hands of the Executive any greater power than he possesses under the present Constitution; it will be about the same.

Mr. KELSO. All the difference is in regard to the number.

Mr. GORDON. Under the present Constitution a bill can be passed in the House, by thirty-four members; the majority of a quorum. Then if the Governor veto the bill, it will require fifty-one votes to over-rule that veto; a majority of all elected. That makes a gain of seventeen. So it takes seventeen votes to over-rule the veto of the Governor under the present Constitution. But if the provision be amended, in the manner which I have suggested, it will require sixty to pass a bill after being vetoed; an increase of nine only. So that in point of fact, there would not be as much power in the hands of the Governor as under the present Constitution.

Mr. KELSO remarked that if a majority of the members elected, after having been advised by the Governor of the imperfections of a bill, and his objections to it, thought fit to pass it, he was of opinion that they ought to have the right to do so.

Mr. BORDEN observed that he understood the Convention had several times decided upon incorporating in the new Constitution the provision contained in the old instrument upon this subject.

Mr. WOLFE proposed to amend the instructions, by striking out the word "three" and inserting "five."

The motion was not agreed to.

The question was then taken upon Mr. Gordon's amendment, and was not sustained.

The question then recurred upon the motion of the gentleman from Marion (Mr. Morrison) to re-commit the section, with instructions, and the Convention divided thus—ayes 54, noes not counted.

So the section was re-committed, with instructions.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the section in relation to banks.

The PRESIDENT. The pending question is on the motion of the gentleman from Ohio (Mr. Pepper) to re-commit.

The question being upon re-committing, with the pending amendment, it was put, and lost.

The question then turned upon the following amendment, which was offered by the gentleman from Franklin.

Mr. BORDEN. If it be now in order, I will move to amend the amendment of the gentleman from Franklin.

The PRESIDENT. It is in order.

Mr. BORDEN moved to amend the amendment, by submitting an article in favor of free banking, providing for banking associations under general laws, prohibiting the passage of laws tolerating the suspension of specie payments, providing for a registry of notes and ample security, for the redemption of the same, the stockholders of such associations to be individually liable for all debts and liabilities of every kind, in case of insolvency the billholders to have the preference, no greater interest than allowed by law to be received, the General Assembly may also pass a law imposing other and further restrictions, provided that no such law providing for a general system of banking shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election, and been approved of by a majority of all the votes cast at such election.

Mr. BORDEN stated the object of his amendment to be, to leave it optional with the Legislature to pass any act on this subject as the wishes of their constituents directed. Also, in case the Legislature should pass any act of the kind, to insure its submission to a vote of the people, for their approval or disapproval.

[Messrs. Biddle and Kelso here addressed the Convention at length. Their remarks are withheld for revision.]

Pending the question, on motion,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day.

The pending question being on the amendment offered by Mr. BORDEN to the amendment of Mr. SHOUR.

Mr. OWEN. It is not my purpose to make a deliberative argument at this time on the general subject of banking. Under other circumstances, perhaps, I should have done so; but I believe the Convention will hardly expect it from me at the present moment. I should not have risen at all to say a word on the present occasion but for the purpose of replying to some observations which were made by the gentleman from Switzerland, (Mr. Kelso).

Sir, there may be very excellent and sufficient reasons against what is sometimes called the "system of free banking"—but which, in my opinion, ought not to be so called. If established under proper guards, it ought rather to be called "a restricted or general system of banking." I say there may be good and sufficient objections against such a system, but most assuredly the gentleman from Switzerland did not state them. One of his objections was, that it would not do to have security by United States or State stocks, because the value of such securities is exceedingly fluctuating. He reminded us, truly, that our own bonds had been down to sixteen or twenty cents on the dollar, and inferred that such might be the case again. Now, in my opinion, there is quite as much certainty as there is in anything yet to come—for all things human are more or less uncertain—there is quite as much certainty as there is in anything in prospect before us connected with the action of human beings—that these stocks never will materially depreciate again. As it regards the depreciation of the stocks of the United States that could not happen without a total disruption of this Union, or its severance into two republics—one Northern, and one Southern. Sir, I will not even talk of such a state of things; I pray God that if such a disastrous event should ever happen I may not be here to witness it. [Applause.] I make no calculations for a contingency like that.

Then as to our State stocks, I do sincerely believe, that we have learned—dearly indeed by experience, and experience is the best teacher, though he charges severely for his lessons—such a lesson in regard to public debt that almost all Conventions, meeting as we do, will place in their Constitutions restrictions in regard to public debt similar to that which we have already passed. If they do, the result will be, in all States as in ours, that their securities will appreciate in value; or, at the least, will remain as good as now they are. I say, that looking at this matter as reasonable men, we cannot expect that these securities will materially depreciate. Sir, it is not proposed to take these securities at their full par value, but to take them at their market value—at the value at which in two hours, or at most in twenty-four hours, they can be converted into specie in the markets of Philadelphia or New York, or Boston. Our four per cents, in a few years to be—

come fives, are now at 82 or 83. Their present par value to make them equal to sixes would be 66 $\frac{2}{3}$ only. The friends of general banking propose, that all stocks taken as security, shall be, or be made to be, equal to stock bearing six per cent. Then our State stock would be taken at 66 $\frac{2}{3}$ only. At that rate it would not only be as good as specie, but about twenty-three per cent. better. A hundred thousand dollars of our State stock, taken at 66 $\frac{2}{3}$ would be worth a hundred and twenty-three thousand dollars, and could be immediately cashed, so as to bring that amount in specie.

It is for this reason, that these stocks, thus taken, as a basis for bank issues, are a better security than gold and silver.

Again, if we could be certain that gold and silver would always remain in the vaults of a bank ready to meet such demands as might be made upon it, that would be one thing; but all experience in the history of banking tells us, that it is not so; that it is with gold and silver in banking vaults, as it is with the cups and balls of the juggler. You see the ball placed under a cup; "presto, pass!" and the ball is gone. The specie remains in vault during a few hours, or days, or weeks. It is counted; and then there is nothing to prevent its being transferred, the next hour, or the next day, or the next week, to some other bank, there to be counted over again. This is so notorious that I need not farther allude to it here. I say, therefore, in this connection, that I consider these stocks to be far more permanent, absolute, certain security than gold and silver can be as a basis for bank issues.

I am opposed, sir, to a portion of the New York system of banking—to that portion which permits mortgages to be taken on real estate as security. Ultimately, they may be good; immediately they are not good; and to secure the bill holder, it is not sufficient that the security should be good at some time in the future; it must be immediately convertible. I am opposed to any system which is satisfied with any security in banking, except that which can, in one, two, or three days, be converted into specie without sacrifice. Now we know this to be the case with United States stocks, or with any stocks of solvent States. The holder can telegraph to New York or Boston to-day, and tomorrow his stocks can be sold at their market value; at all events by dropping a half per cent. below it.

I am in favor of a system of banking—if banking is to be adopted at all—where there is sufficient attestation of the fact that this bill which a man takes out of his purse and holds in his hand, has, corresponding to it in certain safe vaults, its representative in value. I am in favor of bills being countersigned by the Auditor, and that his counter-signature shall not be placed there until he has in his vaults the value of that piece of paper. I would

have no other paper as money but such as bore that attestation. The gentleman from Switzerland (Mr. Kelso) supposes, and uses it as an argument against this system of security by stocks, that when the unfortunate holder of a note finds that it is not paid, he is to come to the Auditor; the Auditor is to tender to him a thousand dollar bond, and demand the change; and if he cannot make change, how, says the gentleman, is he to have payment for his bill? Cannot the gentleman imagine some better mode of managing than that? Has he so little experience in commercial affairs, as to set up that objection as a bug bear? Of course it would be otherwise arranged. A power of attorney ought to be given to the attesting officer or officers to sell the stocks out whenever he or they shall be informed by the protest of its notes, that a bank has suspended specie payments. I am in favor of that sale being made within ten days. No longer grace would I give to those who send out notes, without the ability to redeem them. But the idea of tendering a man a thousand dollar bond under such circumstances is rather new to me—very surely there is no bank of snow for that buck to be caught in. I think he will get away. [Laughter.]

Mr. KELSO (in his seat.) I guess we will catch you there, before we have done.

Mr. OWEN. All right, if you do; as there may be a temporary and slight depreciation of stocks, resulting from those fluctuations to which the money market must always remain liable, I am in favor of this power of attorney; to be granted to the Auditor of State, containing a clause that it shall be lawful for that officer, if he find the stocks depreciating, to withhold the dividends until they make the stocks good; and I am farther in favor of having these stocks to the full amount, dollar for dollar, before any bank notes are issued. Before notes to the amount, say of one hundred thousand dollars, shall go out of the Auditor's hands, there ought to be, safely locked away in his vault, the value in stocks of the United States, or of this, or other solvent States, of one hundred thousand dollars, over and above this; then there is the necessary specie capital of the bank. But there should be, at the least, this one first security.

I am asked, whether I am in favor of saying that there shall be a general system of banking! I am not. I am in favor of introducing into the Constitution, a clause purely restrictive—not creative—not declaring that there shall be a general system of banking, or any other system of banking. I am in favor of leaving that matter wholly to the Legislature, or, in other words, to the people, who will instruct the legislators as to whether they want a system of banking at all. If they are satisfied to take the bank notes of other States, coming in upon them, as is the case in

the State of Illinois, then they will instruct their representatives that there shall be no banks; and in that case, no banks let there be. But if the people decide to have banks, then I desire a set of Constitutional restrictions in advance. I would, then, leave the matter to the Legislature, with certain restrictions. I would make a provision in the Constitution—not a creative, nor yet a negative provision; but simply a restrictive one.

Sir, in regard to the present State Bank, there are some good features about it. The mutual responsibility of the branches is an excellent feature; a feature which has saved the bank, established its reputation, and made its money good. If there is to be a State Bank at all, that feature should be imperative. The chief objection that I have to a State Bank, is, that it is a monopoly; and I do not use this word in the odious sense in which some gentlemen delight to use it, but in the strict, technical sense, only. It is a monopoly; a granting to one class of men, certain privileges and immunities which you do not grant to another class of men, under the same circumstances, and upon the same conditions. It is a violation of that very clause, introduced by the gentlemen from Monroe, (Mr. Read) and which we adopted the other day. Some gentlemen say that that clause has nothing to do with free or State banking. Sir, I say, without hesitation, that when I voted for that clause, I knew well that I was voting for a clause which could not be carried out if we declared that there shall be any monopoly in banking; if we declared that A., B., and C. should be allowed to establish a State Bank, and that E., F. and G., and all the other letters of the alphabet, should be denied the privilege. As being a monopoly, I am opposed to a State Bank.

I am opposed to it for another reason. You cannot make such a charter perpetual; common sense protests against that; it must be subject to renewal. You may make it for five, or ten, or fifty years, but at the expiration of that time, a question comes up, Shall the charter be renewed?

A similar question was once presented to Andrew Jackson, when the United States Bank induced Congress to renew her charter, and the President was asked to approve the renewal. Fortunately for America, her National Bank and her Executive, then stood opposed to each other. Each possessed vast power. That struggle of giants convulsed the nation. Had it been a compromise instead of a struggle; had the President of the United States, with the unbounded popularity he then enjoyed, chosen to combine with the President of the United States Bank, for any sinister object, who shall estimate their united strength? It was the fashion a few years ago, to talk somewhat idly and vaguely about the union of the purse and sword. That would have been such a union, in

very earnest. The President—the Commander-in-chief of the Army and Navy of the United States, the source of all executive power and patronage, on the one hand, and on the other, the Bank, wielding a capital of fifty millions, granting accommodations to the amount of a hundred millions; the Great Regulator, the Commercial Ruler, the Mighty Institution, possessing the sinews of war and dispensing or withholding, for the moment, at her nod, plenty and prosperity throughout the land, without distrusting the strength of our form of government, we may devoutly pray, that it may never be tested by the influence of a conjunction so ominous.

Four millions of dollars were paid to the State of Pennsylvania for a charter less valuable than that which was vetoed in 1832. No government upon earth ought to grant to a company of individuals a privilege worth four millions of dollars. While such grants are considered within the province of legislation, political corruption is as certain as the rising of the sun. I have already had occasion to express the opinion, that the power which is inherent to-day in such a sum as four or five millions of dollars, corresponds to that which lodged, five hundred years ago, in a steel-clad army. A legislative body cannot more safely be tempted by the one, than intimidated by the other. You may as well plant men, with arms in their hands, around your State House, besetting its entrance and threatening its inmates, as to place in the path of duty to be trodden by your representatives, a seductive pecuniary temptation amounting to millions of dollars.

Sir, even with such temptation in the way, our National Government happily escaped the threatened danger. What averted it? The personal character of an executive officer. But that system is ill-guarded and indefensible, which relies, for its sole protection against dangers so threatening, upon the personal character of one man.

The temptation, in the case of a proposal to renew the charter of the State Bank of Indiana, is of identical character to that which assailed Andrew Jackson, and is admitted to have corrupted a portion of the Legislature of Pennsylvania. The difference is in degree only, not in substance or effect. While our State shares in a banking monopoly of its own creation, what security have we against the recurrence, here at Indianapolis, of scenes, involving a smaller stake, indeed, yet similar in character to those enacted in Washington in 1832?

I shall vote, sir, against every provision that may be introduced here to make imperative the establishment of a State Bank, or the establishment of a general banking system. I shall vote to prohibit the State from being a stockholder in any bank. But I shall vote, also, against any clause positively forbidding a bank with branches, mutually liable for each

other. That is a favorite idea in many portions of the State; and to exclude it would endanger the adoption of the Constitution. For that reason, though opposed to it, I am willing to leave it an open question.

But I am not willing to leave the whole subject of banking as an open question, without certain general restrictions thrown around it. Past experience shows that it is not safe to trust to State Legislatures without such restrictions.

Mr. STEVENSON. I rise to detain the House but a short time upon this question, and the detention shall be very short, for this reason, if for no other: that I do not know a great deal about it. The object of any party in establishing banks, I have no doubt, is for the purpose of making money. Bankers, I repeat, have but one object, and that is to make money by their operations. But, sir, the country has another object. The object on the part of the country I take to be this: that by banking establishments it should be furnished with a convenient medium of circulation—one that is good, and that will answer all the purposes of the community. The country needs banking institutions for the purpose of carrying on its commerce. The commerce of the country, limited as it is, could not well be carried on without banks or a system of credit. Hogs, cattle, wheat, and everything of the kind, have to be purchased, and we have not men of capital, or, at least, men who keep the capital by them, to purchase the produce of the country. They must be purchased on a credit on the part of the purchaser, or the banks must credit him, and give him cash in hand on his bill. This is one object on the part of the country in having banks—that they may obtain credit; to convenience the purchaser, that he may buy up the produce of the country.

Now I hold that a system of free banks will never accomplish this object; that it cannot effect the conveniences of the object of having banks placed at suitable points and distances in the country to enable persons to purchase the produce of the country. But before I undertake to show that this cannot be done under a system of free banking, I wish to notice the argument of the gentleman from Cass (Mr. Bidle).

Sir, we are frequently led into error by the adoption of false principles. The gentleman from Cass says that "money is the standard of value." He says that it is the measure of value as a pint is a measure of water or a bushel a measure of grain. Now I hold that money performs no such office in the country. It is not a standard or measure of value, and can not be. A standard, Mr. President, measures the same amount every day. It is always the same. A pint or a bushel is the same to-morrow that it was yesterday, or has been to-day; but contains no such measurement. It is a

representation of value, but not a measure of value, because it may not be the same to-morrow that it is to-day. A hundred dollars in money may buy a hundred bushels of wheat to-day, but not so at another time. It is not, therefore, permanently the standard of anything. Nor can it be so; and we are led into error when we say that it is a measure or standard, instead of being the mere representative.

Let me illustrate: you send a ship load of wheat to England, and they send you a ship load of something back, and the difference in value of the two ship loads is paid in money, so that when we take it as a measure, and take into consideration that money has an intrinsic value that should not be disturbed, we are led into error. Money has an intrinsic value just as wheat and corn have an intrinsic value, and no more. But the gentleman supposes that you might establish a system of banking that would disturb the value. If you increase the currency you disturb the value of gold and silver. Now let us examine this matter: He says that this objection applies to State banks but not to independent banks. Let us look at it a little. The gentleman says it does not apply to independent banks. How does he propose to establish them? He will buy a million of State bonds, for which he pays a million of dollars. That money goes into circulation as it was before. He brings here his million of bonds and issues a million of paper upon their security. Now, when this is applied to his theory, does it not disturb the currency just as a State bank would do under the same circumstances? Most certainly it does. It adds a million to that which is already in circulation, which must have a tendency to cheapen money. If that million which he paid for his State bonds was put out of circulation, then you would not disturb the currency; or, in other words, "the standard of value."

Then the gentleman's theory as applied to his own system is worth nothing. It must fall to the ground in the estimation of any individual who can see an inch before him. So much, then, for the gentleman's theory and his plan that will not disturb the standard of value.

But, Mr. President, we have had a State Bank, and gentlemen say that it is a monopoly. Sir, if I purchase a million of State bonds, and the State permits me on that security to issue a million of notes, by which I draw interest on both, is not that a monopoly? But gentlemen say that the system is free to all. I say that it is the greatest humbug that I have heard of for the last half century. Sir, none but the rich can bank. They say that it is free banking. I ask you where is the farmer or the mechanic that can bank? Then, sir, if the State Bank system is a monopoly, the other is much more a monopoly; and the one has an advantage in this respect over the other.

But, Mr. President, the great object of banks in this country is to enable the farmers to receive cash for their products—that the men who sell their products are not to credit the purchaser, but that the banker should do the crediting business. And how is that? You sell your hogs, or your cattle, or your grain, and you get your cash for them; but strike out of existence your banks, and I ask you where you are to obtain your cash for your produce? Sir, you must then sell your produce on credit; and the whole business of the country must be done upon credit alone.

Now, sir, if you adopt a system of banks throughout the country that cannot be sustained, and you do the very same thing, your business must be done upon credit. Well, Mr. President, you can have banks at different points of the State, but the principle of one should be the principle of all—the mutual liability principle. Had it not been for this principle, your bank at Bedford would have been down long ago. But that principle above all others sustained it, and but for the mutual liability principle, not one bank in the country would have sustained itself. Look at the course of trade and see whether you can sustain these free banks in the State. How does it move? You have commercial points to which your produce is always moving, such, for instance, as Madison. The commerce is moving continually to that great commercial point from which it is shipped to the east. Now I say that your independent banks cannot be sustained in Indiana as they can in New York, for this reason: New York is near the great head of our commerce. They send their money from home to buy your produce, and the distance is a great item in banking, for the further you send your notes away the longer they are in returning, and the more interest you realize. This money is good in the State of Indiana for another reason. You purchase your goods in Philadelphia and New York, and that kind of paper to the merchant who supplies your goods is good to him because he purchases his goods at these great commercial heads, and this money is good just as far as their merchandise is extended through the country. Their money, I say is good, but how is it with your free bank money? Take the money of a little bank here, and I am willing to admit that it will be good and safe in its locality; but how are these banks to sustain themselves in competition with the banks at New Albany, and Indianapolis, and Madison? Here is your produce bought up by your merchants and shipped to New York. Your bankers at these points are enabled by these shipments and the merchants living at the same points, to make the exchanges with the merchant in the east. Your banks furnish them with bills of exchange, but they are not willing to take your bank bills and travel a hundred miles into the interior of the

country and ask for bills of exchange there. No, sir, they will go to the banks in the neighborhood of the place where they make their heaviest purchases or shipments, and thus your banks at New Albany, and Madison, and Indianapolis, will be good when your banks in the interior are worth nothing at all, because the banks of the interior cannot send their money a great distance beyond them, and the laws of trade must in the end break up these banks unless they are sustained by the mutual liability principle. Now let me ask why is this? Is it the interest of the banks at Indianapolis, and New Albany, and Madison to sustain these banks? No, sir; their interest is to break them down, because by doing so they will bring to themselves the business of the whole country. Then I say that these banks will sweep down all the little banks, and your chief banking business will be done at the great commercial points, and the rest of the country will have to say "good-bye" to banking. If you make these institutions sustain the banks of the interior then they will be sustained, but in no other way.

But, Mr. President, there is another thing that will operate on this matter very powerfully, against all the banks of the interior. This banking is to be done by men of capital, and you may search the State, from one end to the other, and wherever you find men of large capital, you will as certainly find them in favor of independent banks, and opposed to the mutual liability principle. They wish to bank themselves. Now let a man commence banking, at Indianapolis or Madison, with a capital of two or three millions of dollars, and how are the branches of the interior to sustain themselves? Whenever it is the interest of bankers, having a large capital, to make a "run" on those of smaller capital, they will do so, and will break them down. Then I say, that under this free banking system, the whole banking operations of the country must be done by a few men of large capital, at the great commercial points; and whenever the merchant wants an accommodation, he must go to these points. He cannot be accommodated in the interior of the country. Now, sir, whenever the country tries the experiment, they will find that these things are true; and I am anxious that the Convention should not tie up the question in such a way that the Legislature may not have the power to alter it, at pleasure, whenever the requirements of the country may demand an alteration. I look upon the proposition of the gentleman from Allen (Mr. Hamilton,) as being the best thing on the subject, and it is what I should be glad to see adopted. I will read it, for the purpose of showing what is best to be done now.

If we were in New York, I should have no fears; but as we are in Indiana, remote from the great commercial head, we cannot expect our commercial operations should be the same

as operations at New York. Here is the proposition:

"The Legislature may authorize the establishment of a new State Bank, with Branches, to go into operation after the expiration of the present Bank charter, under such regulations as may be provided by law; but in no case shall the State be a partner, or have an interest therein, or in any branch, except as may be occasioned by the investment of any trust funds of the State therein, as loans. And the safety of the funds so invested, shall be secured by their preference in payment, in case of insolvency, over the stocks of individuals in the bank."

Now, Mr. President, the words "State Bank" here signify nothing. It is not necessary that it should be a State Bank similar to the one which we have now established. It says that there shall be a bank and branches. It leaves the question entirely open. It does not say what the security shall be, or what it shall not be. It does not say that you shall establish a branch similar to the one you now have, but simply that you may provide that there shall be a branch, and leaving the whole details of it to the Legislature. I tried to get an opportunity of moving this proposition as an amendment to the proposition now before the House, and I trust that we will consider it carefully before we have done with this question. And I repeat again, that we cannot have branches established through this country to enable the commerce of this country to be carried on as we should desire, without the mutual liability principle. That principle cannot be applied to independent banks, but it may be applied in some form to a State Bank; and I must say that it is the most essential principle, in my estimation, when we regard the safety of the billholder and those whose business requires them to use banking facilities.

Mr. PETTIT. I regret, Mr. President, that I am not able to bring more learning to this subject, than I possess. I will, however, give my views upon the subject, such as they are. I have risen, Mr. President, rather to say what I will not do, than what I will do upon this subject; I have risen rather to say what I will not vote for, than what I will vote for. I always listen with great pleasure to the delegate from Cass, (Mr. Biddle,) on all subjects on which he may speak, but I must say, that this morning I listened, with unusual pleasure, to his remarks upon this question. He showed the Convention that he had pried deeply into the subject—the whole subject of currency. He directed our attention to its rise, its progress, its fall. All these points alike underwent the powerful scrutiny of his examination. Sir, I was glad to see that gentleman coming round to what I regard as sound views on the subject of currency or banking.

I will not, however, tarry longer to pass encomiums or eulogies on what he said, or on

that gentleman's head or heart. His talents and his worth are known to, and I trust appreciated by, every gentleman on this floor.

The subject of banking and currency, Mr. President, is said to be an abstruse one. It is said that it requires a great deal of learning, and that of an especial kind and quality. Now if this be true, I must admit, that of all other subjects, I am the least qualified to discuss or debate this one. It is told to me, that there is an immense amount of financial learning; that, in short, to stamp certain papers and endorse them, and turn them over, and put them in this pigeon hole to-day, and in that one to-morrow, and a third one next week, and to take them from this corner of the vault and put them in that, exhibits a great deal of financial skill and learning, and that it makes money. Now, with all due deference to great financiers, I must be allowed to say that I do not believe anything of the kind. If there be learning in that, I at once confess myself ignorant of the subject, and ought not, therefore, to detain the Convention.

But, sir, I have not risen to say what system of banking I will go for, but to say that I will not go for any system, unless certain provisions and restrictions are adopted, among which are the following:

In the first place, any system of banking, to secure my approval, must be equally open to all, whatever restrictions may be imposed; and wherever there is any restriction to be imposed, let it be imposed upon all alike.

In the second place, the stockholders must be individually liable for all the debts and liabilities of the bank.

In the third place, the State must not be a partner in the bank.

In the fourth place, there must be ample security to the bill-holder.

These four fundamental propositions must be found in any charter or any *project* that can gain my vote, or my support. Why so? In the first place, I recognize that principle which I have more than once avowed during the session of this Convention, for which I have drawn my political sword, and thrown away the scabbard—which demands that all members of the body politic shall have equal rights and equal privileges. Restrain one, and you must restrain all; set one free, and you must set all free. That system, and no other, can get countenance and support from me. Sir, upon what pretence, at this period of civilization, it can be said that a few men should have political or pecuniary advantages over others, I do not know. I ask for no such advantages. I would spread out the broad platform of equal rights; and I would place all men, and all men's children, upon it, and tell them to scramble for the prize, whether it be money, or honor, or political distinction and preferment.

Then, sir, let me ask, does the State Bank of Indiana occupy this position? Will any State Bank that is proposed to be organized, occupy this position, and leave us all occupying that standing, upon the same basis of equality of rights? Sir, you say to me, a private individual, that I shall not loan my money, but at a certain per centage. Sir, I ought not to have said "my money," or to talk about money at all, for, in God's truth, it is little I have, and when I get it, I never can keep it. [A laugh.] I, sir, have none to loan. But I make the simile. You say that I shall not loan my money, but at six per cent. But you say that a privileged few, whom you arrange into a political corporation, with the power of making all the currency of the State—you say to this one hundred, or six hundred stockholders of the State, out of a million of population—you say to them that their dollar may count to them as two, three, or four dollars. You say to me that I shall not loan my dollar for more than a dollar; and yet you say to these men, that each of them may loan his dollar for three dollars, thereby obtaining eighteen per cent. per annum, while I am not to have more than six cents increase or interest upon my dollar. Now, sir, is there any justice, any equality, any right, in this? Is there the germ here, that we should seek to find, of political equality, when we are moving away the rubbish, to lay anew the political foundations of our Government, on which all may stand, with equal right, and equal power, and equal interest? [Applause.] Sir, so much for that proposition. To gain my support, it must have this proposition in it, in the first place.

Secondly, the stockholders must be liable for all the debts and liabilities of the bank. Why not? Do you say that men may go merchandizing, or farming, or to any other business or avocation of life, and not be liable for their contracts, or for their mishaps, or for their wild and reckless indebtedness? No, sir, no. And here again applies the fundamental principle, that in trade you should not give one man an advantage over another. Why should not all business be carried on according to the dictates of every man's judgment, or of every man's interest? Leave every one free. Leave government to its legitimate duty, and you will find that its sphere of action is contracted indeed. All the duties and liabilities of a government to the individuals composing it, are small, and in a small compass. It consists simply in protecting the weak against the strong—and in giving redress for wanton or accidental injury done. You should say, therefore, to your fellow-citizens: "You are all put upon a par. Go and do the best you can; preach if you please; practice law if you please; make shoes, or tinker, or tailor, or do anything else your fancy chooses; and when you find that one business is no longer desirable, then change it for another, which may suit you better. You are all as free as the air;

judge for yourselves, what is best and proper for you to do. Let each man contribute to the State, as much as is necessary to keep up your laws." That is what I would say. You must have men to enact and enforce your laws, and these are all the legitimate subjects for which money should be taken from the pockets of the people.

Now, sir, I protest that the State should not be a stockholder in any such scheme as this, and I object on this principle, that the money of the State is derived from everybody in the State. However unjustifiable it is, it is the money of every man, banker or no banker, though he may be ever so averse to risking his own money; the State comes forward and says: "I will risk it for you," thus driving a man to be a banker whether he will or no. There is no fairness, no justice, no equality in that. I say, let each man bank who will, as I would let every man make shoes or clothes, or follow any other vocation in life. Then, sir, the stockholders must be liable for all the debts and liabilities of the bank. It is but a partnership, like any other partnership; it is no more nor less. It is merely two, or ten, or a hundred, or five hundred men united together, for the purpose of making a currency on which to make a profit, just as they would in vending goods; and for all their contracts I would make each one who would have shared in the profits liable, just as I would make the partners of any other copartnership concern liable for the debts of the establishment. Yes, sir, I would make them each liable for the redemption of all the paper which they may issue.

On this next proposition I may, perhaps, with the indulgence of the Convention, be allowed to tell an anecdote. ["Consent! Consent!"] The State must not be a partner. Now of all the fallacious, and absurd, and ridiculous propositions which I ever heard—and I mean what I say to the fullest extent—is the proposition that there is any propriety in the State undertaking to make money from the people for the benefit of the people. [Great applause.] And that, sir, is the allegation in favor of a State Bank. You say that the State Bank has accumulated a large amount of money. Why, sir, who did they make it from? From the customers of the bank? or in other words, from the people of the State. The State is the people, and the people are the State. Now, to make money from the people for the benefit of the people, is the grossest solecism that I ever heard contended for; and it is only fitly comparable to the anecdote which I once heard of three boys. An aged farmer who was excessively proud of his children, and was always lauding their sharpness and capacity for business and trade, praised in a very particular manner one transaction which occurred between his three sons. It was a very rainy morning, and they could not work out of doors. They went, however, to the barn

to attend to their cattle before breakfast, and that being done they went to trading with each other. Well, all the capital they had to trade upon was their jackets, and by way of showing their skill in bargaining they sold and re-sold, and swapped and re-swapped their jackets until each one had gained three dollars profit on his operations, and when all was concluded each had his own jacket. [Laughter and applause.] Now that is precisely the situation of our banking operations; nothing more and nothing less. It is utterly absurd to say that you can sustain this one and skin that one, and rob a third and cheat a fourth, all for the benefit of the same men. [Applause.] There is no truth in it. It is an absurdity, covered with a flimsy gauze, well calculated to deceive and delude; but it does not delude that man who probes this thing to the bottom.

Well, sir, I do not propose to go more fully into the subject of currency. I am satisfied, however, that the plan as detailed by the gentleman from Cass this morning, (Mr. Biddle,) is not only the best, but that it is a safe one; and that it secures to all the same rights, is in the first place the darling object with me. From that ground I cannot be driven; on that ground I will stand alone. I will stand from the opening to the close of this Convention, on that proposition, that all the people of the State should be on a par, that the restriction of one should be the restriction of all, and the liberty of one the liberty of all; and from that position I cannot be moved.

Now, sir, I must notice one proposition that fell from the gentleman from Switzerland (Mr. Kelso) this morning, for whose opinions in matters of law I entertain great respect, and certainly no disrespect to him personally, but I must be allowed to controvert that position; and that is, that we can do nothing with the State Bank; that it must live out its life; that it has vested rights. Sir, I hurl to the winds as trash, all your declarations as to vested rights. There is nothing of it; I pronounce it a fabrication, without a foundation on which to stand. Sir, tell me not of vested rights in a State of freedom where all are equal. Let me say to you that the first and the only one, the one that lies above and below all others, the first that I recognise as a vested right, is the right to have equal laws, equal institutions, equal privileges, and the right to resume these whenever they have been temporarily taken away. The vested right of the people to be equal, is far above and far below all others. It stands as an impenetrable fortress against which the light armed troops of monopoly will dash without effect, and but to be defeated. Demand for your people political and pecuniary rights, and these secure all other rights. Tell to me that the State may make a vested right in a bank! Then, sir, your honorable Senators and Representatives to-day in your legislative halls, may go and continue

this charter forever. They may make it perpetual if you please, and then say that it is a vested right. And must it last forever, even though the worm be gnawing at your very vitals? Are all your interests to be prostrated before this mighty dragon? Will you tell me that there is a vested right in the few to cause all the evils which have been so vividly portrayed in this Convention? Have these few all the vested rights and the people none? [Applause.] No, sir; no! This doctrine is neither of the law nor of the gospel. There is no truth in it. There is no vested right but the vested right of the people. Whenever a man is born in this broad land, he has a vested right; and that vested right is, that the laws shall be equal by which his rights are to be secured; that none shall by law be placed above him, either in political or pecuniary advantages. There is the whole doctrine of vested rights; the paramount right of the people, and not the paramount right of the few.

Mr. President, I have not made these remarks with any design to attack the bank, or any other vested rights. I am perfectly willing that that institution should live out and *shave* out its miserable existence. [Laughter.] Let it go on. I will not undertake to make any bitter attack upon it. I will not undertake to be a prophet or the son of a prophet: but I may be allowed to express my firm conviction that that bank like all others, when it comes to be wound up, will be soul less at any rate. You tell me that that bank has made a large profit; that it has accumulated an immense sinking fund, but I ask gentlemen to point out to me the number of banks or shaving shops, or paper machines, or whatever else you may choose to call them, that have been established in this Union, that have ever wound up and paid out of their stock all their liabilities? How many out of your million of banks, that ever did run out, and divide out their stock as it was put in and redeem their bills? You cannot find one out of five hundred that have ever wound up solvent, nor will you find one in five thousand hereafter. They cannot do it. I will not say that it is the business of this Convention or of the present Legislature to withdraw from the State Bank the capital stock, the saline fund, or the college fund, or the loan fund, or the school fund, all of which have been deposited there, and I trust, for the benefit of the rising generation, that that too will not be absorbed; but I will not say that I have not my misgivings on the subject, for I do expect when seven years more shall come round and the State shall say "pay me back the money I deposited here as capital stock—the million of specie which I deposited," that the bank officer will say first and foremost "Oh, you withdrew your patronage from the bank, and we have to stop; our paper was out largely and it took all the specie to redeem our bills. Now here is

an old banking-house or two and a few protested or slow notes; you may have these in place of your specie." "Oh then," says the State officer, "give me back the college fund?" To which the bank replies, "That is all gone, too. And you cannot much regret that for the college is an aristocratic institution which ought to be levelled to the ground." "Well then" says your officer, "if that is gone, do give me the saline fund." And he receives for an answer, "Oh, that is a matter of no consequence, there is plenty of salt coming from the Kanawha and the lakes. There is no necessity for salt." [Laughter.] Then last of all, staring and wild with anxiety in his countenance he says, "For God's sake give me the little pittance that belongs to the rising generation, the money that belongs to the boys and girls; give us that that they may learn to read and write, and know their rights and learn the history of your wrongs and oppressions." And they will answer you, "no, we have sunk that fund on purpose that we might keep them in ignorance, that they might not know how we have wronged them."

Mr. President, I have not got my own individual consent to believe that any system of paper issues will ever be found to be ultimately solvent, or beneficial to any community. It is the baseless fabric of a vision; it is evanescent as the air and though it may apparently be good and available for the time, it will be found to be worthless and good for nothing. I have not therefore got my consent—I have not brought my own judgment to be satisfied with any such system at all. But, sir, I represent a constituency who are confiding, and to do my own will as against theirs, I would not under any circumstances. I am not in the habit of talking of my constituents. I more usually talk about principles, but let me say that the people that I represent are a free banking people. What kind of free banking with restrictions they left me to say; but they said, "go against the State Bank of Indiana. We are willing it should live out its fitful days, whether it should die in peace or be haunted as a murderer." I am willing that it should live out its time, and if proper restrictions could be obtained I would go for a system of free banking by which all the citizens of the State should have the same rights and privileges. It is idle to urge as an objection, that the rich few only will bank. That may be true. You cannot give to all men riches. That is impossible. But leave the door open—leave the road free for all to walk in; and this is all that they ask and all that they can ask. Sir, I do not propose to make all men equal in every respect. If a man has got but one eye, I do not propose to give him another. I do not propose to use the plastic hand of nature and restore the amputated arm. I do not propose to give a man wealth where industry or fortune has not given it to

him; but I do propose that all men shall have equal rights and liberty to acquire wealth and happiness and comfort. [Applause.] I will not detain the Convention longer.

On motion,

The Convention adjourned.

TUESDAY, JAN. 7, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BADGER, a delegate from Putnam county.

The journal of yesterday was read and approved.

The Convention then proceeded to the consideration of the

ORDERS OF THE DAY.

The pending question being upon the amendment offered by the gentleman from Allen to the amendment of the gentleman from Franklin.

Mr. MATHER said—

MR. PRESIDENT: Before we proceed with the orders of the day, allow me to call the attention of the Convention to the fact, that one of our most worthy associates is absent from his seat in this Hall this morning, mourning the loss of one on whom his every hope of life or joy on earth seems to have concentrated.

The wife of my colleague, Mr. Beach, died in this city on yesterday, and will be buried to-day at 10½ o'clock.

To those who are *really* acquainted with my colleague, and know the strong social feelings of his heart, his attachment to his home and his family, I need not say that this event has overwhelmed him with sorrow. And if it is ever right for *man* to mourn or sorrow, when the will of *God* is manifested toward him, those of us who know the character of the deceased, and her many noble qualities of mind and heart, feel constrained to acknowledge that our friend mourns not without cause.

Although it might appear to the public to be altogether appropriate for the Convention to adjourn for a few hours upon an occasion like the present; yet, considering the very great length of time we have been engaged here, and knowing, from the quiet and unassuming character of my friend, his dislike to force his grief upon the attention of others, as his friend, I will not ask the Convention to do so.

But as there are quite a number of the delegates, who come from the immediate section of the State where my colleague resides, and design to absent themselves from the Convention for a few hours, for the purpose of attending the funeral services, I *will* ask for myself and those friends who desire to attend, that, while thus absent, the Convention will not take any

vote upon the important question now under consideration.

[Mr. LOCKHART then addressed the Convention. His remarks will appear hereafter.]

Mr. NILES. I rise, at the suggestion of many gentlemen, to move an adjournment until two o'clock, P. M., in consequence of the death of the wife of the Hon. W. Beach, delegate from Elkhart county, in order to allow his friends in the Convention to attend the funeral. It would be out of place here to pass any eulogium upon the deceased; but it strikes me that it would be no more than showing a proper mark of respect for the memory of a worthy woman, and an evidence of sympathy for our friend in his great affliction, to adjourn over until the afternoon.

Mr. N. then moved the adoption of a resolution embodying the sentiments above expressed, which was unanimously adopted;

And then the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the orders of the day.

The pending question being on the amendment to the amendment offered by Mr. Borden,

Mr. READ of Monroe. I have, Mr. President, for a subject so extensive, but a short speech to make. In the outstart, I wish distinctly to say that I am opposed to any and every system, bearing what name soever it may, which authorizes any man or any set of men to coin paper into dollars, to circulate as the money of the country.

I believe in the words of Mr. Webster, "that of all the contrivances for cheating the laboring classes of mankind, none has been more effectual than that which deludes them with paper money;" and that "this is the most effectual of inventions to fertilize the rich man's field with the sweat of the poor man's brow." I wish these words, so true, and so powerfully said, could be made to ring in the ears of every voter in the State of Indiana.

The scheme of paper credits to circulate as money, is utterly indefensible upon any sound principles of political economy. It is condemned by all experience. It enables the few to fix the value of all property, and to exercise a tyranny over men, which no despot upon the face of the earth, at this day, dares to do. As money is the standard by which we measure value, it is the same as though we should grant to a favored few the power of lengthening or shortening the yard stick at their own discretion, or of changing the weights and measures, which regulate the buying and selling of all the products of the country.

Were the question of paper money a new one, from the sentiments which have already been expressed on this floor, it would find few advocates here. This remark applies just as much to the gentlemen of one political school

as to those of the other. But I must here say that because other States adopt and legalize a vicious system, I cannot recognize it as legitimate reasoning, that we must do the same thing in self defense. It was this very process of argument that so long kept up the system of commercial restrictions—the Chinese wall system of commerce—against the common sense and the philosophy of the world. No one defended the system as good in itself. But it was held, that because one nation sinned against the great laws of commercial reciprocity, all nations must do the same thing. This kind of teaching in morality would be in this wise: Honesty is best, provided other men would only be honest, but inasmuch as they will not be, we must be dishonest by way of self defense.

Look at the report of that part of the committee in the Ohio Convention which favors banking. Their argument is, that in Ohio they cannot give up the practice of circulating paper credits as money, because we of Indiana, and other States, will not do the same thing; that it will bring upon them a tide of paper not so good as their own, and which they cannot control. We, in our turn, report exactly the same argument, and in similar words.

According to this reasoning, we can never have any reform. We must forever go on in the same course of error, because others do; and these again must do the same thing from the necessity of following our example.

Banking, as we have it in this country, is an ingenious method of enabling men to live on the money they owe. It is nothing less. Every bank bill is a certificate that somebody is in debt. What is bank borrowing? You go to a bank—you give what? Why, your credit. You get what? Why, the credit of the bank; but with this slight difference, you get no interest upon your bill of credit; but upon their bill of credit you pay, as the case may be, some seven or twelve per cent.

The greatest living political economist well pronounces the system from "beginning to end a compound of quackery and imposture;" and again, "an engine of unmixed evil."

Under this system, with fewer causes of commercial embarrassment than is existing in any other country upon which the sun shines, we have suffered from constantly recurring commercial disasters and revulsions beyond all other countries. More free from scarcity, from general pestilence, from war, than others—almost wholly exempt from these evils, which are elsewhere the causes of commercial embarrassment—we have through the agency of paper money brought down upon ourselves all the results of these frightful scourges and curses of mankind.

McCulloch in his great work, the Commercial Dictionary, says, "that had a committee of clever men been selected to devise a scheme by which the public might be tempted to engage in

all manner of absurd projects, and be most easily duped and swindled, we do not know that they could have hit upon anything half so likely to effect their object, as the existing American banking system."

At one time, it fills the country with gambling, speculation, and fraud; at another, with the wrecks of bankruptcy. Now, the delirium of commercial excitement; then, the collapse of prostrated business and ruined credit. So long as we have the system, we must, every ten or twenty years, perhaps oftener, run the same cycle of expansion, contraction, and explosion. The capitalist only is profited. He only, reaps a rich harvest, amidst the wide-spread ruin. The laborer, the man of moderate means, is always the loser. After the great crisis of 1837, in our large cities, laborers, both male and female, begged employment, for their very bread; and that in a land overflowing with plenty. Tell me of the tyranny of the English Edwards, and Henrys, and of other despots, in debasing the coin of the country. We do the same thing, and to a much more ruinous extent, when we permit the debasing of the currency by paper.

The only paper which can be safely tolerated, and which produces no disturbing effects upon the value of property, is bills of exchange, which are founded upon the products of the country, and certificates of deposit, which represent actual specie, and used for business convenience, and to prevent the labor of counting.

The transmission of coin is not needed, to any great extent, even in the largest commerce. The whole is done through the medium of bills of exchange, representing exports and imports. Thus, it has happened in a commerce of two hundred millions, between Great Britain and the United States, that not two millions of specie has passed between the countries; and, perhaps, not even a dollar of that needed in carrying on this commerce.

The gentleman from Vanderburg, (Mr. Lockhart,) in his speech of this morning, referred to the immense products of the Wabash valley, and the banking facilities required in its exportation. This commerce can be carried on, great and increasing as it is, should it even go up to hundreds of millions, as it will in a few years, just in the manner in which all great commercial operations are now carried on. How much does the Indiana State Bank do, in this great work of exporting our products? Just next thing to nothing. The presence or absence of the institution, even now, would no more affect this immense commerce, than the presence or absence of the gnat upon the horn of the ox, would affect the sturdy and quiet old animal.

It is astonishing how little, either of specie or of corporate promises, has to do with the commerce, either internal or foreign, of any country. In England, by an actual examination of the stamps issued at the stamp office, it

is ascertained that the business turning upon bills of exchange, is not less than twenty-five hundred millions of dollars, while all the specie and bank bills of the country, are not over twenty per cent. of that sum. In the United States, no one estimates the internal trade done upon bills at less than one thousand millions of dollars; but all the paper money in the country is not over one hundred millions. This shows the fallacy of the argument in favor of paper money, as a business necessity.

In principle, I am wholly opposed to it. It is, as Talleyrand once said, strength in the beginning, but in the end, it is weakness. All wealth is the result of labor, yet, strange enough, the man who does the labor, never has the wealth. In other countries, the direct operation of government takes it from him; in the United States, paper money, more than any other one cause. It has not a single countervailing advantage.

Gold and silver are money, and, say what men will, nothing else is money. Other things may, it is true, be the signs of money, but gold and silver alone are everywhere acknowledged as such, and pass current in all the marts of the civilized world—at New York, at London, at St. Petersburg, and at Canton.

The Constitution of the United States declares, that no State shall make anything but gold and silver coin a tender in the payment of debt. Thus the great commercial truth, that gold and silver alone are money, is, in the United States, an axiom of constitutional law. But in practice, no people ever so far departed from this truth.

The voting of this Convention, I suppose, settles the question, that paper credits are still to be issued as money, under the authority of the new Constitution. It now remains, to determine the best and safest guards to incorporate into the Constitution, in order, as far as possible, to prevent the evils of such credits. I will at once say, that I would not adopt any system of banking, as a part of the Constitution. But I would, first of all, forbid the State from becoming a partner in any such system of banking, and then lay down restrictions for the security of the bill-holder.

I am, sir, most happy to find, that so few in this body, advocate the old system of State partnership in banking operations. This is the feature in our present system, which I have chiefly opposed, at home and in this body, and to which I will never give my assent.

My worthy friend from Owen, (Mr. Dobson,) insists that free banking has upon it the smell of salt water. Now, that may be true. I shall not defend free banking. But I will say, there are smells more unhealthy, than that of salt water. Government banking smells of monarchy; and not only that, it sends forth a strong and most offensive odor of public debt. It originates in the creation of a public debt, al-

ways. It did so in Indiana. It aids in creating public debt. It has done so in Indiana, and but for the State Bank, our debt would never have been what it is. The Bank of England, the mother of government banking, commenced in a government loan. It helped the government debt onward, until it is now beyond computation. This debt has changed the whole face of society. It has filled that country with palaces and with poor houses. It has divided the people in the following ratio: six paupers to one gentleman. National debt, stimulated and kept up by its convenient mistress, a national bank, has done more to produce this condition of society, than all other causes combined. The union of church and state has not proved so great a curse, as the union of bank and state. The one and the other are monstrous and incestuous unions—contrary to the spirit of a republic—and, so far as I am concerned, as an humble citizen of Indiana, I will, to the last, forbid the banns.

But we are told of the control which the State has over its own bank. Well, sir, the bank is much more likely to control the State than the State the bank. General Jackson, in his farewell address to the American people, on this point well says: "Such an institution will be pregnant with the same evils (yes, he says the same evils) produced by a Bank of the United States, although its sphere of action is more confined, and in the State in which it is chartered the money power will be able to embody its whole strength, and move together with individual force to accomplish any object it may wish to attain." Whether this has proved true in Indiana, I will not undertake to say. The privileges and exemptions which it has from time to time exacted and obtained, sufficiently show its power in controlling legislation.

State banking! What is it? Why it is giving into the hands of a *few*, money belonging to the whole people, borrowed upon their credit and for which they are responsible, to control and manage, and thereby enabling them and their favorites, so far as the bank funds will permit, to manage and control all the business of the country.

How may this be done, and how is it actually done? You want a loan, say five thousand dollars, for any business operation. You present yourself to the bank, with the very best paper. The first question is, What do you wish to do with the money? If you wish it for an operation competing with a bank director, or a bank favorite, you will be very likely to be quietly refused.

When the banker deals upon his own money, it is his own business. But when he asks me to give him State money to drive me from the field of competition, I will not consent to it. Sir, it is utterly wrong. It can never be reconciled with the principles of justice or of equal rights. We condemn in other forms of govern-

ments, the granting of stars and garters and titles of nobility. By a section already adopted, we have forbidden these distinctions. But this is a small matter; it is the merest nothing compared with giving to a few hundred men in Indiana the money of the State, with which to control the business and the property of the State.

The argument of the State becoming a business operator to make money off her own citizens, is not worth a serious refutation. It is simply an absurdity. Besides, it is easy enough to show that however it may be with individuals the State, in the long run, never does make money. The State makes the losses, the individuals concerned make the gains. What has been will be, to the end of time. The man must be blind to all exaerience and deaf to all sound reasoning, who seriously expects the State to make money by engaging in business, either in its sole capacity or as a partner. The thing is too preposterous for serious debate.

But, Mr. President, what are the proper and best safeguards to be applied to whatever system may be adopted?

In addition to individual liability and the control of State officers over all issues, the great source of safety to the country is the requirement of special collateral security, for the redemption in gold and silver of the bills or notes issued; such security not to be in the hands of the banker himself. All securities which he has in his own keeping are nothing. They may be in the vaults to-day and out of them to-night. It is all one as though a man were required to endorse his own note. Such endorsement may be very good, but it is quite useless. The simple object of the security is to make it the interest of the banker at all times to keep on hand specie for the redemption of his paper. The safest security, because always convertible, is Indiana or United States bonds. This is a security, too, which the banker can best give, because while held in pledge it will yield him a dividend. It has still another advantage. The dividend may always be retained, as required in the Ohio banking law, to make good any depreciation in the stocks.

This requisition, upon its very face, bears evidence of safety beyond any banking restriction which has ever been devised. If it fails there is but one step further; and that is, the total destruction of paper money.

But it is objected, your securities will not be sufficient. Then, I ask, is it better to have no securities at all? Suppose, upon this system, a bank does fail—a thing which will not often occur, because it has no interest to fail—there is, in the first place, all the capital of the bank, which is in its own control; and there is, besides, the collateral security, which is under the control of a State officer.

Another objection is, that it will require too much capital to bank in this way. Undoubtedly

it will require capital, and more of it than upon any other plan. This is admitted by all who understand the system.

But the very evil heretofore has been, that men without capital have attempted to bank, have exploded, and thrown the losses upon the public. It is objected, first, that the security is too little, then that it is too much. Objections beautifully consistent, and as profound as consistent! But if the requisition of security in stocks of dollar for dollar is not deemed sufficient, counting the stocks at their market value, but not above par, ten per centum beyond that amount may be required. This has been proposed in other States, in order to make "assurance doubly sure;" and it is said that such requisition would not prevent banking.

If any man proposes to bank upon credits, whether State or United States, I say at once, it will never do. I favor no such scheme. But if, in addition to the capital which under the existing system the banker is required to have, he must superadd his own personal liability and a collateral security not in his own hands, how, in the name of common sense, does this make the bank less secure, so far as the billholder is concerned, than he would be without these securities.

Unless there are securities in other hands than his own, all rules laid down by the Legislature, such as requiring a certain proportion of specie to the issue, are utterly futile, deceptive, and good for nothing. The rules may be very wise and necessary, but it is for the bank to observe them or not, just at its own discretion.

But, sir, I must step aside from my purpose to make my respects to my friend from Vanderburgh, (Mr. Lockhart,) and to assure him, that I do not give up the principle of the taxability of State or United States bonds. The question of equal assessment and equal taxation, I trust will not be given up. The subject is now in the hands of a committee. The people of Indiana demand equality in the burdens they must bear in supporting Government.

But since the allusion of the gentleman, I must say to him, that I hold, that moneys on hand may be taxed—that moneys loaned to individuals may be taxed, and that no less, moneys loaned to governments may be taxed.

I hold that it is not nor ever was the law, that a man may withdraw his property from taxation, by investing it in stock of any kind. In the case of *McCulloch vs. the State of Maryland*, Chief Justice Marshall says, as to the bank stock belonging to its own citizens, "it still continues liable to taxation, as a portion of their individual property, in common with all other private property in the State." Money of an individual invested in United States stocks is surely "private" property. But the case always referred to on this subject, is the Charleston city case. The city taxed the United States stocks—a majority of the Su-

preme Court held that the tax was unconstitutional, as being a tax levied "upon the contract subsisting between the government and the individual. Had the *interest* of the citizen in the bonds been taxed, or his *income* derived from them, the implication of this very decision is in favor of the power. It is not, however, my purpose to argue this point, but to re-affirm my opinion, that not only is it not justice, but not law, that there can be in our midst a privileged class, living in affluence and enjoying all the benefits of government, and yet escaping all its burdens.

But, Mr. President, to return to my subject: I will support no system of banking, as a system, whether State or free. I will support principles and restrictions only, without which no system, with my consent, shall exist. I will never vote, that the Legislature shall create banks of any sort or description. I will vote that they *shall not create them* unless coupled with certain restrictions and liabilities, leaving the power, under such restrictions and liabilities, in the Legislature, to be exercised or not, according to the will of the people.

Sir, the following three propositions relating to this subject, have for many years constituted a part of the proposed creed of one of the great political parties of the State of Indiana, (the democratic party,) and have conspicuously adorned the columns of the newspapers under their control in every part of the State. It appears to me, that they are principles worth something more than "to point a moral, or adorn a tale;" or even to form a heading for a newspaper, or secure votes to a party. I think they have a definite meaning, which ought to be carried out in practice. These principles are:

1. "No connection between the Government and banks.
2. "A gradual return from a paper system.
3. "No grant of exclusive charter and privileges by special legislation to banks."

I shall, sir, favor those restrictions, which in my opinion will the most certainly secure these principles, and at length bring the country to the true commercial and constitutional medium of exchange. By the general adoption of a species of securities which will gradually disappear, this object will be accomplished, and banking will be restored to its legitimate sphere, which is not the emitting and circulation of bills of credit.

Were I to consult my individual views only, I should first and last, in the beginning and end, under all circumstances, without compromise or concession, record my vote as I do my opinions, against the whole paper credit scheme of money, under any form or restrictions.

These, sir, are my sentiments in the abstract and in the concrete, and the same which I maintained before I was a candidate, and such

as I have endeavored to maintain as a delegate in this body.

Mr. FOSTER said—

MR. PRESIDENT: The subject under consideration is one of much importance; and it depends upon the action of the Convention in relation to this question, whether it will be for the weal or the woe of the people of the State. I know that it is somewhat irksome to listen to an individual recapitulating the same arguments that have been heretofore used, and, perhaps, much better used, by other gentlemen; but, as Elihu said to the three friends of Job, I also wish to give my opinion; and, although I may coincide with several gentlemen who have gone before me in the result at which they have arrived, my illustrations may be somewhat different from theirs.

I was much pleased the other day with the remarks of the gentleman from Montgomery (Mr. Carter). I may be allowed to say that I coincided with him in the drift of his observations; but, when the vote came to be taken upon the amendment of the gentleman from Wells, (Mr. Bascom,) I must confess that I was somewhat startled—though not for the first time in my life—to see how far a man's practice would differ from his theory; for what he asserted in one breath, he voted against with the next.

Sir, I will not undertake, like the gentleman from Cass, (Mr. Biddle,) to go into a philosophical investigation of this question, nor, like the gentleman from Switzerland, (Mr. Kelso,) into a statistical argument; but I intend to make a few brief remarks, in compliance with a duty which I owe to myself and to my constituents; and I am sorry that my respected colleague and myself differ so much on this matter. It is true, as he has said, that, during the campaign, when canvassing for a seat in this Convention, that he did avow his principles in favor of free banking, just as I did, in the alternative of bank or no bank, in favor of State banking; but I undertake to say that, while a considerable minority of the people of Monroe are opposed to all banking, and but a small minority in favor of free banking, a large majority of the people of that county are decidedly in favor of a State Bank in contradistinction to any other. [Great applause.] And, Mr. President, I will state further, that those in my county who are opposed to all banks would, in the alternative, prefer a State Bank to a free banking system. Sir, I am well acquainted with the people of that county. I have resided among them for more than twenty years; and I think I may say, without egotism, that I am better acquainted with the sentiments, the resources, the wants, and the wishes of the people of that county than my colleague; for I am in more daily intercourse with them than he is, and that, perhaps, necessarily arises from the difference of our avocations in life. [A voice—"At

him again."'] I am happy to find, Mr. President, that, like myself, he is opposed to all banking in the abstract. Now, sir, it will be remembered that, at an early period of the session of this Convention, that gentleman read us the farewell message of General Jackson. He has given us a second reading of it to-day, and I now move that it be ordered to be engrossed for a third reading on to-morrow [Great applause and laughter.]

Permit me now to pay my respects to the two very eloquent gentlemen from Tippecanoe and Posey. I must confess that I was utterly astonished at the demonstration which they made. The gentleman from Tippecanoe raved like the wild bull of Basham. Yes, sir; and I must say that, when I see men of such talent as the gentleman from Tippecanoe, and men of such high aspirations as, the gentleman from Posey, I was utterly astonished to discover that, in all they had to say, there was nothing but declamation. They reminded me very forcibly of an incident that occurred some years ago. A very honest Dutchman was invited to a party by a neighbor who moved in a little higher circle than that in which he was accustomed to move. He determined to accept the invitation, and thought he would conduct himself with great propriety. He said to himself that, when we would go to the door, he would knock very politely, and inquire: Is the Colonel at home? That he would then pay his respects to the lady of the house; and, once obtaining admission, he would pay particular respects to the young ladies. Well, he had all this in his mind, was perfectly prepared to conduct himself with great propriety, dressed himself in his best clothes, went to his neighbor's house, knocked at the door, and, by some unfortunate accident, had forgotten all his previous arrangements; and all that he could say when his knock was answered was, "Who keeps the house?" [Laughter and applause.] So it is with the two gentlemen from Tippecanoe and Posey. After all their declamation, it just amounts to this: "Who keeps the house?" [Laughter and applause.]

Sir, we have been favored with a relation of the history of banking in this country; and in the remarks made by gentlemen disparaging allusions were made to the continental money which was used during the war of independence. Much as it is to be regretted that that money was bought up by speculators, and that the real advancers received but little in return, let me say to gentlemen that that money fed and clothed our hungry and naked soldiers, and that in all probability, but for that money, we should yet have been under the British yoke. [Applause.]

Now, in the establishment of the United States Bank we all know that that was a solvent institution, that it was founded upon the credit of the Government, and that, although it

was a monopoly, it yet afforded vast commercial facilities. But the difficulty was this—it had not a sufficient basis; it was founded not merely upon the credit of the Government, but the Government had not sufficient stock in the institution to control it, for it only owned one-fifth, amounting to seven millions, while private individuals owned the balance amounting to twenty-eight millions.

The private stock-holders had the control of the institution to all intents and purposes. Had it been under the control of the United States, had Congress been able to control it in the same manner in which our Legislature controls the State Bank of Indiana, there is no doubt that that Bank would have been in existence to this day. But, sir, that institution—or rather I should say the directors of that institution—treated the Government with contempt and disrespect. The Government Directors had no voice in its management; and if they even ventured to express an opinion as to what was proper to be done in regard to the interests of the Government, they were not only disregarded, but hooted down. We all know the persecutions to which Mr. Whitney, one of the directors, was subjected, because he acted the part of an honest man.

Now what was the fault of that Bank? It was not merely a bank of discount and deposit; it was not merely a dealer in bills of exchange, but it entered the arena of commerce; and that was the first reason of its downfall—because it embarked in speculations which were not germane to the interests of the institution.

But, sir, even an institution of that kind, is, in my opinion, infinitely superior to your independent banking establishments. No doubt gentlemen recollect that some thirty years ago, no less than forty-three banks were manufactured in Kentucky; and that, at the expiration of one year, only three of them were in existence. It is true that there was a commercial crisis, and no doubt that helped to hasten their downfall; but it is equally true that that crisis was brought about by speculators and scoundrels. Well, sir, the most amusing thing that I know of in the way of banking, is this: We used to estimate the value of paper by gold and silver; but some years ago they established a different principle, making paper the standard; and under that standard the Spanish dollar varied from one hundred and one to an hundred and five per cent.—paper being the standard and the precious metals bringing a premium. Thus, a paper dollar was at par, while the specie dollar was above par, when indeed and in truth, the paper was at a discount. This was certainly an anomaly—such as I hope we are not soon to see again.

But, sir, I am a little astonished at the course which some gentlemen have taken on this question; and inasmuch as politics have

been heretofore adverted to, I may be permitted to allude to them. And I must say that when I see a number of whigs on this floor, advocating the free banking system, I am inclined to put my own construction upon the course which they thus pursued. I know that they were always in favor of a National Bank, although they deprecated the idea during the Harrison canvass. Well, sir, they now repudiated a National Bank, just as they have repudiated a great many other doctrines which they could not stand by, and which the people have long ago repudiated; and now they wish to appear a little more democratic than their neighbors; and as a last resort, as a last plank to cling to, when the ship has gone into pieces, they wish to establish a free banking system. And let me say this is for political effect—that it is to revolutionize the State; that while they now forget to talk of the United States Bank, and a protective tariff, they will cling to this free banking system and make it a party question throughout the State; thus endeavoring by this means to ride into office and obtain the government of the State if they possibly can. [A voice—"But they can't do it."] While then, I am opposed in the general to all banks whatever, I am perfectly willing to admit that it is necessary that we should have banks of some character. Had we no banks, the State would be inundated with the paper of Kentucky, and Ohio, and other States; and how easy would it be for an individual in any of those States under the free banking system, to borrow fifty or an hundred thousand dollars and come into our State, and purchase our hogs, and cattle, and mules, and grain, and leave us their rag money in payment, hardly escaping with our surplus produce beyond the borders of the State, before this money is discovered to be perfectly worthless. Now, sir, this would never happen from any institution under our own control. With a banking institution established here we would at all times be able to understand its condition. We would know nothing of the banks in Kentucky, and Ohio, or elsewhere, and we would not, consequently, be at their mercy. Sir, that is one strong reason with me why we ought to establish a bank of some kind, so as to keep out of circulation the money of other States.

But it is contended that all banks are monopolies. I have no hesitation, Mr. President, in admitting that they are all monopolies—whether they are State Banks, or free banks, or independent banks; and I am disposed to say that if there should be any monopoly in the State, in the shape of banking, it should be in the hands and under the control of the State, and not in the hands of speculators. Banking, when well conducted, is known to be profitable. I heard a friend of mine say that last year, when in Ohio, the directors of banks hardly knew what to do with their dividends. They

had to increase the salaries of their cashiers, and other officers, and even when that was done, they were able to share a dividend of twenty-five per cent. upon their stock. Now, if banking is profitable, I want the profits to go into the coffers of the State. If the profit is made from the people, as was boasting said yesterday by the gentleman from Tippecanoe, (Mr. Pettit,) let that profit go into the State Treasury, and return again to the people. Let it be applied to the liquidation of our State debt; let it pay the expenditure of the government, or let it go to the education of the rising generation. If, on the other hand, you establish free banking all over the State, all the profit that will accrue will go into the hands of a board of speculators, united together for the purpose of fleecing the community.

Mr. President, I have been somewhat astonished to discover that most of the gentlemen of the bar, on the floor of this Convention, have advocated a system of free banking, in opposition to a State Bank. Now, sir, I think it would be quite as well, if those gentlemen would take the beam out of their own eye before they attempt to take the mote out of the eye of their neighbor. I have not heard the first gentleman on this floor make a proposition that the practice of the law should be open, and free to all. Not one of them, Mr. President, has made any such proposition. They talk of monopolies, and they yet sustain a monopoly among themselves. Every man may preach who chooses. Every man may practice medicine if he chooses; but no man may practice law unless he has undergone an examination for the purpose, and obtained a license; a license that may be procured, whether the requisite talents are there are not. A license is to be obtained; and no matter whether the applicant has one or five ideas above an oyster, if he comply with certain forms, he can be permitted to share in the monopoly of the bar.

Mr. NILES. I believe there is no gentleman of the bar on this floor, who is not perfectly willing to meet the gentleman from Monroe and abolish all exclusive privileges to lawyers.

Mr. FOSTER. All that may be very true, Mr. President, but I should like to see it carried out in practice, and my allusion has only made the gentleman wince.

"The flesh will quiver where the pincers tear—
The blood will flow where the knife is drawn."

(Applause.) Sir, it is known that all the learned professions are open except the profession of the law; and I have seen an individual, notwithstanding the provision in the old court, and the Constitution of the United States, forbidden to plead his own case in a court of justice. Sir, the course of the gentlemen remind me of a circumstance that occurred in Virginia, an anecdote which, with the consent of the Convention, I will relate. [Cries

of "go ahead," and "let's have it."] There was in that State a celebrated preacher by the name of Weems; a man whose name will long be remembered; who wrote a life of Gen. Washington, of Franklin, and of Marion, and, perhaps, has done more than many voluminous writers, for instilling a love of country and patriotism in the minds of the youth of our beloved country. He had obtained considerable notoriety, and, as is often the case with men of his class, he was not unfrequently subjected to impertinent arrogances. One day, as he was approaching the court house, at Goochland, a lawyer, in company with others of his fraternity, standing on the steps of that building, observed, "Here is parson Weems coming; we will have some sport." The parson approached the court house, and was accosted by Mr. Morris, after the compliments of the day, as follows: "Mr. Weems, a curious circumstance occurred this morning, which I must relate to you. As I was coming to court, passing a creek, I saw a man fishing. I asked him, in a very genteel way, what he was fishing for? 'The devil,' was his reply. Aye, said I, do you get any bites!—do you get any nibbles? 'Yes,' said he, 'nibbles and bites both; but I can't catch him.' Well, said I, what are you bated with? 'Only a parson,' was the answer." "Well," said Mr. Weems, "I, too, passed a brook this morning, and saw a man fishing." I inquired of him what he was fishing for? He answered he 'was fishing for the devil.' The devil you are, said I; do you get any bites? 'No,' said he. Do you get any nibbles? 'No,' was the answer. What are you bated with? 'A lawyer,' said he. How do you account for your want of success? 'Why,' was the very significant answer, 'because Dog wont eat Dog.'" [Great laughter and applause.] Thus it is, Mr. President, that while the gentlemen of the bar, with an exuberance of patriotism, go against all monopolies, they still take good care to keep up their own. [Laughter.]

Now, sir, what is this celebrated free banking system? It is admitted, on all hands, that the course pursued in the State of New York is this: An individual, or a company, who wishes to commence banking, goes and purchases United States, or State Stocks, and deposits them with the Auditor, or Comptroller. The officer then issues bank paper to the same amount as the stock deposited. This is only as collateral security, and there need not be a single dollar of specie deposited as a basis, for the redemption of this banking paper. It is well known, sir, that money men are foolish enough to believe that bank stocks, or State stocks, are far superior, as a security, to specie. Mr. President, I cannot coincide with such an opinion. We all know that stocks are liable to a great deal of change. Sometimes they are appreciated, at other times they are depreciated. They may be at par to-day, and be-

low par to-morrow. They are nothing like a true standard of value. A company of men may deposit a hundred thousand dollars of State stock to-day, and in less than three months that hundred thousand dollars may not be worth fifty thousand dollars. But when you deposit specie—the gold and silver—in the vaults of the banks, it is there; and it is unchangeable. It speaks for itself. It is not liable to the mutations which are brought about by the falls and the fears of the stock exchange. Then, to establish a free banking system in this State, it occurs to me, would be nothing more than to establish a corporation of monopolies.

My respected colleague intimated to this Convention, that when he was canvassing for a seat on this floor, he hardly heard a single voice raised in favor of State Bank. Let me tell that gentleman that I advocated a State Bank, and that if I had the power, the State should be the only stockholder, and that all the profits realized by banking should go to the State Treasury, and lessen the amount of the people's taxes.

But it is said you cannot have a State Bank unless one-half of the stock be held by individuals; because they understand banking better than your State officers. All I have to say in reply to that is, that if you make your defalcation an act of felony there will not be so many stealings in future as there have been heretofore; and I have no doubt that under such a resolution you might have a good banking system under the control of your own officers, having rash penalties annexed.

But it is said the only legitimate way to bank is by means of bills of exchange. Now men are known to fail in the commercial world, and it is very doubtful whether your free banks could establish a correspondence in London, or at Amsterdam, or Berlin, or Copenhagen, or Petersburg. And under these circumstances they could not enter largely into commercial transactions unless they were in partnership with some well known house in New York, or Philadelphia, or some of the eastern cities. And you will find that the paper issued by individuals under a free banking system established in this State, would not probably, go further, than the county in which it was issued. You may go to Louisville or Cincinnati, and with such paper as would be issued under that system you would not be able to purchase goods except at an enormous discount; and the discount would be much greater were you to take that paper to eastern cities. The whole result then would be, that we would have in the State nothing but a batch of "shin plasters." These, of course would be of no service so far as commerce is concerned. They would not answer the purposes either of banking or of commerce. On the other hand, if we establish State Banking, let me tell gentlemen that the credit of the

government will give to such a bank its solidity, and if part of the resources of Indiana are embarked in a State Bank the implied faith of the State will have more effect in making such a currency good and receivable in other States, than all the free banking systems that you can adopt.

As I remarked in the outset, I merely rose for the purpose of giving my opinion. When the question was presented here of "bank or no bank?" I voted "no bank;" but I shall hereafter vote for a State Bank with proper restrictions and modifications in contradistinction to the free banking system. I wish it to be understood that I would desire that the present State Bank should be wound up whenever the term of its Charter expires. It is well known that you cannot make them wind up their business before that time. They have vested rights; and I believe in them, the opinion of the gentleman from Tippecanoe [Mr. Pettit] to the contrary notwithstanding. And while that bank is winding up let us be making preparations to establish another bank, throwing around it proper restrictions; and above all that the note holders under all circumstances shall have preference in payment. I care not how coercive your restrictions may be; I go for the restrictions, and by no means for the free banking system, under any circumstances.

[Mr. HENDRICKS next addressed the Convention for upwards of an hour. His remarks will appear hereafter.]

MR. CHAPMAN. I have no desire to make speeches upon this or any other subject, but I cannot resist the impulse which I feel, to expose the errors of some gentlemen, in relation to the position occupied by the friends of Bank reform, as I understand it. Almost every thing thus far said by the friends of the State Bank, has been grossly erroneous, so far as the New York system is concerned, and I have before me unquestionable authority to sustain my assertion. I mean, sir, the volume of statistics from the Secretary of the United States Treasury, relative to the condition of all the banks in the Union, which was published by order of the present Congress, and copies of which are in the possession of many members of this Convention, as well as myself. It is to me a matter of surprise, when gentlemen have at hand an authentic document like this, that they will persist in denunciations without the slightest foundation, in fact, to back them. If they do not altogether misrepresent, this testimony conclusively shows that they totally misapprehend the real history of the New York system.

Among other statements equally erroneous, it has been said that thirty-one out of the one hundred and four free banks, so called, had proved total failures, and that all the rest were likely to meet the same fate, and thus demonstrate the rottenness of the system. Now, I will prove the utter fallacy of these statements

by reading two short extracts from the document. The first is from the official report of the Comptroller of New York, under the date of December 30, 1848. He says:

"Since the passage of the general banking law, thirty-one of the free banks have been closed by the Comptroller, whose aggregate circulation at the time of the failure was, - - - -	\$1,417,545 00
Am't redeemed by the Comptroller, - - - -	1,357,424 00

Leaving the outstanding circulation, including \$4,069 of Atlas bank certificates, - 60,121 00"

The Comptroller who made this statement, was no other than Millard Fillmore, now the President of the United States. However I may regard his political sentiments, I place some reliance upon his official statement of facts. Other gentlemen of this Convention will not readily question his veracity.

But for further illustration, I will read from the report of the Comptroller of a subsequent year, dated January 2, 1850. Speaking of these same thirty-one failures, Washington Hunt, the successor of Fillmore, says:

"Since the passage of the law, (General Banking, passed 1838,) thirty-one have failed, and were closed by a sale of the securities pledged with the Comptroller. In most of these cases, the proceeds of the securities were insufficient to redeem the entire circulation; therefore a *pro rata* dividend was paid to the bill holders, and certificates issued for the balance, payable out of any additional means which the banks may have possessed. But in every instance, a small portion of the circulating notes are still outstanding. The presumption is that they are mostly lost, and will never be presented. The question is, what shall be done with the funds remaining in the Comptroller's hands for their redemption? The amount thus held is \$32,819 79, belonging to thirty banks; and as a majority of the failures occurred *almost ten years ago*, there is no probability that this balance will be called for by the bill holders."

I might read many other extracts, demonstrating the superiority of the *security* system of New York, over any other ever adopted in this country; but I will merely invite gentlemen to read and examine for themselves. They will find evidence enough in this document alone, not only to disprove and overturn their assaults, but also to show conclusively the great superiority and safety of that system over our own.

The majority of the failures, of the New York banks, under the new system, took place "ten years ago," says the Comptroller. Have gentlemen all forgotten that *all* the banks in Indiana were insolvent at the same time? I am aware how easy it is for a majority of the people to forget such events, but I have a vivid recollection of this one, for I took an active part

in rousing the public mind to the necessity of forcing a resumption, notwithstanding the friends of the banks generally, declared it would be ruinous to make the attempt. The State Bank and branches remained thus suspended for more than four years, shaving the people at the rate of from 5 to 15 per cent. on exchange, and until enough had been thus speculated from the people to enable the banks to resume. Even at the last, it took the hardest kind of legislative screwing to force a resumption, and the act requiring it was passed in the face and eyes of the report of the then President of the Bank, who protested that a resumption of payment would be ruinous to all concerned.

But, Mr. President, I do not wish my position to be misunderstood. I am personally hostile to all systems of paper-money banking, such as have heretofore existed in this country. I do not believe in the necessity or propriety of making every bank a manufactory of paper money: and in this feature I have long conceived lies the chief evil of American Banking. No other country tolerates such a monstrosity, nor is it in any degree requisite to the business of legitimate banking, which is merely the borrowing and loaning of credit, and transactions in exchange. Take away the privilege of making paper currency, and you might very safely permit the banking business to be just as free to every man, as any other business whatever.

But the friends of the State Bank system not only adhere to this evil in its worst shape; they go further. They seem to believe in the doctrine of Bank and State, quite as firmly as any people heretofore have in that of Church and State. We are in the habit of saying that governments should be divided into three departments, but we, in fact, have a *fourth*, and it is the most powerful and privileged of all. Some gentlemen seem to reverence it as much as ever did zealous devotee a Church Establishment. Without a State Bank department, they think we can have no good paper money, and they are as sincere as those who believe that there can be no religion without an "established church" and "no church without a bishop." I doubt, sir, whether such gentlemen have yet ascertained whether or no "saltpetre will explode."

Yes, sir, we have not only a regular bank department, under our present Constitution, but we have by law, irrevocable by the General Assembly, clothed it with the most important powers of legislation, affecting the currency, and credit, and property of every citizen. Some gentleman has objected to the term "bank parlor," as mere slang. Let those who thus regard it, go the elegant chamber of the State Bank, if they can obtain permission, and they will not only see cause to change their opinion in that particular, but they will have the gratification of seeing the legislative hall of the Bank. They will not find it as wretched a place as that in which the representatives of the people meet. In the

well-appointed hall of the Bank, periodically assemble its representatives, and in secret conclave, pass laws relative to credit and currency, according to their sovereign will and pleasure. But its power of positive legislation is no greater than its negative. Gentlemen express the greatest fear and alarm at the very limited veto which we give to the Governor, who is elected by and is responsible to the people. But they have not a word of objection to the power which the Bank possesses by its charter—that of an unqualified, unrestricted, unequivocal, and imperative “vested right” to veto any act of the General Assembly relative to the Bank. It possesses this monstrous power, and may exercise it any time, without responsibility to any body! And all this, in addition to that influence which associated wealth always can easily exercise over legislation generally. No act of the General Assembly, concerning the bank, can be passed without its assent; and I have never known an act defeated which it desired to be passed. This alone would determine my vote against the perpetuation of such a system.

But another objection is that State Banking depends upon State borrowing and State debt. This is admitted by its advocates. They admit that the people would never submit to a tax to raise necessary capital, for the benefit of those who might be entrusted with its management. The capital for any future bank must be borrowed, as it was borrowed for the present bank. That was really the commencement of the State debt which has crushed and disgraced the people of this State. The Bank debt led us into the debt for “Internal Improvement.” All our subsequent follies, in my opinion, may be traced back to that original error.

We are told of the “profits” of the system of State banking. But I maintain that the State has not made a cent by it, even if we disregard what I have just alluded to. The old State Bank which preceded this was a total failure, though it is now almost forgotten. Under the present system, we lost a million of dollars of bonds sold to the Morris Canal and Banking Company—we lost some eight hundred thousand dollars, by the attempt of the bank to bolster up the Internal Improvement system in its last throes—the school fund has been encroached upon to expand the dividends of weak branches—the people were shaved out of thousands by the suspension of 1838 to 1843; and I have not a doubt that ultimately every dollar of the State capital will be sunk.

I admit that the Bank has been comparatively “well managed” for the last seven years, and has acquired general confidence. But this has nothing to do with the “system.” The experience of other States as well as this in time past, proves the system to be wrong. So disastrously has it worked, that six States by their Constitutions prohibit banking altogether—Illinois, Iowa, Wisconsin, Missouri, (in her Con-

stitution of 1846,) Mississippi, and Louisiana, with her great city of New Orleans, which perhaps does as much mercantile business as our whole State. This experience, and these results, are certainly worthy some attention.

As to the “economy” of the system, take the single item of salaries. They amount to \$30,000 a year for bank officers alone, I believe—to say nothing of banking houses and other items—about half the expense of the State government proper. This is pretty good pay for handling the million of capital belonging to the State. I will agree to do it for a quarter of the \$30,000, and honestly, too, notwithstanding the sneers of gentlemen in its interest on this floor.

But I oppose the system for another reason—its liability to affect or be affected by political considerations. The whigs sustained and justified its first suspension because its management was in the hands of their partizans, and thus delayed resumption. The same thing might happen under democratic ascendancy. And unquestionably it will always be the case, that the influence of the Bank will be used in favor of that party which is most willing to sustain it. As to its effect upon the common business interests of the community, whether its managers be bad or good, I have no doubt that the principle of competition must ever be superior to that of monopoly.

The mutual liability of the branches for each other's debts, I admit is a good feature—the best of the whole concern. But this was borrowed from the New York safety fund system, with this difference in favor of that system that the fund was taxed against the banks and was put into the custody of a State officer, instead of being kept by the banks themselves, as is the case with our State Bank. But though this is a good check on the operations of the branches, it is of but little use, under our system, to the bill holder; for when a “crisis” comes, it will be surrendered on the plea of the “public interest,” as the last suspension proves.

The creation of a currency is a sovereign attribute, and if we delegate such a power to any body of men, we should exact the most ample security against the abuse of that power. I will vote for such security, and as much of it, as any other man will do—dollar for dollar, and more if I can get it. This much has been accomplished by the new system of New York. That requires collateral security to the full amount of bills issued, for their redemption in specie, and in addition to this, holds each stockholder individually liable to the amount of his stock. And yet gentlemen express alarm at its insecurity, and suggest that it will fail under some imaginary contingency. It weathered the storm created by the operations of the United States Bank, while all our banks failed; yet possibly an earthquake might trip it up. It

would not take half an earthquake to trip up our State Bank again. [Laughter.]

With the exception of the mutual liability feature, borrowed from the New York safety fund system, our State Bank is but a miniature edition of the United States Bank. As long as it enjoys the credit and the capital of the State, and a monopoly of business, it will flourish. Deprived of these advantages, it could not exist. Even with these, a great deal depends on its management, and this may be good or bad, according to accidents.

The general system, similar to that of New York, which is proposed by one party on this floor, is vastly superior in every respect. It affords ample security to the bill holders, which is placed in possession of an officer of State; it admits of competition, that best regulator of all business, to every necessary extent; and it is always subject to the control of the Legislature. But some gentlemen object to this system, because they say it is new and untried. If they will examine the documents and laws, they will find it has existed twelve years. Our own system has existed but sixteen, which is only four years longer, and those additional years were less than the limit of its suspension. So they do not gain much on that point. In addition to features above named, there is in the New York system, personal liability of the stockholders to the amount of their shares, which in effect is two for one, besides the amount of specie which every bank must necessarily keep on hand for the prompt redemption of bills.

But other gentlemen object to the system, for fear of its influence upon the Legislature. Here again it is infinitely superior to our system. It is directly the interest of banks under the general security system, not only not to ask favors for themselves, but those first established, are, on the contrary, directly interested in exercising whatever legislative influence they may possess, to induce the Legislature to exact still better securities from all who come after them, so as to shut out competition as much as they can. There is anything but danger to the community in an influence thus directed. Perhaps as a means of safety, it is equal to any thing that could be exacted by law.

But, sir, it was not my intention to enter into a defense of any system, in detail. In my view, it is not necessary for us to adopt any one in particular. It is enough for us to impose such restrictions as will secure the people against loss. I presume some system or other will be adopted, and it has long been my opinion that whatever kind it may be, we should make it subservient to a settlement of our State debt. This is the great reason why I favor a general system similar to that of New York, which has worked so well during the last ten years. The only way in which we can expect soon to bring home our State bonds, is by some such process

as this. It is out of the question to think of raising money by taxation for such a purpose. But if we create a business necessity for them, they will gradually return without difficulty. This demand can be created by requiring them, not as a basis, but as collateral security in the business of banking. We can then by law levy a tax upon the banking privilege, for the liquidation of the interest on the State debt, and ultimately for an ample school fund.

Gentlemen who favor the State Bank object to this proposition, because they say it will raise the value of the bonds; and because the interest upon them will have to be paid to foreigners. It seems to me the futility of all such objections is self-evident. All must admit, that sometime or other, we must pay these bonds dollar for dollar, and the annual interest. The sooner we can get them home, the sooner shall we cease to pay the interest abroad. They would gradually become the property of our own citizens, and the interest, which in 1853 will exceed \$300,000 a year, would gradually be paid at home instead of being sent to a foreign country. It seems to me that such a consideration as this, so easily effected, is infinitely more important as a great measure of public policy, than any prejudices which gentlemen may entertain in favor of the State banking system.

As to the broad intimations that this proposition originated with the bondholders of New York or London, and that members of this Convention have been corrupted by certain means, I have only to say for myself that no approaches of the kind have been made to me. Other gentlemen can answer for themselves. I do not forget that similar charges were made when the settlement of the State debt was accomplished under the Butler Bill. If money was then used, I got none of it; but perhaps that was because, in that case, I happened to be the first person who proposed the basis of the settlement; or because I fought against the details of the long-tailed bill for the purpose of getting the best possible bargain for the State.

The return of the State bonds, and their reduction to a domestic instead of a foreign debt, is the first great object I have in view. I support the new and secure system of banking as a means conducive to that end. But I would also say to those professed anti-bank men, who avow so much alarm at the project, that I support the new system also, because it approximates nearer to anti-paper money views, than any system ever before devised in this country. It is better as a measure of correct business policy and safety, by far, than the State Bank, which latter system no vote of mine shall aid in perpetuating. I would prefer the honest platform of no paper money at all, rather than to give such a vote. I am willing to permit banks for the reasons I have given, though I will readily vote to impose all proper and reason-

enable restrictions. If they can stand the restrictions which I propose, I am willing to risk them.

Before the question was taken, the Convention adjourned.

SPEECH OF MR. READ OF CLARKE,

On the subject of "Banks," delivered Friday afternoon, January 3, 1851.

Mr. READ of Clarke said—

MR. PRESIDENT: I do not intend to detain the Convention more than a very few moments. In rising to say a few words on the subject of banking, it is not my intention to make war upon the present State Bank, for I will do that institution the justice to say, that during the last eight or ten years its business has been well transacted. The managers of that bank have acted with great prudence and forethought, for which they not only deserve our thanks, but the thanks of the country at large. I must say, however, that I am opposed to the principle on which that institution is founded—more, perhaps, because it is a monopoly, than for any other reason.

Now let me call the attention of the Convention to what is the present situation of the charter of the State Bank, under the present Constitution of the State. Sir, you have no less than thirteen monopolies throughout the State in the shape of Branch Banks; and that charter provides further that there shall never be another branch established without the unanimous consent of all the branches; and if you renew that charter, it will of course continue with that restriction. Now, for example, there is Logansport on the Wabash river, which, in the course of time may grow up to be as large, and populous, and wealthy, as Cincinnati or Louisville. Indeed, it is now a flourishing and commercial place, and yet she never can have a Branch Bank of the State, or the facilities of obtaining money which such a branch would give; and why? Because all the branches of your State Bank will not consent to it. This would be equally applicable to other points in the State. We had some experience of this a few years ago. They obtained a district and an act of the Legislature authorizing them to establish a Branch Bank agreeably to the provisions of the charter. The necessary amount of stock on the part of individuals had been obtained. As I am informed, they got the assent of every branch in the State until they came to their neighbors at Lafayette, and they objected. Oh, shame on such a selfish board of directors! Now is not that a strong objection to the system? Why should men in one part of the State have such great advantages over those in another part of it? I say it is wrong, and this Convention has a

right to repress it. I have no special anger against the Bank itself. For eight or nine years it has done its business well; but I object to its principle on the score of its being a monopoly.

Now a few words relative to this million of dollars of which we have heard so much. I think I understand that matter; but if I do not I have some records that will help me out. In the year 1839 or 1840, a bill was introduced into the Legislature authorizing the President of the State Bank to borrow a million of dollars for the purpose of increasing the capital stock of the Bank of Indiana. Mr. Merrill went on to the east, and whether he or his agent negotiated the money I am unable to say, but they sold upon short credit a million of bonds of the State of Indiana to the Morris Canal and Banking Company, and Mr. Merrill had hardly returned home before he received notice from that institution of their inability to meet their liabilities. He immediately returned in order to get the bonds, but he was told that the bonds had been sold to the United States Bank, and from there had been transferred to European capitalists. That is the true history of the matter, so far as my memory serves me. That money was borrowed, or bonds sold, and your farms and the farms of our constituents are now mortgaged for the payment of the money. Yes, sir, that money was borrowed, or at least the State bonds were sold directly to increase the capital stock of the State Bank. At any rate if there had been no bank, that money would never have been borrowed, and there would not consequently have been any loss. [Consent.]

Now, in order to sustain this argument, I will refer to the documents, and the first one, I believe, is from the pen of my friend from Marion (Mr. Maguire). It is in the Auditor's report of 1848. At the conclusion of his report on this subject, he says:

The amount of bonds issued on	
account of the State Bank, it	
will be seen by the above, is	\$2,412,000 00
The amount on which the Bank	
pays interest is	1,390,000 00

Difference	\$1,022,000 00
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This sum, although a loss by the Bank, is transferred to the internal improvement system, with what propriety, or by what authority does not appear by any record of this officer. The loan was made for the purpose of obtaining funds with which to increase the capital stock of the Bank. It proved unfortunate; a small portion only have been realized. With what propriety it was turned over to the internal improvement account I am unable to determine. Although, in either case it was a loss to the State, yet it would seem proper that in winding up both the internal improvement system and the Bank, the accounts should have been

so kept as to show that each had borne its own disasters.

But the fact of the matter was this—the State at the time was paying neither principal nor interest. She cared but little or nothing about it. The cry of “repudiation” was loud and long at that time of day—though I believe that our people never seriously thought of repudiation. That was the case, and in order to save the Bank, the State shouldered the amount. I think these are the facts relative to the million of dollars, and that they cannot be successfully gainsayed by any member of this Convention. Then in the next place, you find the common school fund—that fund which was designed for the education of the poor children of the country—attacked and taken. Now what has become of that fund? Gentlemen talk of the Bank making eight hundred thousand dollars for us; but if they run up the account current, they will find that instead of making anything, the Bank has lost, and would stand indebted to the State, taking into consideration near a million of dollars lost as alleged to heretofore.

Mr. WALPOLE (in his seat). I will believe it if you will prove it.

Mr. READ. I am proving it as fast as I can. Have a little patience. He goes on to say—

This fund, derived from the Sinking Fund, which is controlled by Sinking Fund Commissioners. It consists, as provided for in the one hundred and fourteenth section of the Bank charter, of the residue or profits of the Sinking Fund, after discharging the loans negotiated by the State for the payment of its stocks, the amount of interest thereon, and incidental expenses, and is set apart as a permanent fund for common school education, under the direction of the General Assembly.

From the organization of the Bank until the passage of the act of February, 1841, (chapter 121 of general laws,) the fund was left to accumulate in the hands of the Commissioners. By the act referred to, all payments of this fund into the State Treasury were declared loans to the State, and to be on an interest of six per cent.; and the General Fund is so charged, and the Common School Fund credited on the books of this office.

This fund would have been paid into the State Treasury from year to year, in current funds, but for the passage of another act of the General Assembly. This is the act of January 31, 1842 (general laws, chapter 68). This act provided for the issue of five per cent. scrip, commonly called five per cent. bank scrip, to pay the indebtedness of the State to the Bank, for advances by the several branches, to carry on the internal improvement system, amounting to seven hundred and twenty-two thousand six hundred and forty dollars, principle and interest to the period of adjustment, and made this

scrip receivable for all debts due the Sinking Fund.

Thus you see, sir, that the Bank was so anxious to obtain Eastern funds, upon which, of course, she might make a per centum, that she advanced to contractors the enormous sum of seven hundred and twenty-two thousand six hundred and forty dollars. True, this was a debt against the State, at least in equity; but, sir, if this money had not have been so liberally distributed with the contractors, what would have been the result? The question is easy answered. The contractors would have suspended, the bubble would have burst, and our glorious system of 1836 would have been blown up at an early period, and this sacred sum saved from utter loss; but, to save the Bank from the danger of insolvency, the State was compelled, from the necessity of the case, to issue this five per cent. bank scrip based upon the Common School Fund.

Now, sir, if the Bank had not advanced the money, there certainly would have been no loss to this Common School Fund; and if our banking institutions had been in the hands of private individuals, they never would have advanced to contractors the amount heretofore stated; if they had, it would have been their own loss, unless authorized by the Legislature to do so, which I presume would not have been the case; if they had, they would have stood upon equal footing with other creditors of the State.

Then, sir, there is another account which I contend would never have been lost; because the contractors, as I have said before, would have stopped their work at an earlier period. At any rate, Mr. President, the facts are these that there are between seven and eight hundred thousand dollars which are lost, which have been taken from the poor children of your country; or, if you recover it, you will have to levy a direct tax upon the people for the purpose, because it is a debt which we honorably owe to the School Fund; and if we ever pay it, we will have to tax a people that are already taxed to the eyebrows, for the purpose of making the deficit good.

There is another provision to which I will call the attention of gentlemen. The present charter provides that when any of the branches was not able to pay six per cent., its charter might be wound up; yet, when one or more of the branches were not able to pay that dividend, they went on from year to year, declaring a dividend of one, two, three, and four per cent., and took the deficit out of that fund to pay the interest on the amount originally borrowed for banking purposes. Then, sir, I am for dissolving all connection with the State and banks. I have no hostile feelings to the Bank, and can have none; for, let me say, I am an humble stockholder in that institution.

Mr. WALPOLE (in his seat). Is that a fact?

Mr. READ. Yes, sir, it is a fact; but I do not stand here as a stockholder, but as the representative of my constituents. [Applause.] Now, I appeal to every gentleman on this floor—and I see many grey heads here as well as my own—whether we have not had the most ample experience of the workings of this system? We had once before a State Bank of Indiana, whose paper was received as gold and silver throughout the whole Mississippi Valley; and if an individual should have chanced to get up at that time of day and speak a word against it, he would have been in danger of losing his scalp. I speak politically. And what has become of that Bank? Why, sir, I have a hundred dollar bill in my pocket now of the Branch Bank of Brookville, and I have some idea of calling on my friend over the way, from Franklin county, (Dr. Berry,) for payment, or at least for some information about it. Sir, that Bank has long since gone by the board; and I will ask you if there ever was an instance of a State Bank in these United States, or, at least, West of the Allegheny Mountains, that ever wound up in a state of solvency. I never knew of one yet that did not come out insolvent. But I trust, for the character of mankind, at least, that the present State Bank of Indiana may be an exception.

True, the State Bank of Indiana may wind up solvent, particularly if the State steps forward and meets all her losses. Sir, it has been ascertained that, under this State Bank system, there have been lost in the United States upwards of sixty millions of dollars. Is it not, then, time that we should open our eyes to the matter—that we should look back upon our past experience and remember that like causes produce like effects.

And, Mr. President, when the bank fails who are the losers? Is it your bankers, or your sharpers and shavers? No, sir, they always manage to keep the run of the game. It is the farmers, the mechanics, and the laborers of the country who suffer—the men who are engaged in their daily toil, and who never think about breaks except when they have the misfortune to find that the bank paper they may have is utterly worthless. It is they who suffer most, and not the Shylocks of the bank or the stock exchange. Sir I am here to represent those farmers and mechanics; and I call upon this Convention to guard their rights, as I have no doubt they will do.

Mr. President, I am well aware of what causes a break up of those institutions, except in those cases where downright rascality is the cause; it is mostly from favoritism. Look, sir, at the suspended debts of the Branches of the State Bank amounting to about four hundred thousand dollars. I speak in round numbers. Indeed it may be over that sum. It was consider-

able over that amount in 1846, if I have made the calculations right, and I think I have. It too often happens that when the honest industrious farmer or mechanic knocks at the counter of the bank and asks for an accommodation, that he is refused, sometimes for one excuse and then another; mostly however upon the plea, that the Bank is not discounting any new paper; having run up to the limits of the charter; at the same time those favorites have been accommodated at the tune of one, ten, and twenty thousand dollars, and consequently when one of those favorites fail, the loss is great. Now, sir, if the bank will examine her suspended debt, she will find but little loss from the farmers, mechanics, and laborers.

The Banks all understand how to make favorable reports. I never knew one yet that did not. I recollect well that a very short time before the utter failure of the State Banks of our sister State, Illinois, that the Bank reports of that institution declared it to be solvent, and showed resources more than sufficient to meet all liabilities, and appeared to place it too beyond all doubt; and in less than twenty-four hours, I might say, it all sunk in the gulf of ruin and destruction. No one ever yet saw a bank report that was not perfectly favorable to the creditors, even if the bank should break the very next day. All who have carefully examined the Bank reports in most cases, annually made to the Legislature of the different States, must be struck with the very imperfect manner in which many of their statements are made out; the absolute ignorance, neglect, or misrepresentations and misstatements they contain.

Well, sir, you may ask me what kind of a bank I am in favor of [A voice—"Aye let us hear"]. No matter whether it be a State Bank or a private bank, I am in favor of one that will protect the note-holders, either by individual responsibility, or by funds deposited as collateral security for their redemption, or both united. ["Consent, consent."]

The safest way to make a sound paper currency, is to have at all times ample security for its redemption in possession of the State. In order to make this security ample, it should be not only sufficient in amount, but should be of such a nature, that it may be readily converted into cash without loss.

Should a general system of Banking be adopted in this State, it can hardly be doubted but it would prove beneficial. It would create a demand for our own State stock. The interest paid upon them, would be paid to our citizens. Every person who held a bank note, secured by such stock, would have a direct interest in maintaining unviolated the credit of the State, and would give a sound and uniform currency.

Then I would propose, for the present, State bonds, or bonds of the United States, or bonds of other States which pay their interest regularly upon them.

Should a general system of banking be adopted upon these same principles that now exist in the State of New York, I am satisfied that it would prove to us one of the great radical reforms of the day, upon the subject of banking. The free banking system was adopted in 1838; this was its origin in this country, although it had existed in Scotland, and other countries, for many years; here it was altogether experimental; their first plan, in part, proved to be insufficient; that is, there was a few failures, and some loss; but nothing to compare with those banks of special incorporated charters, during the same length of time. They have, however, learned wisdom from past experience, and have now adopted a system that all admit works well; indeed, it may be said that there is, or very near, a perfect system in banking. We were all astonished at a phenomena in banking which lately took place in that State, under their present general banking system, as it now exists there. One of the banks at Buffalo lately failed. They stopped payment, as the saying is, for want of funds. Well, what was the result? Instead of the notes on the bank depreciating, and becoming worthless, as is universally the case with chartered banks, the notes of the bank, in a few days, actually advanced, and brought a premium of one-half per cent. Now, sir, this appears strange; that when a bank breaks, that the paper advances; but no more strange than true, in this case. The security given to the State, by the bank, in the first place, to secure the note-holder, was immediately converted into cash; and, being Eastern funds, commanded this premium.

That, sir, would create a sound and wholesome currency.

Now one or two words in reply to my friend from Wayne, (Mr. Rariden,) a man for whose judgment I entertain the highest opinion. As he led off in the dance on this question I will turn my attention to him for a moment. [A voice—"Now take it Rariden."] Mr. President, that gentleman threw in here what he undoubtedly meant for a scare-crow. He told us that we were to have railroad, and plank road, and other corporative stocks, as a foundation for this system of free banking. This, sir, is the first time I ever heard the thing suggested. I believe the thing never was suggested until yesterday. I then received it as a scare-crow and consider that he was the author of the project; but I trust that it will not scare members from doing their duty on this occasion; we have all seen scare-crows before to-day. But the gentleman went on to read a part of Governor Wright's message to show what great loss the State had sustained from this kind of capital escaping taxation. Sir, there is a great deal of puffing in most all messages, except those which were delivered by the present occupant of the Chair—Governor Wallace. [Laughter

and great applause.] Well the gentleman quoted the Governor's message showing the great contrast in the property as assessed by the county assessors at Madison, New Albany, and Indianapolis, and as it is assessed by the several corporations at these places. Now this is the fact about that matter. When present valuation was made, it was made some four or five years ago, and it was under that valuation that the assessment was made to which the Governor refers in his message. It is known that in these cities property has advanced in that time in many cases over a hundred per cent. The city assessor makes his assessment off the present value, but the county assessor takes the valuation made four or five years ago; and that, sir, will readily account for the difference. Do not understand me as making any objections to Governor Wright's message—far from it, sir, that message does honor to the man; in short, it can't be beat; I merely wish to show the discrepancy between the two assessments.

Again, sir, these towns have many local improvements to provide for. They go on improving their streets, and having large sums to raise for this purpose, they sometimes look out for an assessor that has liberal views and high notions, and in this way property is often valued at two prices, and this is another reason why property is valued more highly by the city than the county assessor; for it will be recollected that they cannot levy a tax higher than fifty cents to the hundred dollars, *ad valorem*.

This, sir, is about all I have to say upon the subject. I do not intend to trouble the Convention again unless I may feel called upon to reply to remarks made by gentlemen. I repeat again, that I have no hostile feelings to the State Bank. It has done well for the last eight or ten years. She has maintained the credit of her paper; she has acted in that sphere in which all banks should act. And as to telling me about speculating in bills of exchange and discount, why, sir, that is all moonshine; for establish what bank you will, they will do the same. And when gentlemen say that she is yielding large interest to the stock-holders, I can tell them that she never yielded me more than eight or nine per cent. in the aggregate, after deducting out the annual taxes, when money was worth ten per cent. That bank has kept within her proper sphere of business, against which I have not a word to say; but when I look upon the character and the history of all State banks, I have come to the conclusion that if we are to have banks at all, we should have them upon the broad principles of justice (equal rights to all, exclusive privileges to none), and make them perfectly secure, for the redemption of their paper, for that is all that the people want in relation to any bank; and for that principle I will go, whether you adopt a State bank or a free bank.

I will, at the proper time, present to the Convention the following article for their consideration, and trust that it may, or some other of a similar nature, be adopted:

The Legislature shall have no power to pass any act granting any special charter for banking purposes; but incorporations or associations may be formed for such purposes, under general laws.

The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payment, by any person, association; or corporation, issuing bank notes of any description.

The Legislature shall provide by law for the registering of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same, in specie.

The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes, or any kind of paper credit to circulate as money, after the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, shall be individually responsible, to the amount of their respective shares of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January, in the year one thousand eight hundred and fifty-two.

In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference, in payment, over all other creditors of such bank or association.

This, sir, is my system, or rather the New York improved system; and, in my humble opinion, if adopted here, all is safe, and above all, the note-holder will be made secure.

I am, personally, no great advocate for any banking system. I believe it would have been a happy thing for this country, if there never had been a bank in it. But they have been fastened on us; and I doubt the policy of abruptly breaking off from them. And besides, our sister States would furnish us with a paper currency, over which we would have no control. It appears to me, that expediency requires that we should authorize the Legislature to furnish that currency, with proper guards and checks, and, above all, security for the redemption of their notes. This, sir, is what I believe the people want.

The individual who passes counterfeit money, is punished by the laws of the land. He is treated as a felon, as an enemy to society; and the individual who passes bills on a broken bank, is treated with not much less severity. But they who issue bills, which are from five to fifty per cent. discount, are gentlemen and bankers—complained of a little by those who suffer, at the moment of their losing, to be sure—but they are wealthy bankers, or brokers, and they are taken by the hand, wherever they go. They

are quite the gentlemen. They made money out of the public, and no inquiry is made, respecting their moral honesty. Sir, I am done; and I thank the Convention for their attention.

WEDNESDAY, JAN. 8, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CHARY.

The journal of yesterday was read and approved.

The PRESIDENT laid before the Convention a communication from the superintendent of common schools, in reply to a resolution of inquiry adopted by the Convention.

Mr. PRATHER moved that the communication be laid upon the table and three hundred copies ordered to be printed.

The motion was agreed to.

Mr. BRIGHT, from the committee on the legislative department, reported the following section in compliance with the instructions of the Convention:

"SEC. — The members of the General Assembly shall receive for their services a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall be made. No session of the General Assembly, except the first under this Constitution, shall exceed sixty days, nor any called session forty days."

The PRESIDENT. The question is, Shall the section pass?

Mr. CARTER. I move, sir, to suspend the rules requiring the yeas and nays to be taken upon the passage of the section.

The motion was negatived.

Mr. BORDEN. I am under the impression that the committee was instructed to provide that the members of the General Assembly were to receive a certain sum for the first sixty days. [Cries of "Oh! no."]

The yeas and nays were then taken upon the passage of the section, and resulted—yeas 82, nays 27—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Bascom, Beard, Berry, Borden, Bowers, Bracken, Butler, Carr, Carter, Chandler, Clark of Hamilton, Clements, Cole, Conduit, Cookerly, Crawford, Davis of Parke, Edmonston, Farrow, Fisher, Foley, Foster, Gootee, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hitt, Holman, Johnson, Jones, Kelso, Kendall of White, Kinley, Lockhart, March, Mathis, McClelland, McLean, Miller of Clinton, Milhgan, Mooney, Morgan, Mowrer, Murray, Nave, Nofsinger, Owen, Pepper of O., Pepper of C., Pettit, Prather, Read of C., Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scot, Steele, Stevenson, Tague, Tannehill, Thomas,

Watts, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—82.

NAYS.—Messrs. Blythe, Bourne, Bright, Brookbank, Bryant, Chapman, Coats, Colfax, Davis of Madison, Dunn of Jefferson, Elliott, Frisbie, Garvin, Graham of Miami, Hogin, Huff, Maguire, Mather, McFarland, Miller of Fulton, Moore, Rariden, Read of Monroe, Ristine, Robinson, Spann, Thornton, Wheeler, and Work—29.

So the section was passed and referred to the committee on revision.

BANKS.

The Convention then resumed the consideration of the subjects of banks.

Mr. ALLEN. Mr. President, this question has been already pretty fully discussed, and I feel as though it would be occupying the time of the Convention to no purpose for me at this time to enter into a full discussion of this question in all its bearings, even if I was capable of doing so. I will however ask the indulgence of the Convention while I make a few remarks. The question as to whether we shall have banks or not has already been settled by a decided majority of this Convention, and therefore needs no further comment; but the next question, and it seems much the most difficult one to settle, is, what kind of a banking system we had better adopt. Some gentlemen here are in favor of the present State Bank system, others are in favor of a free or general banking system, while others are in favor of a kind of amalgamation of the two systems. Now, sir, I am not particular by what name you designate the banking system which we shall adopt, if it shall contain in its provisions certain principles which I deem essential to the existence of a safe and wholesome currency, I shall cheerfully vote for it without regard to the name it may bear. The principles to which I allude are as follows: first, that ample security shall first be required to be deposited with a State officer for the redemption in specie of all bills to be put in circulation by the banks; second, that the stockholders shall be individually liable, at least to the amount of their stocks, for all debts and liabilities of the bank; third, that the State shall in no case be a stock-holder in any bank; and fourth, that any citizen or number of citizens of the State who shall comply with the provisions and requirements of the law, shall have the right to establish a bank. These are some of the most essential safeguards which I hope to see thrown around the banking system in the State of Indiana—restrictions which I regard as absolutely necessary to the existence of a safe currency. In regard to the kind of security which the Legislature should require as a basis for banking, I do not think that it is necessary to specify in the Constitution, for this reason: It is impossible for us to know at this period what kind of securities will be the most

safe and the most available in twenty, thirty, or forty years hence. There may be in ten, fifteen or twenty years from this time other securities besides State stocks which would be even more acceptable and more safe and available than any we have now; and, sir, it does seem to me that this is a matter that peculiarly belongs to legislation; it is a matter that they ought at all times to have the control of. Why, sir, suppose it should so happen hereafter, as has been prophesied by the gentleman from Vanderburgh, that State stocks should depreciate, although we are willing to admit that they would be the best securities at this time, if it is left in the hands of the Legislature they will have it in their power to correct this difficulty by requiring the banks to increase their securities or to substitute others which would be safe, and thereby keep the currency sound. Again: it does seem to me that gentlemen are anxious to legislate for all time to come; that they are not willing to commit to the hands of posterity the right to determine for themselves mere questions of expediency for fear that they will exercise that right injudiciously. Sir, to me this is a narrow view of this matter. I do think that we can with safety confide something to the honesty and intelligence of the people. There is another view of this question. These State stocks will, in all probability, in a few years be paid off and redeemed by the State, and if the Legislature should have no right to substitute other securities for banking, however safe they might be, the result would be that the banks would be compelled to wind up, however important it might be for the country that they should continue their operations. Sir, I can see no good reason why this right would not be safe in the hands of the people, to be exercised by them through their Legislature, from time to time, as circumstances and their best interests might require.

As to the proposition whether the State should be prohibited from being a stock-holder, I am equally clear.

I am satisfied as I have stated upon another occasion in this house that the State should not engage in banking or any other enterprise for the purpose of making money. Sir, the duties of a State government or any other government are plain—it is to protect the citizen in his legitimate pursuits and in the enjoyment of those rights and privileges which belong to him as a freeman; and when it has accomplished this, the great object of government is attained, leaving the rest to individual enterprise under the direction of wholesome laws. In regard to the extent of the individual liability of the stockholder I am not particular whether it is to the amount of his stock or whether it is unlimited. I believe that I would prefer having it unlimited; nor do I suppose for one moment, as has been asserted on this floor, that this provision would prevent capitalists from

embarking their capital in banking. Sir, it would only make the stockholder watch over the operations of the bank with greater vigilance—it would then partake more of the nature of a mercantile partnership, and would secure for the bank that industry, prudence, and economy, which is necessary to the success of any enterprise. While on the other hand it would give credit to the banks by giving community greater confidence in their safety, and thereby give a wider circulation to their paper. This, it seems to me, is the legitimate result of such an organization, the tendency of which would be not only to benefit the stockholder or banks, by increasing their faculties for doing business; but would also benefit community by a sound and safe currency. But, sir, I regard the other proposition giving to all the citizens of the State the same right to establish a bank by complying with the conditions, as being the best and most republican feature in this system of banking. Sir, it would be useless for me to enter into a detail of the objections which might be urged against the present State Bank system, one of the most prominent of which is, that it is a monopoly, and it is sufficient to say that monopolies have ever been the source of oppression and fraud, and the just cause of complaint in every country and community where they have been tolerated. Sir, it is granting by law to a certain number of citizens of the State rights and privileges which are not extended to all under the same conditions; and this of itself in my mind ought to be a conclusive objection to every friend of equal rights. Sir, so long as we contend for equal rights—so long as we hold that men are equal and stand upon the same broad platform of equal rights and equal privileges—so long we should never give the sanction of law to a monopoly of any kind whatever; for whenever we do we give the lie direct to one of the cardinal doctrines of which we boast as freemen. By making the system general, and extending to all the same rights under it, we not only obviate this very odious feature, but we invite into the field the same salutary and wholesome competition in banking which now exists in all the other departments of trade and occupations of life. Sir, there is nothing better calculated to increase the facilities of trade—nothing which tends more to stimulate and give energy and activity to the business of life—nothing so well calculated to compel men to accept and be satisfied with fair profits, and to deal fairly and honestly in traffic than a proper and fair competition; without it our mechanic shops and mercantile houses would be converted into places of extortion and fraud; yet, sir, to my mind there would be just as much injustice and impropriety in prohibiting by law the establishment of more than one store in a certain town, or of more than a certain number in the State, as there is in prohibiting any more than a cer-

tain number of banks; for banking and commerce are intimately connected, one giving facilities to the other; and it seems to me that they ought to be subject to the same legitimate competition. Sir, I look upon this feature in the general banking system as being better calculated to recommend it to the favor of the people of this State than any other feature in it, for it contains the very first principal upon which rests all our notions of free government and equal rights. It was contended by the gentleman from Switzerland (Mr. Kelso) that under this system it would require some nine millions of banking capital in order to supply a basis for banking in all the places in the State where banks would be desired, and that the State would have to issue more bonds for that purpose. In answer to the gentlemen's argument I would just say that I do not suppose that any friend of free banking ever dreamed of requiring the State to furnish capital to individuals for banking purposes. That, sir, is the State Bank system, and must have been the source from which the gentleman derived this idea. I would as soon require the State to furnish capital to the merchant or mechanic to carry on *their* business, as to require the State to furnish capital for banking. No, sir, we only ask the State to give to all its citizens the same rights in this matter—open the door to all who will comply with the conditions, and say to all that you have equal rights and equal privileges secured to you by general laws, and this is all that is due from the State, the balance you must do for yourselves. But, sir, there is another important result that I conceive will be accomplished by this system, it is this: each bank will stand upon its own foundation, unconnected with others, which will prevent them from concentrating their efforts for the accomplishment of objects beneficial to themselves alone, and their power to expand and contract their issue thereby very much lessened, and their means of doing injury in this respect almost entirely defeated. Sir, when all the banks in the State are banded together by one common interest—when the interest of one is the interest of all, is not their influence to be dreaded if it ever should be their interest to exert it in some cause which would conflict with the best interests of the community, and is it not important for us to guard against such influences, and to keep banks, as well as every branch of trade, within its proper and legitimate sphere.

The gentleman from Vanderburgh says that, if free banking had been established under our present Constitution, at the organization of the State Government, that the country would have been flooded with irredeemable and irresponsible bank paper. Sir, it occurs to me that this is begging the question. I have no doubt but this is his opinion, but might not the gentleman be mistaken; nor does he show in what

way a paper currency, based upon ample security, deposited with an officer of State for its redemption, and having in addition the individual liability of the stockholders, would be irredeemable and irresponsible. Sir, if a paper currency, secured in this way, would be irredeemable, and the bank irresponsible, I ask the gentleman if it would not be ten times more so under the present State Bank system, where there is not one farthing of security of any kind whatever—resting solely upon the honesty of the banker. The gentleman says that a number of the free banks of New York have failed, and that some of them paid only seventy-six cents on the dollar. Now, sir, the reason that they did not pay and redeem all their circulation is because the officer whose duty it was to take the security, did not require ample security; and the stockholders were not individually liable; and I undertake to say that, if, in addition to the securities which they did take, the stockholders had been individually liable, that every dollar of their notes would have been redeemed, and not one cent would have been lost to the bill holder or to the community; and I think that I shall be able to establish this assertion to the satisfaction of the Convention, when I come to that part of this subject. The gentleman from Vanderburg read us a letter from some gentleman who, he says, is well acquainted with the New York system of free banking, and who condemns the system. In answer to this letter, I will just say that the late New York Constitutional Convention was perhaps as well acquainted with the New York system of banking as the gentleman whose communication was read by the gentleman from Vanderburg, and I think would be quite as good authority on that subject; and they establish the free or general banking system in that State, and regard it as the only safe and proper system of banking; and this, too, Mr. President, after they have tried all the other different systems. Sir, it does seem to me that the decision of the State of New York upon this subject, after the experience she has had, and her means of testing the correctness of this system, is entitled to some consideration, and ought to have some weight with gentlemen who are disposed to profit by the experience of others.

The gentleman from Shelby, (Mr. Hendricks,) also, attacks the free banking system. He says that the system cannot stand; and, to establish his position, he reads from the report of the Comptroller of the State of New York upon the subject of the failure of a number of free banks in that State.

Now, sir, as a number of gentlemen upon this floor have taken this report as a text book, and have appealed to it with great show of triumph, as affording incontestable proof of the utter failure of the free banking system, I, sir, am willing, also, to test the question by that

report, and abide by its decision; and for the satisfaction of the Convention, I will read that part of the report which refers to the subject under consideration, which reads as follows.

"Insolvent Free Banks."

"Since the passage of the general banking law, thirty-one of the free banks have been closed by the Comptroller, whose aggregate circulation at the time of the failure was \$1,417,545 00
Amount redeemed by the Comptroller, - - - - - 1,357,424 00

Leaving the outstanding circulation, including \$4,069 of Atlas

Bank certificates, - - - \$60,121 00

This is an extract from the report of the Comptroller of the State of New York, in 1848, and shows that there was only a deficit of sixty thousand one hundred and twenty-one dollars to meet the liabilities of all those thirty-one banks which had failed; and in another report made by the Comptroller in 1849, the following facts are disclosed, and which reads as follows:

"Since the passage of the law, thirty-one banks have failed, and were closed by a sale of the securities, pledged with the Comptroller. In most of these cases, the proceeds of the securities were insufficient to redeem the entire circulation; therefore, a *pro rata* dividend was paid to the bill holders, and certificates issued for the balance payable out of any additional means which the banks may have possessed."

But, in every instance, a small portion of the circulating notes are still outstanding. The presumption is, that they are mostly lost, and will never be presented. The question is: What shall be done with the funds remaining in the Comptroller's hands for their redemption? The amount thus held is thirty-two thousand eight hundred and nineteen dollars and seventy-nine cents, belonging to thirty banks; and as a majority of the failures occurred almost ten years ago, there is no probability that this balance will be called for by the bill holders." Which shows that the whole loss to the bill holders, when the whole proceeds are applied, will be less than thirty thousand dollars—a mere trifle when compared to the amount in circulation. Now, sir, suppose that the stockholders in these banks had been also individually liable for the redemption of their notes, can any man in his senses doubt for a moment that one dollar would have been lost, or that their entire circulation would not have been fully redeemed. But, sir, when we recollect that this was the first experiment in free banking; and when we recollect, too, the circumstances under which these banks were organized and went into operation, it destroys the whole force of the gentleman's argument—his entire fabric falls to the ground. By the indulgence of the Convention, I will read from

this same report which specifies the causes and circumstances which surrounded those banks at the time of their organization better than I can do it. This report says:

"The country was then flooded with stocks from almost every State, and the consequence was that numerous banks sprung into existence under this law. Repudiation soon followed. Many States that did not repudiate failed to meet their obligations, confidence was impaired, credit was shaken, and stocks generally depreciated. The consequence was, that many banks failed, and the Legislature partially retrieved its error in 1840, by excluding all stocks except those issued by this State, (the State of New York,) and required those to be, or to be made equal to five per cent. stocks.

"Finding the small banks unsafe, the Legislature, in 1844, required individual bankers to deposit securities to the amount of at least fifty thousand dollars, and associations to the amount of one hundred thousand dollars, before they were entitled to any notes for circulation. The stringency of the money market in 1847 admonished the Legislature that the security of those banks were insufficient, and in 1848 they required the stocks deposited to be stocks of this State, and equal to six per cent. stocks, and the bonds and mortgages to bear an interest of seven per cent. per annum, and that they should not be for an amount exceeding two-fifths the value of the land covered by the mortgage.

"This (says the report) is the *free bank system* as it *now* stands, and it takes its name from the fact that all are *freely* permitted to embark in it who will comply with the rules prescribed. It is no *monopoly*—no exclusive right granted by the Legislature to a favored few—but is open to all who can give the required security."

Now, Mr. President, this is properly the New York free banking system, and not as it existed in 1838 at its passage it has been amended and improved, and I am prepared to assert that not one dollar or one cent has been lost—nor do I believe there will be under the present system of free banking in the State of New York; so long as her people remain true to themselves. Now, sir, let us see the conclusion the people of that great commercial State have come to after testing the system fully, and after having tried almost every other system of banking which human ingenuity could invent. I read from the report of Mr. Fillmore, who was at the time Comptroller of the State of New York. He says:

"The safety fund system was virtually abandoned by the creation of the free banking system, which grew up under the act of 1838.

"The distinguishing feature of this new system is its requirement of productive and available securities to be pledged with a State officer as a guaranty for the redemption of the whole circulation.

"This principle has been tried and tested by nearly twelve years experience, and may now be regarded as firmly established in public estimation as the basis of all future legislation on the subject of banking.

"The plan originally introduced by the general banking law of 1838 was defective in many of its details, and new legislation has been required from year to year, to re-construct, strengthen, and perfect it.

"The Legislature aimed at the outset to require sufficient and unquestionable security for the entire circulation. It was conceived impossible that any American State would repudiate its obligations, and no one suspected that any of the States would fail in the prompt payment of interest. The stocks of all the States were admitted, therefore, as a basis of circulation.

"This error proved disastrous, and was almost fatal to the system during the earlier period of its operation."

Now, sir, from what I have read, it is evident that New York, after they have had this system for twelve years, have decided in its favor, and now regard it as the best and safest system of banking which they can adopt; and it has therefore become the settled policy of the State, and they regard the chances of loss to the bill-holder under this system as now amended, as the next thing to impossible. Banks may fail to meet their paper with specie at the counter, but the bill-holder knows that the securities are deposited in the vaults of the State, and that his bill will be redeemed beyond a doubt, and he rests satisfied and secure. But gentlemen say that even if the bank should ultimately redeem their notes, that still when the bank stops that the notes would depreciate, and that the laboring man would be compelled to suffer a discount or shave on his note. This, sir, is a mistake, as I can testify. Walter Joy's Bank of Buffalo failed in 1849—the only free bank which has failed since the system was perfected; yet her notes passed just as current after the bank failed as they did before; and they were not at any time at a discount in the city of New York, which is better than Indiana State Bank paper; for it is always at a discount of from two to three per cent. in New York city. So you see that the bills of one of those free banks were from two to three per cent. better after the bank had failed, than Indiana State Bank paper. So much then, for the free bank system of New York, so much talked about and harped upon by gentlemen upon this floor. But the gentleman from Shelby says that no poor man can take stock in these free banks, because he would not be able to buy a State bond, the smallest of which are for the sum of five hundred dollars, and that each share would have to be at least that amount. Now, sir, I do suppose that it would require no great exertion of human in-

anguity to obviate this difficulty. It occurs to me that the stocks, or the greater part of them would have to be purchased by the bank through their agent after it was organized, and that all a stock-holder would have to do if he had no State bonds, would be to hand over the money whether the amount was great or small, and let the stock be purchased for him, and deposited for him in the proper office. It is also contended by the gentleman that the only reason why the State Bank has stood and can stand is because the branches are all mutually liable for one another, and that therefore they can concentrate their united force at any given point—that is, I suppose he means that if a run is made upon one branch that the others can run with their specie to her aid; and upon the same principle, when so much specie is required to be placed in the vaults of the Bank, and a count is to be had, they can then perform the same service, and have the same specie recounted in each branch.

But, sir, I will ask the gentleman one question. Suppose the officers of the State Bank were all to join together and issue and put into circulation all the money they could, and get other money in the place of it, and then walk into the banks and take all the specie out of the vaults, and then leave. I ask the gentleman to tell me what would become of the bill-holder? Where would be his security? Sir, he would be left without a farthing.

Sir, it is this power and interest that makes them one in all their operations—that forms one of the objections to the system. If they can unite their power and influence wherever their interest requires, might they not exert a dangerous influence if their interests should direct them in an improper channel? and if their interests should conflict with the interests of community, would they not be a formidable power to combat with in any contest? I suppose that it is this power of concentration which now enables them to realize twenty per cent. on their stocks. Sir, I do not wish to make war upon the present State Bank. They never refused me any favor which I asked at their hands, and I am willing to admit that it has been well conducted, and is a credit to the State, but this is owing entirely to the honesty and prudence of the men who conduct it, and not to the safety of the system; and I do think that we can adopt a better and a safer system, one that will be better adapted to the wants and growing interests of the State. I regret Mr. President, that I am compelled to differ with many gentlemen upon this subject.

The gentleman from Monroe gave us a specimen of his eloquence on this subject, in which he contended that the State Bank was the very thing we wanted; and rather insinuated that us free bank men were under the influence of the bond-holders; but as I could not see the force of his arguments, and could not under-

stand to what particular point they were directed, I shall therefore not attempt to answer them. In conclusion, Mr. President, I will add that I cannot see why gentlemen are so much opposed to changing the present banking system for the general banking system which we propose, for as I regard it, it will be changing a system which is wholly without security, and which depends solely upon the honesty, prudence, and skill of those who direct and manage the finances of the banks; for a system which offers security which will place the safety of the banks beyond the ordinary contingencies of life—a system which, with ordinary care, *cannot fail*—one on which the bill-holder can rely with confidence—one that will always secure to the laborer the reward of his toil; and to all the different occupations and departments of life a sound, healthy, and stable currency.

Mr. ROBINSON here addressed the Convention at length; his speech will be published hereafter.

Mr. MILROY. We live in an age of progress—progress not only in the arts and sciences, but progress in the knowledge of human rights. And, sir, the most of those old iron, feudal, or rather common law notions, of proscriptive rights, vested rights, divine rights, incorporated rights, and chartered rights, under various forms, which came down to our forefathers from their British ancestors, and remained in our political system after the American Revolution, have been gradually melted away before this spirit of progression, until it has reached this one—the strongest, the most dangerous, the most pernicious of all—the chartered right of converting rags into money—of making fortunes out of pictured evidences of indebtedness. And the great contest that has been carried on in this Hall, for the last four days, is, whether or not the spirit of progress shall sweep away this British remnant—this barrier to the advancement of human rights in our State. We are to determine whether our posterity shall be cursed with this chartered monopoly, or whether they shall have the same freedom and equal rights in the business of banking, under proper restrictions, as in every other occupation of life. With due deference to the gentlemen of the opposition, I must say that I believe that their predictions, statistics, and calculations, relative to the evils, failures, ruin, taxation, &c., that free banking, under the proposed restrictions, would bring upon the people of the State, are just about as accurate as would be calculations by them, in figures, of their chances of getting to Heaven. Gentlemen draw all their conclusions of what the evils of free banking would be, from banking carried on under the principle that it now is in this State, and seem incapable of considering it in any other light. I will admit that, if general banking was allowed, on the principle that now governs banking in this.

State—the principle of issuing three or four dollars in paper for one in specie—no individual responsibility—no security to bill-holders—issuing small notes, &c.—it would prove the greatest curse that could befall our State. Such a system of general banking has not been dreamed of by the friends of reform banking, and such an idea is at least twenty years behind the age. We only demand that the doctrine of monopoly and chartered rights, in relation to the business of banking, shall cease forever, and that there shall be such stringent restrictions put upon it, that it cannot be hereafter exercised to the injury of society, or of any of its members.

The experience of the world demonstrates that it is much more difficult to root out an old error, or to reform an old system in *political* policy, however corrupt and unjust it may be, than to introduce scores of new theories into the moral or social policy of a people. Accordingly, we find that this old rampart of exclusive rights holds out with the most determined energy, against progression. But there exists not a doubt in the minds of the friends of progress, that it, too, will be swept away, and that our Legislature, under the proposed restrictions, can and will form a system of banking, that will be perfectly safe to the people, and one that will be incapable of creating those expansions and contractions in the currency of the country, so ruinous to labor, and destructive of morals, and beneficial alone to shavers, speculators and gamblers.

I regard this question as one of more vital importance to the people of Indiana—to present and future generations, than any that has yet been discussed in this body. It is one, sir, in which is not only involved the prosperity and happiness of millions yet unborn, but one upon which depends the purity and beneficence of our State Government. It depends upon this Convention to determine whether banking shall hereafter be reduced to the level of any other common honest business, open to wholesome competition and the enterprise of all, or whether it shall remain held up by the strong arm of government, above competition, an exclusive chartered monopoly, and another name for corruption, fraud, partiality, and swindling. This is the true question presented for our determination, and let us remember that our decision is not for a day, or a year, but for ages; and let us try to divest ourselves of all selfish considerations in making up our decision.

I am opposed to any chartered banking system, and, sir, I am opposed to such a system, not from mere policy or expediency, but from a long-cherished principle—a principle of eternal hostility to all chartered monopolies, whether for individual, company, town, county, or State purposes. A principle that I imbibed in my boyhood, in that ever-memorable contest of the Democratic party, headed by the immortal

Jackson, against that great chartered monopoly, the United States Bank. And this principle has grown with my growth and strengthened with my strength. And, although the question of banking has not assumed a party character in this body, yet I must be allowed to say, that I doubt the Democracy of any one, calling himself a Democrat, who is in favor of retaining, in any form, our present chartered banking system—I say I doubt the genuineness of such a man's Democracy, as much as if I had known him to have opposed General Jackson, and have favored the re-charter of that old Hydra-headed monster, the United States Bank. He is not one of the *progressive Democracy*, at least. I am opposed to charters in any form or shape, or for any purpose whatever. The very idea of a charter carries with it that of exclusive rights and privileges, and is anti-democratic and anti-republican in every respect. To prove this, I need only to refer to the definition of a charter: "A charter may be defined to be a deed given by a government, to one or more persons, granting to him or them, individually or collectively, certain rights and privileges, therein specified, which are denied to all other persons." The true idea of a republican form of government is that it guarantees to all its citizens, equal political rights and privileges. But if this definition of a charter be correct, where, I ask, is the justice, the consistency, the republicanism, in such a government granting charters to portions of its citizens, more especially when these charters are granted for banking purposes—giving to a few individuals the chartered right to make fortunes in a manner that is prohibited to all others—the right to issue paper in the form of notes, to circulate as money, upon which they draw interest, and thus make fortunes out of what they owe, while all the other inhabitants of the State are required to pay interest on what they owe. If these are what are called equal political rights, the fewer we can have of them, the better. They are the same kind of political rights that are recognized in all the monarchical governments of Europe, where the doctrine is inculcated, that the mass of the people are born with saddles upon their backs, and a fortunate few are born booted and spurred to ride them.

One of the strongest arguments urged by gentlemen in favor of a chartered system of State banking, and one which seems to have the most weight with them, and apparently the most plausibility, is that the business of banking being one of great profit, it should not, therefore, be owned and controlled by individuals, and the profits go into their pockets, but should be owned and controlled by the State, and the profits go into the State Treasury, for the benefit of all her citizens. This, sir, is a specious argument, and one that is calculated to deceive the unsuspecting. It is such an argument as designing demagogues always make use

of, to accomplish their ends. The *avowed* object of their proposed measures, is always for "the benefit of the people," when the *real* object perhaps is, to subvert the best interests of society, and render the proceeds of the labor of the people subservient to the interests of a few. Such were the specious arguments made use of by the advocates for the re-charter of the old United States Bank. Its profits were not only to pay all the expenses of government, but eventually to yield a large surplus for the purposes of internal improvement and the education of the people. But, sir, if the State has a legitimate right to monopolize the profits of banking, merely because it is a profitable business, and for that reason alone ought not to be allowed to enrich the pockets of individuals, then, sir, by a parity of reasoning, merchandizing, being a lucrative business, its profits should not be enjoyed alone by the merchant, but the State should own all the mercantile establishments within its borders, and reap all the profits of the business to be applied for "the benefit of the people." And upon the same principle the profits of farming should not be allowed to go into the pockets of the farmers alone, but the State should monopolize all the farms within her borders, and rent them out, and apply the proceeds for "the benefit of the people." And so of all other branches of business. Banking is a branch of business, and the State has just as good a right to monopolize any other branch of business, and reap its profits, as that of banking.

But, sir, the experience of the past clearly demonstrates to us that our Governments, both State and National, are most prosperous, and best accomplish the purposes for which they were created, when disconnected from every other business but the purpose for which they were instituted—that of making and administering good and wholesome laws. No government can engage in banking, without opening a door for corruption. Governments, like individuals, are fallible, and subject to temptation, and must be administered by individuals; and let any set of beings, lower than the angels, have the power and the right of converting worthless piles of rags into money, and they will abuse that right.

The best interest of every people requires that their government should be kept pure and above every contaminating influence that might sway it from the rigid line of its duty, or cloud it with prejudice, injustice, or partiality. This can only be done by disconnecting it from every other business but that of governing. If a government is engaged in the business of banking, it must be swayed by interests in common with the stock jobber, the trader, and the speculator, and is as incapable of governing, or of deciding impartially, as was Demetrius when his craft was in danger. A just government should regard every honorable business, trade,

traffic, or profession of its citizens, with equal favor; but is it possible, or even probable that it will do so, when it is itself engaged in a branch of business and is daily brought in competition with a portion of its citizens.

The State should therefore be disconnected from every kind of business engaged in by its citizens, that its government may stand above the fog of interest and prejudice, amid the pure light of justice, and be able to regulate and control every business or interests of its citizens with impartiality and the best good of society.

The privilege of banking, like that of every other trade or traffic, should, under proper restrictions, be free and open to all who have the means and may feel disposed to engage in it. A man's money is his property as much as his grain, goods, land, or live stock, and he ought to be allowed to make use of it in any way for his own advantage, as freely and unrestrictedly as of any of his other property, if in so doing he does not wrong his fellow man or injure society in any way. But as all banking is at war against gold and silver, the natural currency of mankind and only certain measure of value, and is a struggle to drive this natural currency out of circulation and supply its place with a paper currency, an uncertain standard of value, which may be increased or diminished at the pleasure of its makers, and thus create expansions and contractions in the currency that renders prices fluctuating, and creates a reckless spirit of speculation that leads to bankruptcy, ruin, and vice. And as it is the absolute duty of a government to protect its citizens as far as possible against injury, fraud, and swindling, and to place strong guards around every trade, traffic, or business that may be exercised to their injury, it should therefore place such stringent restrictions upon free banking as will secure their billholders beyond the possibility of loss by failure or depreciation, and keep their issues within due bounds. These restrictions should be such as to deprive banking of those charms that now hold out such great inducements to engage in it. If the charms of issuing three dollars or more in paper for one in specie, of holding their own securities, of issuing small notes, of no individual responsibility, &c. were taken away, banking would cease to be such a charming business, and capitalists would not be any more likely to engage in it than in merchandising, brick making, or any other business. Free banking, the "Hydra-headed monster," that has been pictured by gentlemen here as shooting up its heads in the shape of "shaving shops," in a thousand different places in our State, being thus deprived of its fangs, might be turned loose on society with impunity, and would prove as harmless, and as useful perhaps, as any other occupation.

The experience of over twelve years in New York, and of over one hundred years in Scotland, shows that free banking is not impractic-

cable, or an Utopian scheme; and proves that banking, under wholesome restrictions, when left open to competition, will regulate itself, like any other business.

All the evils that have heretofore flowed from the business of banking, may be traced to one source: that of governments interfering with the natural laws of trade, by selecting this business out from among the ordinary occupations of mankind, and by charters placing it above competition, with exclusive rights and immunities not allowed to any other business, and of becoming stock jobbers in it themselves.

Let the expenses of our State government then, be hereafter paid by taxation, without a resort to banking. Sixteen years, or perhaps less, at our present rate of taxation, will extinguish our State debt; and then one-fourth of our present rate of taxation will amply defray all the expenses of our State government. No one who enjoys the protection of our laws and the benefit of our free institutions, will grudge this scanty pittance for their support.

The financial concerns of the government of the United States were never more prosperous, or administered with greater facility, less expense, or more security, than since its disconnection from all banks. The same reasons that dictated that separation, and since that event has so clearly proved its wisdom, operate equally as strong in requiring the separation of our State government from all banking institutions. Then let the union between bank and State, a union equally as pernicious as that between church and State, be forever dissolved; and let banking be divested of its chartered privileges, and be reduced to a level with the other ordinary occupations of life, and, under proper restrictions, be free to all, and open to competition. These are reforms that are loudly demanded by the progress and intelligence of the age, and if we do not comply with this demand we will prove recreant to the trust that has been confided in us.

On motion of Mr. HOWE,
The Convention adjourned.

AFTERNOON SESSION.

SUSPENSION OF THE ORDER OF BUSINESS.

Mr. TAYLOR, asked the Convention to suspend the order of business, in order to allow him to offer a resolution. [Cries of "Read, read," and "What is it?"] It is simply a resolution to the effect that the President of the State Bank be requested to furnish to each member of the Convention, one copy of the annual report of that institution, for the past year.

Mr. BORDEN. I would inquire whether that will involve any expense; because, if it does, I should be opposed to it.

Mr. TAYLOR. It will involve no additional expense. The directors of the bank usually

print a considerable number of their annual reports, and I believe there are a sufficient number of the last report to supply one to each member of the Convention.

The question being taken on the suspension of the order of business, it was agreed to.

The question then recurring on the adoption of the resolution, it was adopted by consent.

Mr. THORNTON, desired to offer the following resolution:

"Resolved, that the debate on the article of currency, and banking, shall terminate on Thursday, the 9th inst., at 3 o'clock, P. M."

Mr. PEPPER of Crawford, moved to amend by striking out "three," and inserting "two," so as to give gentlemen all the afternoon to vote in.

Mr. McFARLAND said, he did not see any good reason why a resolution of this kind should be passed. It was within the power of any gentleman to call the previous question, so as to cut off the debate. It might be that the question would not have been sufficiently discussed by that time; and, in his opinion, it was a question of so much importance, that it ought to be discussed just as long as a majority of the members thought it necessary it should be discussed.

Mr. THORNTON. If that be the opinion of the Convention, I will withdraw the resolution for the present.

The PRESIDENT. The Convention will now proceed to the consideration of the orders of the day.

Mr. HOWE, being entitled to the floor, addressed the Convention as follows: If any gentleman desires to move the previous question, I will give up the floor. [A pause.] I have no desire to debate this question, and I was in hopes that some gentleman would move the previous question. I had a few remarks to make, which I was willing to reserve until the second section should come up; but, inasmuch as it appears to be the order of the day to debate the question now, I shall state all I have to say upon the subject.

And, Mr. President, let me remark, before I lay down the basis of the argument, that I have no fault to find with the State Bank, or with the currency it has furnished to the State. As citizens of the State, the only attitude of demand we can assume towards the bank, is that of requiring from the State a safe and sound currency. If it fails in any other particular, that is no part of our business, unless we have had special business with it. So far as a safe and sound currency is concerned, I freely admit, what is beyond dispute, that the State Bank, as compared with other banks, has furnished us with a safe, sound, and sufficient currency; but there are some other questions involved besides that, for a safe and sound currency, and, in the argument which I shall

make, I will lay down two or three propositions.

The first question is, whether we are to have a bank at all?

The next is, if we are to have a bank, shall we have a State Bank, banks brought into existence by special acts of incorporation, or what is called free banking—more properly restrictive banking?

Now, as to the first question, whether or not we are to have banks at all. About that point, I think there can be but little difference of opinion. It may be the opinion of some gentlemen, abstractly, that there should be no banking; or, in other words, that the present system of banking, as it exists in this country, and in England, is founded upon a false basis; and that as speedily as practicable, we should go from that system to another. Now, I am not disposed to dispute the abstract correctness of that proposition. I have no doubt that the present system of banking exists on a false basis; but at the same time, it occurs to me that we have not the power to remedy the difficulty. If we were a little kingdom, and could control our own currency, and prevent it from going out of the State, or other currency from coming in, and set at defiance the laws of trade, we might then talk about regulating the currency. But this we cannot do. We are merely one Commonwealth among others, and our commerce amounts to but little, when compared with that of the great mass of the country. We are, to use a figure of speech, on a great stream; and we must go with the current. All we have to do is to trim our sails, to keep a good hand at the helm, and pass along on our voyage as safely as we may be able.

The reason why the present system of banking is fallacious and unsound, must be apparent to every one who will give the subject the slightest consideration. The fact is, that taking the whole United States together, the amount of paper, as compared with the amount of precious metals which it represents, is in the proportion of two and a half, or three, to one. Looking at this state of things, we should suppose, as, indeed, experience has proved, that it is exceedingly disastrous; that the remuest be a constant liability to change—a constant tendency to expansion or contraction of the currency. This change is constantly going on, and it is impossible that, upon such a basis, any other result should follow. Every system of banking existing in this country, and in England, is a system of exchange of credits, with about one-third of specie to back up that credit. Now, such a state of things, I will readily admit, is unfitted to promote the permanent prosperity of any country, and particularly an agricultural country. But I do not deem it necessary to discuss that question. It has been fully discussed already; and, if not, it is not, perhaps, the proper time to discuss it now.

We must, then, have a bank of some kind; because, if we decree that we will have no bank, what will be the result? Why, sir, if we do not find a sufficient currency for the transaction of the business of the State, the same amount will be furnished by banks in other States. If we do not find four or five millions of paper, Ohio and Kentucky, and other States, will furnish it. The merchants and traders of these States will come here and buy up our produce, leaving us the money which they circulate, and the bankers of these States will reap all the profit of the circulation. It follows, then, that inasmuch as we cannot, by any act of our own, prevent the existence of paper currency, it is our duty to regulate, in the best manner we can, that which we know must exist in spite of us. And another reason why we should do so, is this. There is a considerable profit arising from banking, particularly from transactions in bills of exchange. Some bank must have that profit; because, according to the present laws of trade, it is impossible to dispense with them. And is it not better that that profit should be paid to bankers of our own, where the capital stock would be liable to taxation for the benefit of the State, than go somewhere else? That, sir, in my opinion, is a knock-down argument upon this question. We must, therefore, have banks; for the plain reason that we cannot prevent bank paper from circulating among us.

If then we are to have banks, the next question is, what system is it best we should adopt? and I will now address myself more particularly to my anti-bank friends. I say that if they are consistent with themselves, if they really mean that a metallic currency, or the nearest approximation to a metallic currency is desirable, then I say they are bound to sustain the proposition for free banking; for, in the very nature of things, it is impossible to resort at once from a paper to a metallic currency. We find a paper currency existing here. It is incorporated into our system; if we were a commonwealth by ourselves, and if our Legislature could control the whole subject, it would be inexpedient for us to think of resorting at once from a paper to a metallic currency. We must do it gradually, and that is the reason why this system demands the assistance of those who place themselves in what is called the anti-bank position.

Mr. BORDEN, (in his seat.) In other words, those who call themselves the "specie men."

Mr. HOWE. Will the "specie men," then, if that term suits gentlemen better. I say that if that is their object, they are bound to sustain the system of free banks instead of setting themselves up against it.

Now the usual objection against a paper circulation, founded upon bank currency or bank paper, is founded upon two or three propositions; and these are in the mouths of all those who op-

pose the bank paper circulation. In the first place it is contended that it is a monopoly. That is the first and the most forcible objection with them. Another objection is that the amount of money in circulation is constantly fluctuating and liable to change. And there is a third objection, that in by far the greater number of cases where banks have been wound up, they have been wound up with a loss to the bill holder—that the bill holders have sustained a loss, while whatever assets there may have been, have been divided among more favored creditors. Now, all these objections, so far as they can be obviated, are obviated by the free bank system, and therefore I think those gentlemen who are opposed to all banking, seeing that it is impossible entirely to dispense with banks, are bound to act with us on this question. If a man holds any particular opinion with regard to any important question in society, whether that question be a political or a social one, and he knows that it cannot be carried out immediately, is he not bound to carry it out proximatively, so far as it can be done, and in the only way in which it can be carried out. This system then obviates all these three objections. And I would here say that so far as this question of security is concerned, I for one, am for making it not only ample, but beyond all doubt. I am for excluding for at least fifteen years, all securities except State and United States stocks, bearing six per cent. interest, taken at the lowest price which they have borne within the last twelve months, and in no instance above par; and with such security it is morally clear that there can be no loss to the bill holder. It is quite true that stocks fluctuate; that they depreciate and appreciate; but there is more probability that they will rise in value by this operation than that they will depreciate. At all events there is a certainty—an absolute assurance that the bill holder will be secure. There is no doubt about it. Every one who reflects at all upon the subject, admits this at once. If there be any objection to the system, the want of security to the bill holder cannot be an objection, for that must be ample, beyond doubt.

Now, as to the question of monopoly, that also will be entirely obviated. Under a law of this kind, every one will have a right to bank, if he has money enough. Yes sir, he may bank till dooms day if he pleases. All the privileges that have ever been given to a bank, are the right to sue and be sued in its corporate capacity, and to issue bills. The right of banking is a right which every man has at common law; and this system instead of extending the right, restricts it. It is not a system of "free banking" in the meaning of that term, but a restriction of all banking. It simply enables a corporation to bank upon certain terms and restrictions. It is not by any means necessary that in order to bank, the banker should be a corporation. It

may be an association of A, B, & Co., or it may be Mr A, alone. It is clear then, that it should not be called a system of free banking, but a restriction of banking. So far therefore, as the objection of monopoly is concerned, I think it is wholly obviated.

There is one other objection which is also obviated by this system, and to which I will allude namely, that under this restrictive system, there is not the same danger of the expansion and contraction of this currency. Now, here is a real practical question involved in this case. The danger arising from free banks is the too sudden contraction of the currency; and if all the States in the Union, were to adopt this system at once, there might be some danger to be apprehended from this source. This, however, is not to be expected, although this will ultimately be the system in all the States, I think there is little question. It is a movement which will as assuredly follow as that time passes on. As I have already said, the danger is not of the expansion of the currency, but of its contraction.

Now, it was observed by some gentleman on this floor, that on an exhibit of the affairs of the State of New York, there was found a much less proportion of specie than in our bank, or in the safety fund banks. And, sir, admitting that to be the case, let me ask what does it prove? It proves that there was greater confidence on the part of the bill holder, and not the same demand for specie, and therefore, that the free banks could keep out a larger amount of issue than other banks in proportion to their specie on hand, but if this system be adopted, there must be less paper out than there is now. Of course all paper should represent something—either specie or credit. Our State Bank represents both. It represents thirty-three and one-third per cent. specie, and sixty-six and two-thirds per cent. credits. It is true that the dollar bill and the specie dollar may circulate closely together, and why? Not because the bill is intrinsically worth as much as the specie, but because the paper dollar will at any time demand the specie dollar. Thus all the objections which gentlemen urge against any system of banking are obviated by the system which we propose, and I contend that as consistent men, if those who are opposed to banking generally, really believe what they say, they are bound to abandon their position and to sustain us.

Mr. President, I shall occupy but little more time in what I have to say on this question, because I do not know that my arguments will convince anybody. If a man really wishes to become acquainted with this subject he should take it up and investigate it for himself. If he cannot satisfy himself from his own reflection and reading, I am very doubtful whether he can ever be satisfied by any argument that can be made orally. I have only to repeat that I shall vote for that system which appears to me to

give the fullest security to the bill holder; and I shall vote for no system of security unless it be upon stocks of some kind. I am utterly opposed to the system of bonds and mortgages. This may answer in the State of New York, where there is a much larger currency than there is here and where money is seeking investments, and where mortgages at two-fifths of the real value of the estate will always find a purchaser. I say such a system of things may do there; but it will not do here. The only proper kind of security is that which can be converted into cash without resorting to a legal remedy. It is clear then that security on bonds and mortgages although it may have answered in New York, will never answer the purpose here. There may be a time, if we progress as we have progressed, when the whole amount of the currency will be larger than it is now and sufficient to warrant bankers in taking mortgages at two-fifths of the real value. But such a state of things does not now exist; and it may never exist at all until we become a commercial and manufacturing, as well as an agricultural people. Whenever you have commerce and manufactories flourishing in the country then you will have money in abundance; but we are not so situated at present, and therefore I am opposed to anything like security upon bonds and mortgages. If the first section of this report should be passed, then I shall move the following proposition:

"The branches of any State Bank established under this article shall be mutually liable for the redemption of each other's notes, and all other banks established under this article shall be required to deposit with some officer of State ample security for the redemption of their notes: *Provided*, That for the first twelve years, after the adoption of this Constitution, stocks of the United States or of the different States, shall be alone received as such security, and at their lowest market value, and not above par."

That is the system that I shall go upon; and I shall vote against any other, because with a system of that kind there will be ample security to the bill holder beyond doubt.

Now, sir, there is only one other question about which I will say a few words. It seems to be the opinion that we shall carry the system of restrictive banking; but the only question is, whether we are to leave the question of chartering the State Bank open. Now I am in favor of adhering to one system or the other—especially to the system of free banking. And I will say in addition, that the great danger is that the free banks will not be able to hold themselves up if they are opposed by a State Bank. That is the real difficulty; and I think it is better to give them a fair field, for it will be necessary to give them all the aid that we can, with the severe restrictions which we shall impose upon them. If we cannot give them that aid alone, then we must leave the question

of the chartering of the State Bank open. In any event, however, whether we adopt the system of free banking—so called, or have a free and a State Bank system together the free banks will need all the nurture and fostering care that we can give them, and the only real danger, as I have already intimated, is that instead of furnishing an expanded currency they will not be able to furnish sufficient for the business requirements of the State.

There are abstractly considered but two legitimate objects to be gained by a paper currency; first, by means of paper bills representing precisely the same nominal amount of specie, and not one-third of its amount in specie and two-thirds credit, thus avoiding the fallacy of basing currency on specie and fluctuating credit. Secondly, by means of such a paper currency the expense and inconvenience of transporting and carrying specie, and the great loss by friction and wear are avoided. These are the only legitimate objects to be gained by banking, if indeed a system effecting the above objects can be called "banking." I venture to predict that this system will be ultimately adopted. It is perfection in theory, and will be ultimately attained in practice. The notion of having a specie or metallic currency alone in a commercial and civilized country like the United States is utterly out of the question. Even a paper currency like the present, founded on specie and credit, is more desirable than a metallic one. The truth is that a mere metallic currency would be impracticable.

The system of free banking, so called, leads us towards the adoption of the paper currency alone indicated, when paper dollars represent in all cases specie dollars; and for that reason, if there were no other, it ought to be adopted.

If the system is adopted, however, I am not prepared to believe that there will be any permanent, serious, or injurious scarcity of currency. If this be the case for a time, as it probably will, the deficiency will be made up from abroad, if our business and productions demand it, and if the free banks on the long run should not furnish currency enough, the evil would be less than if they furnished too much.

On the whole this system puts banking on the most rational ground it can be placed; obviates, so far as they can be obviated, all the objections commonly urged against it, and is the first step towards its entire suppression, and the substitution of a better and safer system; and when that takes place the whole of the present vicious system of credit, of which banking as now practised forms a large part, must fall with it, or be followed by a safer and better one.

Mr. SHOUP. Mr. President, I do not rise for the purpose of making a speech, but simply a very few remarks; and I assure the Convention, that I make them under somewhat embarrassing circumstances. The gentleman who

has just taken his seat, said that he expected nobody would be convinced by his arguments. Now it must be exceedingly embarrassing for any man to undertake to do an act from which he expected no good to result, and that, I must admit, is in part, my position. I shall, however, endeavor to be brief in what I have to say.

I will notice, Mr. President, some of the positions of the gentlemen who have preceded me in the discussion of this question, who favor a State Bank. I hardly think it is worth my while to make any reply to the gentleman from Decatur, (Mr. Robinson,) from the fact that the advantage he has over me is so great that it would be entirely useless. The gentleman is proverbially notorious as a man of honesty; and certainly anything that I can say is not likely to receive much consideration with the gentlemen of this Convention compared with what was said by the gentleman from Decatur. But, sir, I would notice one or two remarks which fell from that gentleman.

The gentleman in comparing the issues of banks, spoke with a great deal of confidence of the issues of the State Bank of Indiana, and he asks, "where is the farmer who would not prefer a note of the State Bank to a bond of the State?" The farmers would undoubtedly prefer it because it would answer their convenience better than the bond would; but they certainly would not prefer it on the score of security, because that bank has now a circulation of two and a half dollars for every one dollar of actual capital. Thus making the actual capital which is pledged or deposited for the redemption of the paper of this bank, not more than forty cents for every dollar issued. If that be ample security, then I do not understand what security is. Sir, if the gentleman will look back but a very short period in the history of the country, he will find another instance in which the same argument might have been used, and indeed *was used*. I refer to the United States Bank. When that bank was in operation he would undoubtedly then say to the farmer, in tendering him a note of that bank, "This note is good beyond all question. Here it is; it passes at par all over the United States, and is almost as good in England as Bank of England paper itself." So undoubtedly was said of the State Bank of Pennsylvania, and now we have seen that the issues of these banks were not actually worth ten cents on the dollar. Now, sir, let me say that so far from the farmers of our country desiring such a circulation as this, they feel that they have been altogether imposed upon by money of that kind, and they look with anxiety for the establishment of a system which shall be founded upon a more solid basis.

Then the gentleman objects to the system established in New York, because some nine or ten of these banks have failed.

Mr. WALPOLE. Yes forty-eight of them.

Mr. SHOUP. Well, I have not examined the matter so attentively as to be able to state the precise number; but, sir, if so many of them have failed it is tolerably good evidence to me that banking has not been very profitable to them at all events, however profitable others may be able to make it. Yes, sir, the business was doubtlessly too honest for them, and they wanted to get out of it and go into some other. If they had had powers under a corporation by which they could have realized thirty-five or forty per cent. would they have closed their business? Certainly not. And this, sir, again shows that the free banking system is the proper one. Sir, the gentleman from Decatur charges gentlemen upon this floor who are in favor of the free banking system, with having put on a pair of spectacles with one eye, and that they are looking to the interest of the Wall Street broker alone, and to that of the bond holder. Sir, I do not know that this is a fact, I am not personally acquainted with any gentleman who entertains any such views upon this floor, and I can assure the gentleman from Decatur that the only reason why I advocate the system of free banking is, because I believe it will contribute to the interests of my constituents. But if gentlemen choose to speak of the motives of others they should remember that they are liable to retort, and I might therefore say that the gentleman himself had got on the "one-eyed spectacles" and was perhaps looking deep into the vaults of the State Bank of Indiana for a large fee. [Laughter and applause from the free bankers.] I have now done with the gentleman from Decatur.

I will now notice a few positions of the gentleman from Vanderberg (Mr. Lockhart). That gentleman commenced his speech on yesterday morning in a calm, pleasant, and interesting manner. He set out with the proposition that the present Constitution was framed under the most favorable circumstances, and at a most favorable time; and I drew the inference from his argument that the framers of that instrument accomplished a work which could not be bettered, and that therefore, he is in favor of the section in the old Constitution on this subject, and consequently in favor of a State Bank. Sir, so far as I am concerned I must say that I do not believe any such doctrine. I believe that we are living in age of progression, and perhaps greater improvements have been made in the system of banking within the last twenty-five years than in anything else. Sir, what was the situation of our community when Gen. Jackson stopped the United States Bank? I was taking the paper of that bank every day and passing it off at the counter, being under the fullest impression that the United States were bound for the redemption of the notes. And such, sir, was not my impression only, but it was the impression I am satisfied of a very large majority of the people of the United

States. The mistake however was found out, and the loss lead the people to inquire into the reason of it. The question has been examined by the people, and as a consequence the system of banking has undergone a great improvement. We live now in a new generation. One generation has passed away since the old Constitution was framed, and if we have not leaped something in that time we must admit that we are not very apt scholars. Sir, the doctrine of the gentleman from Vanderburgh, is simply the old doctrine of going to mill with one end of the bag filled with grain, and the other with stones.

A MEMBER. I would suggest "rocks."

MR. SHOUP. Very well; "rocks" then, if that word suits the gentleman's taste any better, although I believe in calling all things by their proper names. Sir, I believe that we are progressing—that we are making valuable improvements upon the old Constitution with regard to banks. The gentleman from Vanderburgh says that the free bank system had been tested at the time the old Constitution was framed, and as an illustration, he calls attention to the banks of Kentucky. But, sir, let me say that the system adopted in Kentucky bore no resemblance to the system of free banking as we propose it. There was nothing of free banking belonging to it. Such an assertion might do if the gentleman was pleading a cause before a petit justice of the peace or a petit jury of the country, but it will not answer here.

Again, sir, the gentleman from Vanderburgh says that if we adopt the free banking system, every county in the State will have a "shaving shop," or in other words, a "shin plaster" establishment within it. Now what is a shin plaster? If I understand correctly what is meant by it it is a piece of paper representing a credit for money when there is nothing to redeem it with; and when a bank is permitted to issue eight or ten dollars for one of her capital, or even three to one, I say that every dollar issued over and above the actual capital of the bank to redeem it, is a shin plaster. Now let us take two bills—one of the State Bank, and one of a free bank as we propose to establish it, and make a comparison between them. We find that the one has an issue of two dollars and a half for one of her capital. On the other hand we take the note of the free bank system, and we ask ourselves the question, "which is the most responsible?" Here in the free bank system we have dollar for dollar held by a third party under the free bank system as a security to the bill holder, while under the State Bank system for every dollar which is secured there is a dollar and a half unrepresented by any security whatever. Sir, if this be so, and it cannot be denied, it needs no extraordinary discrimination to prove that the State Bank comes much nearer the definition of a shaving shop

or a shin plaster establishment, than banks established under that system which proposes that not a single dollar of paper shall be issued for which the most ample security is not deposited.

In reference to the banks that have closed in the State of New York, the gentleman further remarks that they have only paid seventy-five cents on the dollar of their issues. Well, sir, admit that to be true, and what do we see on the other side? Why, sir, if you take the average amount that has been paid to the note holders of your banks that have failed throughout the country, you will find that it does not amount to more than twenty cents on the dollar, [Applause.] The free banking system, therefore, is better; because in case of failure it pays a larger dividend. [Renewed applause.]

Sir, when this system was first introduced in the State of New York, it was entirely new; the bankers loaning money to persons to pay off their old debts, could not make these loans available in time, and hence their failure; and so will it ever be—for I hold that no bank can ever succeed that makes loans of that kind. But, sir, such will not be the case again. The gentleman from Vanderburgh also read to the Convention an account of the sale of stocks, and asks gentlemen what they would think of taking stocks as security that were selling at twenty-six cents to the dollar. Now I regret that the credit of the State of Indiana should ever have been so far reduced as that her stocks should have been sold at twenty-six cents on the dollar; but I am bound to believe that such a state of things never can, and never will occur again, from the fact that the Convention has adopted a section which I think will forever prevent it. They have put down a stake that I think will hold the matter fast. They have said that the Legislature shall never have power to borrow money on the credit of the State for any purpose except that of repelling invasion. With this constitutional provision our present stocks cannot fail to be regarded as the best kind of security—better even than gold. We have nothing therefore to fear from that kind of security.

The gentleman next arrays the State Bank system against the New York system, by telling us that in the State of New York there are eighteen dollars in paper issued for one of specie for their redemption. Now what is the fact? I tell the gentleman that that only proves that they have dollar for dollar as security for the redemption of all their paper, and 18 per cent. into the bargain; because for every dollar that is put into circulation there is a dollar deposited in the hands of a third party for its redemption; and even if they have only one dollar in specie for every eighteen of paper, it is so much additional security to the note holder.

I will now notice a few of the suggestions made by the gentleman from Switzerland (Mr.

Kelso.) The gentleman asks where we are to obtain our bonds? and he goes upon the presumption that we are to borrow them from the State herself in order that we may bank upon them; and he then goes on with a long tirade with the view of showing the large amount which the people would be annually taxed to pay the interest on these bonds. Now, sir, I do not believe that there is a single man upon this floor that advocates the system of free banking who thinks of getting a single dollar from the State. It cannot be done. Now let us look at the gentleman's argument for a moment, and see how far it is calculated to mislead. He makes it out that the sum in which the State will be involved in a given number of years will be over a hundred millions of dollars. This is extravagant enough it is true; but I would just remind the gentleman that even if the State should loan her bonds for any such purpose—which by the way cannot be done—she would charge interest upon those bonds, and one interest account would balance the other. But, sir, we do not require anything of that kind. The gentleman then speaks of the large amount of bank capital that will be necessary, and he classifies each of the towns; he puts some of them at \$20,000, and some at \$50,000, and others at \$100,000, and others again at \$500,000, and in summing up the whole matter he makes it out that by these free banks we shall have a circulation of \$9,000,000, and little else than bonds to redeem it with. Now, sir, what are the real facts of the case? Does not every man believe that our present circulation is more than that amount, if we take into consideration the paper of Ohio and Virginia, and Kentucky, and other States which is circulating among us in addition to the issues of our own State Bank? And, sir, if we have that much of a circulation, and with it all find that it is not enough, that we need it all, and yet more in order to accommodate the business of the country, need we be alarmed at the amount which the gentleman from Switzerland summed up.

Then the gentleman notices some of the difficulties of the present State Bank charter, in relation to the location of branches; but, sir, no man would like to have a partner forced upon him unless he had a choice in the partnership. I regard that as a healthy provision of the charter; yet, if I understand the gentleman from Switzerland aright, he complained that the Legislature had not power to establish branches wherever they pleased. I cannot but think that were the gentleman in the Legislature, and were an effort being made to renew the bank charter, he would be in favor of that principle. It would not be right for the Legislature to have the power of locating branches wherever they pleased, without the consent of the bank. And to wind up with, and convince us beyond all doubt, the gentleman from Switzer-

land arrayed before us a large number of figures by way of showing the comparative advantages between a State and free banks. Perhaps he did this upon the principle that facts and figures do not lie. I can only say that the figures lie when the facts are left out; and I must say that in the gentleman's calculation, I think the facts were not there.

I will now hastily notice a remark which was made by the gentleman from Putnam (Mr. Stevenson). The gentleman thinks that the free banks cannot be sound; that they cannot maintain their circulation or redeem their money with gold and silver from the fact that most of our surplus produce is to be sold at the Ohio river. Now I cannot see any reason in this; for if a bank in the interior of the country loans a man \$20,000 to buy wheat, the man who borrows the money having given his bill duly endorsed, receives the cash, which he pays over to the farmer; and the farmer is then enabled to pay his hired hands, and all his little bills, and thus the money would go into circulation, the banker in the course of, say, ninety days receiving Eastern funds or credits for the amount. If, therefore, any preference is to be given to banks on that score, I should say that banks in the interior could be more easily maintained than banks located on our borders.

The gentleman from Putnam further remarks that the farmers want a State Bank; the State, however, not to be a partner. Now, Mr. President, I am wholly opposed to the name of the State being used, if she has no interest in the bank. Certainly not. Why does a corporation of this character desire to use the name of the State? Why, sir, merely for the purpose of giving credit to their circulation abroad, so that it may be the more easily imposed upon the credulous and unsuspecting. Sir, if the State is not to be a partner I am opposed to her name being used, because it would be a lie upon its very face.

Mr. President, the gentleman from Shelby (Mr. Hendricks) made an interesting speech yesterday, to which I listened with much attention. I do not believe that any other gentleman listened with more interest than I did, and I will notice one or two of the remarks which he then made. One objection which he makes to the free bank system in comparison with the State bank system is, that the independent system is not free to all; that it is not as much so as the present State Bank; because, he says, the books of the present State Bank can be opened in any town, and the farmer can come up and invest his fifty or hundred dollars in its stock, which he alledges cannot be done under the free banking system, because the least bond issued is for a thousand dollars. Now, in this, the gentleman is entirely mistaken. Suppose that we choose to raise a company under the free bank system, what is necessary to be done? Why, sir, that each man should subscribe his

\$25, or \$50, or \$100, just as he is able; that the bonds should be purchased, and that each man should receive a profit proportionate to the amount of his capital invested. Certainly the man who has fifty dollars can invest it under this system just as well as the man who has a thousand dollars. There is no monopoly about it. Sir, this is very like what I would call special pleading. I am no lawyer, but the gentleman from Shelby is, and perhaps he takes short cuts, but they are neither so short nor so deep that the bottom of them cannot be seen. The gentleman, in declaiming against the free banks of New York, says that the appraisement was made when the stocks were low, and that as the business of the country increased and prospered, the value of the stocks increased also; that when on the failure of some of these banks the stocks were sold at forced sale they only realized a greatly reduced price. Now I was under the impression that the stocks were taken at their par value. The gentleman says there was a loss upon the stocks, yet these stocks brought 49 cents and 8 mills, so that they could not be appraised at 20 cents to the dollar.

Again, sir: the gentleman from Shelby asserts that competition increases prices and reduces amounts. Now, Mr. President, if the gentleman refers to competition in banking, does he mean that it is to increase the rates upon which we are to borrow money, and to reduce the amount of circulation? Is that the inference?

Mr. HENDRICKS. If the gentleman will allow me, I will explain to him what I said and what I meant.

Mr. SHOUP. Oh certainly.

Mr. HENDRICKS. I said that competition in the ordinary business of the country increased quantities and reduced prices, while competition in banking would have the opposite effect.

Mr. SHOUP. I do not understand it so. Competition, if I understand it, increases the value of the product in your market for sale. If there are five or ten customers for your wheat, will you not be likely to obtain more for it than if there be only one? Every gentleman must admit that that would be so.

Now, Mr. President, the gentleman from Shelby also makes allusion to a gentleman now in our city who has had a great deal to do with our State bonds; and from his remarks, one might understand him to mean that this gentleman had advocates upon this floor. Sir, I do not believe anything of the kind. I believe that the delegates who are here advocating the free bank system, are doing so from the purest motives of interest to the people—believing that it is to their interest to furnish them with a sound circulating medium.

Mr. President, it is very evident that, heretofore, it has been the interest of stockholders in banks to fail. They generally were large borrowers from these banks; and when a failure

came, they would pay in the depreciated paper at par, by buying up the circulation, and thus reaping large profits from the operation. We see, then, that, under this old mode, it is the interest of the bankers to fail. But, sir, how is it with the free banker? Is it his interest to fail? No, sir; because his security is given in full. It is his interest to do his business honestly, and in such a manner that he himself may not sustain any loss.

Now, Mr. President, what are the facts with regard to bonds? These are to be looked to as a principal security under this free banking system; and, sir, if you examine the state of the market since the year 1791, you will find that the average market value of the bonds of the several States of this Government will average eighty-five cents to the dollar. Sir, there is no great loss here, and there can be no such loss as gentlemen speak of.

The PRESIDENT. The Chair must inform the gentleman from Franklin that his time has expired.

On motion, the rule was suspended.

Mr. SHOUP (resuming). I was not aware, Mr. President, that I had spoken so long; and as the Convention has been kind enough to suspend the rule, I will promise gentlemen that I will not trespass much longer upon their attention. I have but a few more remarks to make; and I will now proceed to notice one position which was assumed by the gentleman from Monroe (Mr. Foster). That gentleman advocates a State Bank, and he does so in a very ardent manner; because, says he, large profits are made by banking; and, if profits are to be made, they should be made by the State, and not by individuals. Now, if the object of our State Government is to make profits, why, then, let her take at once into her hands the merchandise of the country, and realize a profit from that. [Loud applause from the free bankers.] But, sir, I hold that the State should not engage in any traffic, but confine herself to her legitimate duty—that of securing equal rights and privileges to each citizen of the State. [Applause.]

Now, I will notice for a moment the principles contained in the proposition which I introduced some days ago:

"The business of banking shall be free to all on such terms as the Legislature may impose."

Now, if it is right to bank—and I regard it merely as a commercial transaction—if it is right for five, or ten, or five hundred men to engage in such a business, it is right that every man may do it; and the Convention, a few days ago, has fairly settled this question, by providing that no privilege shall be granted to an individual, or to a class, that shall not be granted to the whole. I presume that this principle will be carried out; and if so, the only banking

business that can be done, can be done upon the terms which I have laid down.

Now, the first restriction is, that no banker or banking company shall be allowed by law to receive any greater interest than individuals are allowed to receive. Now, certainly this is right. I believe that no gentleman will controvert this point.

The second restriction is, that all bills or notes issued by any bank shall be registered by some proper officer, and security taken for the redemption of the same. Now, if the Legislature hold to this provision, the note holder can have no fear. The farmer or mechanic, when he takes this money, will know that there is sufficient security in reserve; and that, though the officers of these banks may be rascals and disposed to cheat, they cannot do it, because a third party holds the security on behalf of the note holder.

The third restriction is, that the stockholders shall be individually liable for the notes issued. Some gentlemen are afraid that this takes too broad a ground. I say it is perfectly right. Sir, if you and I should enter into a partnership to manufacture woollen or cotton goods, we would of course be individually responsible for the debts of the business. And gentlemen engaged in banking should be subject to the same restrictions; for I hold that no privilege should be given to gentlemen engaged in banking, which individuals engaged in manufacturing, or any other business, cannot enjoy. Instead of the individual responsibility of the stockholders being made an objection, I think it is a great advantage. It would give credit to your notes, and make them of the very best character.

The fourth restriction is, that the bill holder shall have preference in payment over all other creditors, in case of failure. This is certainly right. The honest laborer, who toils day by day for the little that he earns, when he gets his money at the close of the week, ought to know that it is good, and not subject to a shaming operation by the brokers. Such, sir, I am sorry to say, has not been the case formerly. Thousands and millions of dollars have been lost to the laborer by these rotten institutions.

The fifth restriction is, that no law shall be passed authorizing the suspension of specie payments. I do not think it right that the Legislature should at any time have power to authorize a bank to suspend specie payments; but that, when a bank can no longer meet the demands against it, it should close up its affairs and settle up as far as its means will reach.

These are my views, and I hope they will meet with the approbation of the Convention.

Mr. STEELE. I do not rise to make a bank speech. One of the evils of banking, I am told by gentlemen on this floor, and I have learned it by experience, is over issue. There

is a doubt rising in my mind on the present occasion, whether we are not over issuing in this Convention. Let us inquire for a moment. I have heard it as an old adage, "that too much of one thing is good for nothing;" and I think from the numerous amendments in the hands of gentlemen, that we had better cease our batteries and pass over the muddy stream, for there is something better for us on the other side. Why then hesitate, and stand so long on this side of the stream? Every exertion that is made by gentlemen seems to produce more difficulty—to produce more muddy water and deeper sands, and makes the stream the worse to cross. Then let us cross at once. I have never been driven to the necessity of calling the previous question. [Several voices—"Don't you do it now."] It never has been called by me—never in my life. But, gentlemen, be assured that I have on the other side of the stream, which I have represented by similitude, all that is dear to me. I have there all I own—my children and my sweet-heart. [Loud applause.] Let us for once feel and think of sweet home. [Cries of "consent."] I do not desire, gentlemen, to dwell upon this question, nor do I want to make a bank speech. But I want the Convention to do this—to cross the stream this evening. [Cries of "no sir."] Will gentlemen agree to this? Well, I might give them a speech of an hour in length, before I quit the floor. I could do it, for I have thoroughly investigated this question in 1832. But, however, you will get no bank speech from me on the present occasion. If gentlemen will not stop the matter—if they will not make a bridge and cross the stream, let us do what we can do—make shorter speeches—let us come down to fifteen minutes speeches. We will hear you much better, and will gain more information than from those long speeches of an hour in length. We will then all have a chance of speaking. I have had a desire to say something from the beginning—it is, however, with great difficulty that I ever get the floor. I will say, too, that all my speeches have been uniformly short; so it is on the present occasion. I ask you as an old man—as a father, to stop these long speeches in order that we may get through with the business of the Convention at some day or other.

Mr. BARBOUR said, If it were not, Mr. President, for the deep interest which the people of Indiana must necessarily feel in this question, I should not at this time, obtrude any remarks upon the Convention. I regard it as one of the questions that we are here to settle. I regard it as one of the greatest questions that can ever interest the people of Indiana, that is, a sound circulating medium. The people of Indiana must have a currency—they must have it from some quarter. It must be furnished either by a State Bank and branches, or by some other banking institution, or by both, or by the banking institutions of other States.

What would be the condition of your State, without a currency? What would be the price of the produce of your farmers? It would be cut down to sacrificing prices. I have some little knowledge of the course of trade in Indiana, and what has been my experience, I will endeavor to put before the Convention, that they may have the benefit of it.

Ours is essentially an agricultural State. Our farmers raise a large surplus for foreign markets. There must then be something with which to buy this surplus. That is a proposition which none will deny. And where, sir, are we to obtain the means of purchasing the surplus products of the State, unless it be furnished by means of banking capital? Take for instance the pork trade. This portion of the products of the farmer is offered in market mainly in the month of December. It requires a large capital to buy it. Our wealthier dealers do not keep a surplus on hand for the purpose of this trade. They look to the banks to furnish them a currency for this purpose. But by means of bank facilities, the number of purchasers are increased and the farmer reaps the benefit of an increased competition in the market.

It is not for the benefit of banks and bankers, that I advocate banking institutions. It is solely for the purpose of increasing the agricultural, commercial, and manufacturing interests of our people. Banks do not add directly to the wealth of the community. They do not raise an ear of corn, or a grain of wheat, or make a plow. But they furnish means to the purchasers of the produce of the country by which competition is excited, and thus the farmer is enabled to realize better prices. This adds to the wealth of the farmer—excites his industry—stimulates his enterprise, and promotes the prosperity of the State. But bring about a stringent state of the money market, and the produce of the county must necessarily feel its effects. Sir, it is my opinion that if the present State Bank and branches could have furnished a sufficient currency to have bought the surplus products of the farmer during the present pork season, that pork along the Wabash Valley, would have commanded twenty-five cents more on the 100 lbs. There will be packed along the Wabash this season, over 180,000 hogs. The additional price on this single article, would have made the handsome sum of \$75,000, which would have went into the pockets of the farmers. It will be in vain to tell the farmers they are not benefited by this operation. So stringent has been the money market along the Wabash, that while this Convention has been in session, individuals from my section of country have been to Cincinnati, and brought from that city large amounts of money in sums of ten, twenty, and thirty thousand dollars, which has been employed in the single article of pork. Doubtless many, of whom I have no knowledge, have done the

same thing. As an evidence of this scarcity of money, bills of exchange which ordinarily sell here in the west from a cent to a cent and a-half premium, have sold at par, and in some cases, at a discount. They were for a time, below par in the great commercial city of Cincinnati. Sir, it is a fact within my knowledge, that when the currency of our banks has been exhausted, the price of this staple product has sensibly declined. It cannot be otherwise. Strike out the currency furnished by our banks, amounting to about \$4,000,000, can any one doubt that it would result in serious injury to the State. Such a heavy draft on our circulation would seriously affect prices. This vacuum might be partially supplied from other States. But not in sufficient quantities to meet the wants of trade. And who, I would ask, suffers by this? The tiller of the soil; and consequent every other interest in its train.

It is our duty, as was remarked by the gentleman from Lagrange, (Mr. Howe,) to furnish our people with a currency. A currency we must have. If we do not supply the currency by means of our banking institutions, the currency or bank paper of other States, will flow in upon us. You may erect a cordon of forts around the State and multiply swarms of officers sufficient to eat out the substance of the people, and you cannot keep out the notes of specie paying banks of other States. The only effectual way to keep out, to any considerable extent, the currency of banks out of our State, is to supply ourselves with a currency of our own. By supplying that currency adequate to the wants of our community, we will, in a great measure, effect this. Can any one doubt for a moment, that our people prefer a proper circulation of their own to the paper money of other States—banking institutions of their own, over which they can have some control—the condition of which they may inquire into—officers whose conduct they may from time to time inspect?

The question then is, how can we best supply that currency? By a State Bank and branches—by free banks, or by both? I would advocate a system of free banks, but I am no enemy of a State Bank. My action here will always be taken with a view to the best interests of those I represent. My first choice would be free banks. If we had sufficient capital for that purpose, I would say dispense with the State Bank entirely. But we have not sufficient banking capital to rely on that system exclusively, as I shall attempt to show before I conclude. I wish the gentlemen from Decatur, (Mr. Robinson,) in his zeal for a State Bank, had shown us on what it would be founded. Where are we to obtain the capital stock for such a bank, on which to base her circulation.

The present State Bank was based on foreign capital—money that the State borrowed. This money in process of time, must be paid. Then where is the State to obtain money for banking

purposes? This Convention has adopted a section prohibiting the State from borrowing money, except in cases of emergency.

The gentleman from Decatur advocated that restriction; yet before we have closed the labors of this Convention, that restriction is rising up in judgment against us. I opposed that restriction. I thought it unwise at the time, and that we might safely leave it to the people to say whether it was to their interest to borrow money or not. I would again repeat, I should be pleased to hear from that gentleman where the State is to obtain money for a State Bank. Is the State to have no capital, no currency in it? If so, why call it a State Bank? Any other name would do as well.

So far as I desire the establishment of a State Bank, I wish to see it arranged on principles similar to the present. It is generally conceded that the mutual liability principle is a good feature in our State Bank charter. It induces care and prudence in the management of the bank. It brings together men of talent from different portions of the State—men of experience, acquainted with the wants of trade; enables them to take a comprehensive view of the currency of the State, and to lend their assistance to any branch which may need their protection. It gives character and credit to the currency of any branch throughout the entire State, and, to a considerable extent, abroad. As an individual, I would prefer owning stock in a bank which was in no way responsible for the liabilities of other banks; more especially if it were established at a convenient point, where there were men experienced in the business of trade and banking. But as a public man, desiring to give our currency a more general character, and a wider circulation, the mutual liability principle should be adhered to.

As a necessary consequence of this principle, the Legislature should have no power to establish branches at their pleasure. If such a power be reserved to the Legislature, it would absolutely prohibit the investment of any capital in such a bank. The Legislature could never know, with that certainty which is requisite, when a branch could be safely established—where the business of the country required it—where prudent capitalists could be found to manage it. But where self-interest prompts—where men are to be responsible for the failure or mismanagement of any bank, they would take good care that such bank be located at a point of trade, where there are good and responsible men, acquainted with the business of banking, to conduct it. The very apprehension that the Legislature might exercise such a power unadvisedly, would prevent prudent capitalists from investing. With such a reservation, you might have a bank charter, but no bank.

In what consists the safety of the funds of the State, in this institution? Most unquestionably, in the self-interest of the individual stock-

holders. The bank directory, representing the individual stock-holders, control the institution. This is as it should be. If the individual stock-holders make profits, the State must. By promoting their own interest, they necessarily make the capital of the State profitable. The gentleman from Monroe (Mr. Foster) says the State should own the entire capital, and make all the profits. This would never do. You must have a majority of the men who manage the affairs of the bank, interested in making the stock profitable. Where is your surplus revenue fund, loaned out by the agents of the State? Almost wholly lost. And such would be the condition of a bank, in which the State was alone interested. The capital would be soon squandered.

Mr. President, I now propose to make a brief comparison between the two systems of banking, showing the comparative safety, to the bill-holder, in each—the difference in the increase of circulation of the one over the other, on the same actual capital, and the consequent profit accruing from that increased circulation. Take a State Bank of a capital of \$200,000—on the principle that she issues two dollars and a half of paper money, for every dollar of specie in her vaults, she puts in circulation \$500,000 of paper money. But how does the currency get into circulation? By discounting bills of exchange and promissory notes. What, then, has the bank, to redeem this circulation of \$500,000? She has the \$200,000 of specie in her vaults, and the \$500,000 of bills of exchange and promissory notes, making \$700,000 to redeem a circulation of \$500,000. Now, suppose a bank organized on the free banking principle, desires to put in circulation \$500,000. How can she do it? In the first place, she must deposit with the Auditor of State, \$500,000 in State stocks (which are worth a premium). Over and above the deposits of this stock, the bank must have an amount of specie in her vaults, sufficient to redeem her circulation, \$200,000. Now, how do the notes of this bank get into circulation? In the same way as the notes of any other bank, by discounting bills of exchange and promissory notes. Now, what has this bank, to redeem her circulation? She has the same \$200,000 in specie, the same \$500,000 in promissory notes and bills of exchange, and in addition thereto, she has deposited with the Auditor of State a collateral security of \$500,000 in stocks, which may be resorted to, in case the bank fails to meet her obligations by redeeming her bills in specie, at the counter of the bank. There is no reason that one bank will not be managed as honestly as the other. Is not the security, then, in the one case, immeasurably superior to that in the other? Suppose we destroy all the banks in this State, and Ohio, Kentucky and other States adopt free banks on the principles above indicated; would you not prefer the notes of the free banks, to those of any

other? Would you not sleep sounder on a pile of free bank notes, than those of the old system of banking? The one has a security equal to its circulation, which cannot take wings and fly away.

This free bank, then, has an actual capital, in money and stocks, of \$700,000, and a circulation of \$500,000, \$200,000 less than the actual capital of the bank, requisite to commence banking operations. Now, on the supposition that the people of Indiana own these stocks, to every \$700,000 in money and stocks, (in the above proportion,) we might, on the free banking principle, increase the actual circulation \$300,000. Now organize your State Bank, with a capital of \$700,000. Two and one-half to one, on this specie basis, would produce a circulation of \$1,750,000. But the capital of the bank, to wit, \$700,000, is withdrawn from circulation, and put in the vaults of the bank, to redeem the paper currency. This amount, deducted from the paper circulation, would give an actual increase of the circulation of \$1,050,000. But the increase of circulation, on the free banking principle, was only \$300,000. The difference, then, in favor of the State Bank, in the increase of circulation, is \$750,000. Now what is the comparative profit of the two banks, supposing each to keep out its full circulation? The free banks receive interest on the \$500,000 of stock pledged, and on the \$500,000 of circulation, making an interest on \$1,000,000, while the State Bank receives an interest on her whole circulation of \$1,750,000. Difference in favor of the State Bank, \$750,000; on which the State Bank receives an interest, over and above what the free bank would receive.

Now, Mr. President, it has been asserted that banks organized on the principles of our State Bank are based on false principles, and that they cannot close with safety and security to the bill holder. If this be true, as gentlemen have asserted, who, I ask, would invest a dollar in your free banks? If the State Bank receiving an interest on \$1,750,000, could not wind up solvently, how or in what condition would your free bank, receiving an interest on \$1,000,000 only, close her affairs. Both have to make money by the same process—discounting notes and dealing in bills of exchange. The best evidence I have of the solvency of our State Bank is found in the fact, that the stockholders of this bank, some of whom I know to be prudent, careful, money making men, well acquainted with the condition of the bank, would not sell their stock at a premium of twenty per cent.

Now if we are to have an exclusive system of free banks, let us inquire into what would be the probable consequence of such an act. A very small amount of Indiana bonds or stocks are now owned by citizens of this State. Probably \$250,000 would cover the amount of State stocks owned here. It will be necessary then to send specie abroad to purchase these stocks.

Some few owners of our stocks living abroad might come here to engage in the business of banking. But it can hardly be expected that the owners of our bonds will come here to engage in banking; they are engaged in a much heavier business at home than they could do in any of the cities of our State. They must be brought here mainly by our own citizens, and it will require specie to buy them. Where is this specie to come from? Indiana is a debtor State. In 1853 the interest on our foreign debt will exceed \$300,000. This amount will be sent abroad in specie. This is a heavy drain on the surplus wealth of our State and one that taxes severely the energies of our people. The charter of our State Bank expires in 1857. The circulation at that time may be estimated at \$5,000,000. This circulation would be then withdrawn. Can any one doubt the distress and suffering which such an arrangement of the currency would produce? Now let us see how suddenly and easily the free banks would supply this deficiency; fill up this vacuum. You want \$5,000,000 in State stocks for your free banks; but you have not got them; you can only obtain them with \$5,000,000 of specie. Is that specie in Indiana now, or will it be in Indiana then? No sane man believes it. But suppose by straining every nerve we raise \$5,000,000, and purchase these bonds. We must then raise about \$2,000,000 of specie in addition thereto, to put into the vaults of these banks to redeem their paper circulation of \$5,000,000. Now what have we gained by this operation. We have got a paper circulation of \$5,000,000, which has cost us a specie circulation of \$7,000,000—\$5,000,000 of which have been sent abroad, and \$2,000,000 put into the vaults of the banks, thus producing an actual diminution of the currency of \$2,000,000, apart from the \$5,000,000 of paper currency lost in the demolition of the State Bank, making an actual loss to the currency in Indiana of \$7,000,000. Of course there are not \$5,000,000 in specie to send abroad to buy our stocks. But just to the extent that our specie goes abroad for that purpose, in like proportion will that currency be diminished. Such a course of policy would roll this community together as a scroll. It would ruin the debtor and put fortunes into the hands of the wealthy. There can be little doubt that an exclusive system of free banks would produce a stringent state of the money market in our State. We are not in the situation of New York. She is an old and wealthy State; capital is there seeking investment in stocks apart from the privilege of banking, obtaining simple interest only. But when is superadded to this, the privilege of banking by depositing these stocks as a collateral security, it increases very considerably the currency of banks. When we are out of debt and have a surplus wealth which is seeking investment at home and abroad, we can then rely on an exclusive

system of free banks. Until then it would be better to leave it in the power of the Legislature to act as the interest of the State might require. I can see no objection to free banks; they are unquestionably based on sounder principles than any banks that have yet been organized. The business of the country absolutely requires additional banking facilities, and when that is the case, what is to prevent their going into operation. If good customers is all they want they won't go begging.

I will now mention one or two objections to free banks. It is said that the depositor or purchaser of a bill of exchange of the bank, in case of the failure of the bank, should come in equally with the bill-holder for a share of the proceeds of the State stock. This would be wrong, and at war with the principles on which free banks are founded—which is that of absolute security to the bill-holder. If the depositor, having deposited an amount equal to the entire circulation of the bank, could in case of the insolvency of the bank, come in for an equal share of the State stock, the bill-holder would lose fifty per cent. This imposes no hardship on the depositor. He is not compelled to deposit with the bank. If he does not consider the bank safe, he may deposit with some other bank, or with a merchant, or broker, and so with reference to bills of exchange. It is a matter of individual contract between the banker and depositor—and should stand on the same footing of any other contract. But that which circulates from hand to hand as money, taken by a confiding community, should have an exclusive claim on the stock pledged.

What objection can there be to leaving with the Legislature the authority to charter either, or both? The free banks are safe, and the State Bank has furnished a sound circulation by which the people have never lost a dollar. Where the State is to obtain capital for banking purposes, I do not know, unless we retrace our steps and expunge from the Constitution that restriction of the power of the people. It is said we may use the trust funds of the State. So far as those funds are outside of the bank they are in the hands of men who have mortgaged their farms to secure their payment, many of whom are but poorly able to pay any sudden calling in of these funds, would distress these borrowers, and cause a sacrifice of their farms. Could the present loan of the State made at five per cent., been continued, it would have been of very great advantage to our citizens, invested as heretofore in a State Bank in furnishing a currency to purchase the surplus of the State.

It is said that bills of exchange are the representatives of value, and that in that respect they bear a striking similitude to the circulation of free banks. Now these notes may represent value, as stocks are pledged for their ultimate redemption in case of the failure of the bank.

But certainly bills of exchange are not of this character in majority of cases. The customers of our banks, when they want accommodations for the produce trade, present to the banks promissory notes and bills of exchange, for discount. Sometimes a promissory note is presented in the first instance for discount, and is discounted by the bank with the understanding that it shall be taken up with a bill of exchange. Now which represents value, the bill of exchange, or the promissory note? The bill of exchange was but a continuance of the loan in part. The money was borrowed with the purpose of being invested in produce, yet the bank cannot control the application of the money. When the produce is sent forward and disposed of, the dealer can take up his bill. Some traders give a bill on long time in the first instance. He has nothing at the point where the bill is payable—but his intention is to purchase produce and send it forward to meet his bill. There is no value represented here. Banks, when they sell bills of exchange, generally act differently. They sell sight bills, and draw on actual deposits. Bills are sometimes drawn on consignments, and sometimes on the promise of consignments. A produce dealer here in the west might make an arrangement for his commission merchant in Boston to accept bills, promising to make shipments to meet them. These bills may be negotiated to the bank or to merchants who wish to make remittances. These bills are often paid before the produce comes to hand. They are in fact sometimes payable at sight. There is another species of bills of exchange. A house in New Orleans desiring to raise a sum of money, draws on a branch of his house in New York. The house in New York, when the bill matures, raises the money by negotiating a bill on the house in New Orleans. The two houses keep a bill flying backwards and forwards until they have effected the object of the loan. This is termed high-flying. The only effect of it is a loan of money. I shall not pursue the subject further, but think we ought to have power in the Legislature to charter both systems of banks if the commerce of the country should require it.

Mr. FOLEY. I do not rise for the purpose of making a speech, but for the sake of getting a vote. I move to lay all the amendments on the table.

Mr. COOKERLY asked for a division of the question.

Mr. CARTER moved a call of the Convention. The motion was not agreed to.

The question being upon laying Mr. Borden's amendment on the table,

Mr. FOLEY. For the sake of allowing my friend from Allen to explain the nature of his amendment, I will withdraw my motion, if the gentleman will renew it.

Mr. BORDEN replied that he would. The proposition before the Convention made it obligatory upon the Legislature, he said, in case they passed a law chartering banks, to submit the matter to the people for their sanction. With that proviso, he would go for free banks; without it, he would go against them. A gentleman, observed Mr. B., says that "there is a provision already adopted which says that no matter shall be submitted to the people, unless as in this Constitution provided." I leave it to the gentleman from Monroe if there be not an express exception which is applicable to the case? I renew the motion to lay the amendment on the table.

The question being upon laying the amendment of the gentleman from Allen (Mr. Borden) upon the table, the yeas and nays were demanded, and they were ordered, and, being taken, resulted—yeas 93, nays 29—as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Barbour, Beard, Blythe, Bourne, Bowers, Bright, Bryant, Butler, Carr, Carter, Chapman, Chenoweth, Clark of Hamilton, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker Davis of Madison, Davis of Vermillion, Dick, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Gootee, Graham of Miami, Graham of Warwick, Gregg, Haddon, Hall, Hamilton, Hawkins, Helmer, Hendrick, Hitt, Hogin, Holman, Howe, Huff, Johnson, Jones, Kent, Kinley, Maguire, March, Mathis, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Mower, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Smiley, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wheeler, Wolfe, Work, Yocum, and Mr. President—107.

NAYS.—Messrs. Berry, Bourne, Bracken, Chenoweth, Coats, Davis of Parke, Dick, Elliott, Harbolt, Kelso, McClelland, McFarland, Morrison of Marion, Ristine, Shoup, Smith of Scott, Taylor, and Wiley—18.

The amendment was accordingly laid upon the table.

Mr. PETTIT. I am satisfied that the first section, now under consideration, is as good a one as we will be able to get upon this subject. I have but a few words to say in reference to it. There is no necessity, in my opinion, to amend the first section at all. I am satisfied that the longer we delay with amendments, the farther we will be off from getting anything that is reasonable. For my part, being a friend of free banking, I am satisfied with the first section. I hope, at the proper time, the vote will be taken upon it. To the other sections, I shall offer some slight amendments, and will present a final section, before the article is disposed of. It being near night now, my purpose was more to get the floor, in order to say that when I get the floor to-morrow morning, I will move the previous question. I will now move to adjourn.

The motion was accordingly laid upon the table.

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The motion was not sustained.

The PRESIDENT. The Chair would remark that, though it is not, perhaps, in the regular course, that a communication has been received by the Chair from the President of the State Bank, in reply to a resolution of inquiry adopted by this Convention, it supplies a portion of the information desired. Perhaps the Convention would wish to hear what is contained in it before they decide upon any question this evening.

So the amendment was laid upon the table.

Mr. PETTIT. I rise to make an inquiry for information. I want to know whether the vote is now to be taken upon the other pending amendment.

Mr. BORDON. The motion, I understand, was made to lay both amendments on the table; a division of the question was called for, and now the question is upon laying the amendment of the gentleman from Franklin (Mr. Shoup) on the table.

SEVERAL MEMBERS. That is right. The amendment was then read by the Secretary.

The question being upon laying the amendment of the gentleman from Franklin upon the

The communication was then read by the Secretary.

Mr. OWEN. I move to amend the section by striking it out, and inserting the following:

"The General Assembly not to have power to establish any bank, except on the following conditions: The State not to be a stock-holder; no bank bill, or note, shall issue for circulation until countersigned by the Auditor, nor until there shall have been deposited as security for the same, dollar for dollar, stocks of the U. S., or of such States of the Union, as may be designated by law, to be estimated at their market value, in the city of New York, but not above par; provided that such stocks be, or are made to be, equal to stock producing six per cent. per annum; there shall be no law, directly nor indirectly, sanctioning a suspension of specie payments; bill-holders to have preference over other creditors, in cases of insolvency; stock-holders to be individually liable to an amount not less than that of their respective shares of stock; no bank to receive, directly nor indirectly, a greater rate of interest than shall be allowed by law, to be received by individuals loaning money; no banking institution to have exclusive privileges not granted to similar institutions; nor shall any such institution be created by special charter; the General Assembly shall have the right to alter, from time to time, or to repeal all laws that may be passed, creating banks or banking institutions."

Mr. READ of Clark, moved to amend by striking out and inserting a series of sections against special charters for banking; providing "that associations may be formed under general laws, for such purposes, against a suspension of specie payments; providing for a registry of bills, put in circulation as money, and ample security for their redemption in specie; stock-holders to be individually liable, after the year 1852; and in case of insolvency, the bill-holders to have a preference over other creditors."

Mr. OWEN. I desire to address the Convention in explanation of the section which I have submitted; and, I would say to the Convention, that this proposition has been prepared with some care, and submitted to the consideration of many gentlemen on this floor. But, as it is now late, I would very much prefer to speak to-morrow morning. I do conceive, sir, that this is one of the most important questions that can occupy our attention, and it ought to receive our best consideration. I move that we now adjourn.

The motion was agreed to, and the Convention adjourned.

SPEECH OF MR. BIDDLE

*On the Currency Question, made in Convention
January 4, 1851.*

Mr. BIDDLE then took the floor, and said: Mr. President, I have designed to make a few remarks upon the general question of banking, which I believe has been properly brought before the body by the reported section and the amendment just offered. I desire to address the Convention out of deference to the well known opinions entertained by my constituents on this subject. But I do not stand here as the particular advocate of their sentiments if they should be unsound, because I advocate no principles but such as I am satisfied in my own mind are based upon a sound foundation. I may here premise that if there be any one question well settled in my district, it is the question of banking. Happily for me I concur fully with my constituents. I desire at the outset, to present a few elementary ideas in relation to currency and banking; and in deference to gentlemen on this floor who are much more experienced upon this subject than myself, I must say that I distrust my own opinion on this subject, because it is one of the most difficult questions known to governments and political economists.

I have a few words to say by way of objection to the present State Bank of Indiana. But the friends of that institution will not understand me as aiming at their bank, but at the system upon which that bank is based, and all other banks having a circulation wider than the security for its redemption. Therefore I hope no one will suppose that I advocate any particular opposition to the State Bank. I am, however, strongly opposed to any bank based upon the same plan. I feel under obligations to the gentleman from Clark, (Mr. Read,) whom I do not see in his seat, for the remarks which he made touching the town in which I reside. He mentioned correctly, that that point is entitled to a bank under a law passed eleven years ago, but which has not as yet been obtained. There may be some prejudice existing amongst my constituents resulting from that circumstance; but I do not desire, in treating this question, to be influenced in any measure by local prejudices, though certainly we have much to complain of. I desire to carry out the will of my constituents, but at the same time I wish to entirely divest myself of the influence of any prejudice. It will be my aim to treat the question upon general principles. The nearest banking facilities are situated at a distance of forty miles from us on the west, eighty on the east, sixty-five on the north, and seventy miles on the south; so that we have an area of one hundred and twenty miles square, in a very fertile region, possessing great commercial advantages, without any banking accommodations whatever.

Before I conclude the remarks which I purpose submitting, I desire to say a few words touching what is called "free banking;" and I want no gentleman on this floor to entertain any prejudices against that system. I will confess freely, that when I first heard of this system of banking, it seemed to me to be a wild and extravagant theory. I have found, however, upon a close examination of its principles, that, in my judgment, it is the true system of banking, and I believe that ultimately it will be the only system recognized in the United States. Let not gentlemen suppose that "free banking" means an increase of paper money without any limitation. It is no such thing. On the contrary, I venture to say that it is one of the most safely restricted systems that was ever devised by man. I do not make this assertion at random. What I say I believe to be the conclusion at which every man must arrive, who considers the subject carefully and in a liberal spirit, from the beginning to the end.

I shall now present my objections to the present State Bank, and to the system of banking on which it is based.

What is money? It is the measure of value. Money should bear the same relation to the value of commodities as the chain does to the size of the acre, the pound to the weight, or the figure to the number; and to change this measure of value would be as injurious to enterprise, and as destructive to justice, as it would be to change the length of the chain, the weight of a pound, or the denomination of a figure. Sir Isaac Newton has told us that if you cast a pebble into the Atlantic, you thereby disturb the relative position of every particle of water in the ocean. This is true; and it is philosophically true, that if you change the place of any particle of matter, you thereby change the relative position of every other particle in the universe. It is the same, sir, with regard to the relations of value. Values balance and proportion themselves in commerce, precisely as matter in the natural world. Values are always relative, never positive. Even gold settles its value by its relation to other commodities. In connection with this subject I must mention a new idea, lately put forth in France, namely: to estimate the value of each commodity by the relation it bears to all other commodities. For instance, if A obligates himself to-day to pay B one hundred dollars a year hence, when the debt becomes due they take the relative value of all commodities *at the time the contract was made*, and if the relative value to money has increased, then A shall pay more, in the same proportion; if decreased, then less, in the same proportion. This is entirely true as a theory, but like many other theories which are true, can never be reduced to practice. You could never obtain this relative value sufficiently accurate, but it may be approximated. Indeed most of men's practices fall far below their theories.

Money must have its intrinsic value. I will lay down the proposition that you cannot add to the property of a State or nation by any system of banking that was ever invented. Value is intrinsic. You cannot give value to anything which has not, within itself, its own worth. If it has not value as a commodity, you cannot impart value to it. You can no more add value to gold by coining it, than you can make it heavier by the same means. Do not understand me as going against a paper currency. I go for a paper currency which is worth the promise that it bears upon its face. But I maintain that any bank which has not a basis in her vaults, or some attainable security equal to her paper issue, is an evil to any State or nation. When a bank pays all its debts, and redeems its paper, has it done all that it was morally bound to do? No sir, it ought not to disturb the relations of value. I have stated that money is the measure of value; I contend that it ought not to be varied by paper. You may circulate as much paper as you will to represent a dollar, but you add nothing to its intrinsic value. To disturb the measure of value is the same as to count the figures which represented five yesterday, four to-day, and six to-morrow; or to call the rod 16 feet long to-day, 12 to-morrow, and 20 the next day; or to change the pound from 16 ounces yesterday to 12 to-day, and 20 to-morrow. That is the result that immediately follows from banks issuing more paper than the basis it represents. As soon as things have adjusted themselves to this new condition, they contract their paper, and destroy the just relations of value. Ruin, or at least great injury, must follow. Although the banks redeem their bills, yet if the issue is over and above their intrinsic value, they disturb the measure of value, throw commerce into confusion, and destroy the reward of labor and enterprise; and consequently, do a grievous injury to the community. I maintain that, according to every sound rule of morality and philosophy, you are under obligations not to disturb the relative measure of value, as between man and man.

That there is something wrong in the system of banking, pursued in the United States, every reflecting mind must admit. There has scarcely been a bank since the establishment of banks in the 9th century, that has settled up, and discharged its liabilities as an individual does. A few have, to be sure, but they are exceptions. Is there not something wrong in this? Justice and truth, sir, are fixed—immutable. The idea that justice is one thing to-day and another thing to-morrow, no one will maintain. And if there be an error at the basis of the system, there must be an error throughout. The monument may be beautiful in its proportions, but the foundation is unsound, and will not support it; it is a pillar on water.

Gold and silver have been found to constitute the best measure of value that mankind can adopt. You cannot throw into circulation an undue amount of gold, as you could paper; nor, on the other hand, can you drive it out of existence suddenly. It is uniform in its production and consumption; contains a great value in a small compass; it is used as money throughout the world, and has a uniform intrinsic value in all markets; it is, therefore, the best measure of value. Do not understand from these remarks that I am what is called a hard money man; no considerable commerce can be carried on with the metals alone. But, I say that a paper currency cannot be greater than that which it represents, without doing a gross injustice, as between man and man. This is a proposition which has no answer; it cannot be evaded, it must be met. You might as well try to overturn a well established mathematical rule, as endeavor to controvert this position. I say it is the unavoidable result of all paper currency; not because it is paper, but because it represents that which has no existence. Under the ordinary banking system, you may safely say that they issue three paper dollars for one of specie, or bullion, in the vaults of the bank; they have, say, \$100,000 in specie, and the bank issues \$300,000 in paper. Our own State Bank has about one and a quarter millions in specie, and about three millions and a half in circulation.

Many devices, sir, have been adopted from time to time, to enhance the value of money. Whenever the nations of antiquity got into financial difficulties, it was a practice to stamp the money with a value greater than its intrinsic worth. What gives value to the precious metals? Not the stamp, sir, but their intrinsic value as a commodity in proportion to other commodities. The coin is worth more than the bullion; it is worth the bullion and the expense of coining it into money—no more. We have one instance of this system of doubling money in the history of the Romans, after the second Punic war. They stamped the money at double its intrinsic value, and thus cheated their creditors out of one-half their debts. It was a common device in past ages, before financial affairs were well understood, whenever a nation got into pecuniary difficulties to increase the nominal value of their money in the manner I have indicated. By doubling the nominal value of their money, they in reality added nothing whatever to the common stock, but they absolutely defrauded their creditors to the amount they increased the nominal value of their coin. Now here is the very same thing with the banks. You issue three dollars for one, or say two dollars, what is that but doubling the stamp of your coin? the old Roman device. When you grant a charter to a bank to issue three dollars for one, what is it but saying that the bank's dollar shall count three dollars, while the citizen's dol-

lar counts but one? Is not this unsound—is it not unjust? Certainly.

The difference ~~is~~, between the system which I shall endeavor to advocate and the present banking plan is this: Under the system which I propose, before a bill leaves the counter of the Bank, it has its reality behind that counter to meet its payment. The banks at present have not that reality. How could they have, when they are permitted to issue upon a basis of \$100,000 a paper currency of \$300,000? So many pictures, bearing on their face a promise to pay a certain amount, though in reality there may be no assets behind them to liquidate those promises. It may be asked why do not the banks immediately fail? It is because their debts are not all presented at the same time. They rest upon faith—a very unsubstantial thing to bank on. But they do fail, nearly every one of them—sooner or later—they always lay at the mercy of a people. The State Bank in 1837 could not possibly have paid its debts. What security have we that it ever will?

But that is not the only thing. They have given a false value to paper money, and that paper money changes all the monetary relations, and disturbs the contracts between citizen and citizen. A bill to be sure goes out of the bank with a nominal value upon its face; if the bank be honest it will redeem it, but where is the security if the bank chooses not to redeem it? What is the remedy? There is no remedy—no means to compel justice.

But the mere redemption of its bills by a bank of issue is not a fulfillment of its obligation, for it has done a great injury to the community by erecting a false standard of value. I am strongly opposed to everything that savors of monopoly. But there are reasons which show the whole system—even if not objectionable as a monopoly—to be inherently wrong and false. The gentleman from Wayne (Mr. Rariden) in his remarks the other day, set out by saying “that all the States were pledged to a paper system.” I do not know where that pledge is to be found recorded. If he means that—

Mr. RARIDEN. Will the gentleman from Cass allow me to explain?

Mr. BIDDLE. Oh, with pleasure.

Mr. RARIDEN. I said in effect that most of the States were embarked in that system; and that their habits of trade put them in it.

Mr. BIDDLE. Well, I hope there is a better time coming for other States as well as our own. I hope they will all adopt a healthy system. However, he says, “a bank is not a monopoly because of its franchises and privileges, but because money is always a monopoly.” That is true to some extent. A man worth a thousand dollars can do you more harm or good than the man worth but a hundred. But what is the gentleman's remedy? He

says money is already a monopoly, and therefore we will give it an additional monopoly by the law! Because it is a monopoly, therefore he would make it a greater monopoly. His next proposition was that a free banking system would result in giving an additional impetus to railroad speculations—that railroad companies would become bankers under this system. I shall take occasion to allude to this assertion before I conclude; and when I come to speak of free banking, I think I will be able to show that no set of men can enter into it without doing full justice to the public. Sufficient, then, for the gentleman's objections.

We have had many memorable instances of the issue of paper money. Some of them were referred to by gentlemen who have spoken on this subject. The issue of the Continental money was alluded to. It was an issue entirely without any real foundation; it had no basis except the patriotism of a brave and generous people. I am not prepared to say that the issue was a wrong one; nor would I say that our fathers could ever have established the liberties which we now enjoy without it. And it is probable that, if the Union of the States had been more perfect at that time, the entire amount of the Continental issue would have been redeemed; but it never has been redeemed. How many instances have we not had in our own Government, and in the banks of England and Amsterdam, and indeed in all banks, to show the prudence of having your basis before you send out a bill, and not to let a bill go out to find a basis.

After the removal of the deposits, the funds of the General Government became the basis of banking operations in what were called the "pet banks." What was the consequence? They issued as much as they possibly could of paper money. And what had you then? The most delusive bubble that could be conceived to represent money. You had eight dollars of paper to represent one dollar of specie. When the Government withdrew its money, the bubble burst and ruin followed. This has been the effect in all Governments where banking, upon the present system, has prevailed. But there is no Government that I know of which has been so much deluded as the United States. It is like a man who is accustomed to the use of stimulants—he feels very happy as long as the force of the stimulus continues; but when the stimulus is cut off, he sickens and dies. So with a paper currency; as long as you are increasing it, everything seems prosperous; but there is a point beyond which you cannot go, and when that is attained, injury or ruin must follow. And so it is with your present banking system. You appear to be the most prosperous people in the world as long as you have a large paper issue in circulation; while, in reality, your monetary system is in a most unhealthy condition—bloated, like the

inebriate, and *delirium tremens* must follow. The pound, or the yard, or the figure, is one thing to-day and another thing to-morrow. In my opinion, the monetary convulsions through which the United States have passed during the last thirty-five years would have overwhelmed any people not possessed of the indomitable energy of the Americans.

There was another device adopted by the Bank of England to replenish her coffers. It was to give one-half per cent., payable in its own notes, for bullion. What was the consequence? Parties brought in the bullion, and received the one-half per cent. advance in notes; they then presented the notes, which the Bank was compelled to redeem in specie, which they melted up; then they sent in the bullion again, and made another one-half per cent. In fact, the operation nearly ruined the Bank. It was a continued drain of one-half per cent. But I will not dwell here.

I wish to say a word or two now in regard to bills of exchange. I desire to describe what I understand by a system of exchange. Bills of exchange, since the middle of the twelfth century—

The PRESIDENT. The Chair would remind the gentleman from Cass that his half hour has expired. [Cries of "Go on! go on!"

On motion, the rule was suspended, in order to enable the gentleman from Cass to terminate his remarks.

Mr. BIDDLE resumed. I beg leave to thank the Convention for their indulgence; but I am only about half through. I say the system of bills of exchange was invented about the middle of the twelfth century. And, sir, I take it as an established proposition, that this system never worked injuriously to the public, and that, as a system, it never established a wrong measure of value, but maintained itself by representing the true measure of value always. Why, sir, you can exchange your money from New York on London, or Paris, or St. Petersburg, or Vienna, Berlin, or Canton, for a very small per centage. The exchange at London on St. Petersburg is frequently but one-half per cent., and oftentimes, at Paris, nothing at all. So this system does not, like the banking plan, disturb the relation of value, because a bill of exchange has a reality—its value is determined before it is used. It is drawn on something in existence. But do not suppose I contend that there is no such a thing as a bad bill of exchange. I do not so argue. To be sure, there have been forgeries, and parties have failed to honor their bills; frauds have been committed; but I maintain there has not been one ten-thousandth part the injury done to the public by bills of exchange, that has resulted from paper issues of banking establishments. There have been one thousand dollars lost by bank bills, to one dollar by bills of exchange. I mean to say that exchanges,

as a system, has worked well. It has six hundred years experience to support it. The difference between the two systems is this: The bill of exchange has a solid basis—it represents a reality; while every bank bill issued beyond its basis represents nothing under Heaven but air, or faith. The bill of exchange starts upon a basis; the bank bill, beyond its specie basis of about one-third, has no foundation at all. That is the reason why the one system will work an injury to the public, and the other will not. I ask gentlemen to draw their conclusions from these facts—to examine the subject impartially, and see which system will work the most good and the least evil. I must certainly say, however, it is with diffidence that I put forth my views on a subject which has often misled men of greater penetration and experience than I possess.

I will here throw out what I conceive to be the true system of "free banking." My plan is, to make a bank bill possess a basis, precisely as a bill of exchange, so that there will be no possibility that it can be at any time otherwise than good to the holder. That the bill shall never leave the counter of the bank, until the State shall have in her hands sufficient assets to redeem the bill, in case the bank should fail. It will then have a fixed value before it goes out to the world, and will not be like Noah's dove, which found no place to rest its foot. I should prefer State stocks, as security, for the reason that it binds the State for the redemption of the bills, the State being pledged to pay the amount of stock issued. I would have the banker or company deposit an amount of State or United States stocks equal to their paper issue, with the Auditor; or create a Comptroller, if you will, who shall sign the bills and issue them to the banks. Ample security will then be insured to the bill-holders. The manufacturing and agricultural products of the State constitute the security; and so long as we have seed time and harvest—and we have the pledge of Heaven that they shall ever return—so long will we thus have a basis for an honest people to bank upon. Of course I do not say that the bills shall be redeemed in stocks, but in specie, by the bankers, and the moment the banker fails to redeem his bills, let the State convert the stocks, for the benefit of the bill-holders. No one will pretend to bank, without specie to meet their daily engagements; but if any one should, the bill-holder cannot be injured; the State holds the security in her own hands.

I do not wish to be restricted to the government stocks, though, next to State stocks, our government stocks are most valuable, because it is almost an impossibility for the general government to fail in the payment of stocks. We will never contemplate a dissolution of the Union. I believe, sir, this system must prevail, because it is a system of bills of exchange, in effect. Bank bills are not bills of exchange.

Bank bills, over the amount of the specie basis, are drawn on nothing that existed at the time they are issued. A bill of exchange has a basis before it is drawn. A people will make their stocks good, out of the fruits of the earth, and just so will it be with us, if we adopt this policy. But the time may come, when we shall not have a sufficient amount of government or State stocks, to give a currency to the people. I, therefore, am not in favor of restricting this system of banking, to merely State and government stocks, by the Constitution. Should other States adopt the same system, then their stocks will be as good as our own, for that purpose. Then every man in the State will be interested in the redemption of every dollar in the State. Gentlemen may suppose that a greater or less quantity of money, thus issued, will disturb the relations of value; but the quantity of money will not disturb the adjustment of value, when it is based on realities. It will never change the value of money, so as to injure any one; it is impossible. The gold mines of California, and those of Siberia, which are now being worked even to a more prolific extent than the California mines, will probably raise the value of commodities, but the value of the gold will still maintain a relative proportion to other commodities. The change, however, in the value of the precious metal will be so gradual, that no individual will be injured, under the ordinary time a contract runs. This, however, has not been the case hitherto. On a debt contracted in 1836 and paid in 1842, the debtor paid at least double the amount to the creditor; but a debt contracted in 1830, and paid in 1836, the debtor did not pay to the creditor more than one-half. This was the effect of a sudden derangement in measures of value. As soon as commodities adjusted themselves to one measure of value, another was established. It could not take place with regard to the value of stocks based upon realities. They are based on the agriculture, manufactures, and enterprise of a people. These things are as substantial as anything pertaining to man.

Speaking of the unfortunate results of the free banking system in the State of New York, the gentleman from Hendricks (Mr. Nave) says, that in every age and in every nation where free banking has been tried, it has proved a failure. Now, sir, I would like to know in what nation and in what ages of the world the system has been tried? I wish to know, that I may be instructed. The gentleman could no doubt inform us, but he does not reply.

As far as I am acquainted, it was never tried in many ages nor in many nations of the world. The idea is new. Bills issued on the credit of the State, and backed by the endorsement of the people, cannot fail of payment, unless heaven refuses her bounties, and the seasons withhold their abundance. Gentlemen have

fallen into the error in regard to free banking in supposing that it allows every man to issue, without restriction, and without law or license. Quite the reverse is true. They are deceived by the name "free banking." It is called free because it is equal, but its proper designation is a general banking law. It allows no banking without permanent security to the bill-holders—as permanent as anything which belongs to man.

What was the reason of the failure of many of the free banks in New York? It was because they banked on State stocks other than their own, and on real estate pledged. For stocks, on a State other than the one that issues them for banking, can never be as good as a State's own stocks, no matter what may be the relative credit of the other States, because they are not pledged to the same people. And this is another advantage in the system, that it binds the faith of States to their own people, and secures the faith of a people to the obligations of State. It is based on justice and equality to all men.

I am opposed, sir, to taking real estate as a pledge for banking issues. There is nothing more fluctuating than the value of real estate. Its value is often a mere matter of taste or fancy. Titles are often secret and defective; besides it is not immediately convertible. A security should not only be good, but be ready. Sir, you might as well bank upon a summer shower, as upon real estate. If you look at the few banks in New York that have based their issues upon government, and their own State stocks, you will find that they have not failed in a single instance to meet their obligations—the failure has resulted from dependance upon other State stocks, and upon real estate. It should be remembered, also, that the system was tried in the most disastrous period for stocks. The fact that the free banking system has grown into favor in a great commercial State like New York, is one of the many evidences of its security and utility; and when the system is pruned of its defects and excrescences, we shall have a correct system of banking—one corresponding to bills of exchange, and therefore a safe and permanent system.

A MEMBER. How long has the free banking system been in existence in New York?

MR. BIDDLE. About twelve years. You have then this fact, more evidence in favor of the system.

The old plan of banking was continually disturbing the relations of value, and thereby doing injustice to all classes of society; a general system must effect all alike, and thus be rendered safe and certain in its results. By this system no bill can be issued unless it represent a reality; it does not go abroad to seek its basis.

This, then, sir, as I understand it, is the true system of banking. I have not gone into the

details, neither do I intend to. That belongs to the Legislature to adjust.

It is said, however, that with the proposed restrictions upon free banking no man will engage in it. But, sir, it is with banking as with every thing else in nature. There are certain fixed laws of justice and propriety, which if violated, will tend to ruin and confusion. You need not tell me, sir, that no man will bank when he can make his six per cent. on his stock, and also a per centage upon bills of exchange, besides the interest discounted upon bills and loans. And, sir, if there is no way to bank profitably without injustice and exclusive privileges, then, sir, we will have no banks. No system can stand upon an unjust basis. Justice is the first principle in government. For my part, I am not looking after the interest of bankers; I am studying justice to a people. Of course the bill holder must be made secure; he should be secured in preference to any other creditor of the bank—this is entirely proper. The depositor and banker make their own bargain and run their own risks—the public is not concerned. This safety fund plan that was thought to be the philosopher's stone in banking, how did it operate? Why, sir, depositors swept the bank of every dollar in their vaults, leaving the bill holder defrauded of his earnings. It has ever been so; it will be so again. No bill for circulation should ever issue until the State has security for its redemption in her own hands; not in the hands of the banker, that is as absurd as to take a man's obligation and immediately return it to him. Without this security, no bank should be established. Every stockholder is interested in its integrity and perpetuity; the bill holder is pledged to its support, and the State is pledged to sustain it.

[The reporter would remark that owing to Mr. B.'s addressing the members of the Convention in front of him, he was utterly unable to catch more than a sentence or two occasionally, of his remarks in the latter part of his speech. He trusts that this will account for the incompleteness of the report, which is of course a matter of mortification to the reporter.—ASSISTANT REPORTER.]

MR. B. proceeded: The idea of making money by stamping paper with pictures and of thus increasing the wealth of the nation, is an absurdity. You may just as well undertake to grow a crop of grain by setting down the figures that represent the number of bushels.

The difference then, between the two plans, may be summed up in these words:

The bills, according to the old banking system, which are issued beyond the specie paid in, go out to seek their own basis; the security for their redemption is insufficient, and that in the hands of the bank; whereas, under the free banking system, the bills have their basis before they are issued, and sufficient security for their redemption, in the hands of the State. I can-

not see how gentlemen can hesitate which system to adopt.

Mr. B. said in conclusion: I thank the members of the Convention, for the attention they have paid me. I am free to say that so far as this question of currency is concerned, it has cost me a great deal of reflection, and I have spent much time in its investigation. I do not pretend, however, to understand it thoroughly: that subject which has perplexed nations for ages, is not for me to explain in an hour. But, sir, I have proposed some things that are demonstrable truths, and I believe that we should go as far as we see we are right and no further, and not remain in a condition where we know we are wrong. I believe that we have found a desideratum in banking—in the system of free banks—and I further believe that the time is approaching when all the States of the Union, will unite upon it as the only true and safe plan. We shall then have security from one extreme of the Union to the other.

REMARKS OF MR. HENDRICKS,

(On Banking, delivered in Convention January 7, 1850.

Mr. HENDRICKS. It is not necessary for me to detain the Convention by giving my opinions on the general subject of banking, though before discussing to any extent the systems of banking proposed, I will say that I endorse the sentiments of the gentleman from Monroe (Mr. Read) as abstract truths. The whole system of paper money is a tax upon labor, produce, and commerce. The man who by his labor causes the earth to produce, and the man who by his labor makes those products more useful to man may be termed a public benefactor. He adds to the wealth of the world. But can you say the same of the man who issues a mere promise to pay a bank bill?

Upon every dollar of paper money that is in circulation labor and commerce pay six per cent. per annum; amounting in the course of about every sixteen years, to a sum equal to the whole paper currency; an annual tax upon labor and commerce of one sixteenth of their proceeds, paid to a class who produce nothing, only for the use of a paper currency. This is it not so direct, but it is none the less an imposition, an artificial burthen upon the producing classes, than the system of Tythes in England.

I have no doubt that the time will yet come when the world will look back upon the system of paper currency as a monstrous imposition, and strange delusion as we now look back upon the efforts of the tyrants of the East, and the monarchs of England, to increase the wealth of their empires and kingdoms, by debasing the coin.

But when the question is propounded in Indiana whether we shall have banks or no banks,

other and different considerations should govern us. We are surrounded by States which have banks of every description, good, bad, and indifferent, some of them based upon specie, some upon mortgages, and others upon stocks of States or the United States; and if we have no banks of our own we must look to the banks of other States to furnish us our currency. If we have banks of our own we can know something about them. Our State officers would have the right to inspect their affairs, and the people could know their condition.

Again, the business of banking is profitable; and if we are to have paper money in our midst is it not right that our own citizens should have the profit of the business. Suppose that we use six millions of dollars in the State, there is made upon that an annual profit of nearly \$360,000. Then, sir, are we to rely upon other States to furnish this currency? Must we depend upon Ohio, New York, Kentucky, and Michigan? Shall we pay per annum to these four States, the sum of \$360,000, for the use of their paper money? If paper money is nothing, and if for the use of this nothing, compelled by the custom of trade, we have to pay a per centage, had we not better pay it to our own citizens and retain this per cent. within our borders as a part of our currency. Gentlemen say "no Bank." Let them go further and propound the question of no paper money distinctly before us. If the question is "no bank" and no bank money, let them state it to the Convention. The proposition of the gentlemen from Wells, supported by the gentlemen from Allen, (Mr. Borden) only went half the way. They propose that there shall be no banking in this State, but one half of our present paper currency comes from other States. And will gentlemen put their mark right here, and say that in Indiana we shall have no paper currency either issued within the State or coming from abroad, and that such currency shall not be circulated here. Let them propose such a section as this—"the Legislature shall not establish any bank in the State, and by penal laws shall prevent the circulation in this State of the money of banks of other States," how would that leave us? Four-fifths of our currency is paper, and if that be suddenly withdrawn, we would be left with but one-fifth our present currency; the price of all the property in the State would be reduced to one-fifth of its present amount, and the wages of the laborer would be reduced in the same proportion. Sir, by reducing the currency, the farm that now has a market value of one thousand dollars, would be reduced to two hundred and fifty dollars, and the laborer who now gets one dollar per day, would get but twenty cents. And, sir, while labor and property would be so reduced in price, within our State, the price of every thing which we would require from without the State would remain unchanged, being measured by the foreign

standard of value : and we would continue in this condition, until the holders of gold and silver from abroad induced by the cheapness of our property, should come and purchase it at its reduced price, and so bring money into the State.

If gentlemen desire to bring about this result, let them take that stand, and not simply say that we shall have no currency of our own, but go further and say that no bank bills shall circulate as money in the State.

But, sir, my own opinions in reference to banking, would not govern me if I knew that they differed from the opinions of those whom I represent. I propose to offer an amendment to the original section—an amendment which does not contain all the necessary restrictions upon banking, but only such as should be secured by constitutional provision, and which I think expresses the views of my constituents upon the subject of banking. It is as follows :

“The business of issuing bills or notes, as money, shall not be allowed, unless the same be provided for by law, containing the following provisions :

1. The branches of any bank that may be established, shall be mutually responsible for each others liabilities, upon bills or notes issued as money.

2. The General Assembly shall retain the right of establishing such additional branches, under the provisions of such law, at such times and places as the business of the country may require.

3. The General Assembly shall retain the power of limiting the issues of any bank established in the State.

4. The State shall not be a stockholder, partner, or depositor, in any bank or branch.

5. Each stockholder in any branch, shall be responsible for the liabilities thereof, incurred while he continued a stockholder therein, in the proportion that his stock bears to the whole stock of the branch.

6. A suspension of specie payment shall work a forfeiture of the charter of the bank, or branch, so suspending.

7. No bank or branch shall, either directly or indirectly, charge or receive any more interest upon moneys loaned, than the law for the time being, shall allow individuals to charge or receive.

8. No notes or bills shall be issued as money, except upon a specie basis, which shall be paid in by the stockholders before any issues are made.”

This proposes that there should be but one system of banks in the State. It first proposes that the branches of the bank shall be mutually responsible, not for all the debts of the bank; but only for the issues of each other. That provision is equitable and right. I have thought it right to give to the Legislature the power to establish such additional branches as the requirements of the country may demand. It is

not right to make one branch responsible for the deposit business or the exchange business of another, because this part of the business cannot be regulated and controlled by the board of directors representing all the branches, and is not necessarily regulated by law. It is the business of issuing paper money that we want to regulate. The business of deposits is a mere confidence or contract between the depositor and the banker. One branch could have no control over the deposit or exchange business of another, but a board of directors representing the whole could have the charge and control over the circulation, and it is right that all the branches should be responsible for the issues of each branch so far as they could be controlled by the whole. But it would not be right to make them responsible beyond their power of control if we allow the Legislature to create additional branches without their consent. This plan proposes a specie basis, and the provisions by which the note-holder is made secure are: First, the responsibility of each branch for the notes issued by the others. By this provision, the whole bank is made responsible for the issues of each branch; and it is thus made the interest of the bank to sustain itself and its several branches.

This amendment makes the stockholders in each branch responsible for the liabilities of the branches, and all the branches mutually responsible.

I know of no question of greater importance that can come before this Convention than the one now occupying its attention. Its decision may not be important to that class of traders who deal in money. They make their profits out of the difference in the value of money at different places and the changes and fluctuations in its value at different times. And out of the greatest monetary derangements and revolutions they make their largest profits. They are wreckers to whom float the fragments of the broken fortunes of ruined men in such times as these. But it is widely different in the commercial and industrial pursuits of the country. Their prosperity to a great extent depends upon the stability and permanency of the currency, the standard by which the labor, contracts, and property of the country are measured. If the currency be extended beyond the requirements of trade and commerce, labor and property acquire thereby an artificial value, trade is stimulated to an unnatural degree, and a reckless spirit of speculation obtains, and an excessive over trading soon involves the traders and the country in embarrassments from which relief can be found only in commercial revolution, and universal bankruptcy.

But, sir, if the currency be not proportioned to the property and business of the country, which it is intended to represent, labor does not find employment or an adequate reward, and produce finds no market. The importance

of this question is greatly increasing in this State. Our resources are being rapidly developed, and the facilities for getting our surplus produce to market are rapidly increasing. And if a good currency be furnished to Indiana, wealth and prosperity will as surely reward the labors of our great producing class as that the rain and sunshine fall upon the earth.

I desire here, Mr. President, to notice some objections that have been urged to a State Bank. I am not the advocate of a State Bank as defined by the gentleman from Monroe, (Mr. Foster,) nor would I support a bank constituted just as our present bank is. I am not in favor of any institution of the sort in which the State shall be a partner. I desire no connection in interest of State and banks.

It is said, Mr. President, that a State Bank may and will have its favorites. Admit it. Does any gentleman believe that if a system of free banking were adopted those having capital to invest in such banking would not also have their favorites? Under that system, one very wealthy man by his bank, might control the currency of a whole section, and decide who should and who should not have money for the purposes of trade. It is different, however, with a State Bank. A board of directors, a number of men, selected by the stockholders, control the issues, and decide whose note shall be discounted, and who shall have the money.

Mr. President, I will not disguise the fact, that our present State Bank has favored one interest in the country to a greater extent than others. She has loaned her money to the farmers of the country to enable them to buy and feed stock, and to the produce and stock dealers, to enable them to buy the grain, the hogs, and the cattle of the country, instead of loaning to merchants and speculators. By this policy she has kept her money out upon short loans, and upon certain time, but has incurred the violent opposition of those who would like to be her favorites—merchants who would desire to do business upon a borrowed capital, and speculators.

Sir, while I admit that the present bank has favored this interest, I say that the objection of favoritism of particular individuals will apply with greater force to the free banking system, than to a system of branches, mutually responsible and controlled by a board of directors.

Gentlemen have objected that the State Bank has been in the habit of charging more than the lawful interest on money, by doing its business through the medium of bills of exchange. Now I ask if this objection may not equally be made to the system of free banking? And whether it is not as easy to prevent the abuse of power on the part of a State Bank as on the part of independent banks?

Again, sir, it is objected that the State Bank is a monopoly. I agree with gentlemen who

have spoken upon this subject, that all banks are, to a certain extent, monopolies; and the question for us to consider is: which is the greater monopoly? If we are to establish banking at all we ought to establish such a system as will answer the purposes of the country, and be the least obnoxious to the charge of being a monopoly. The Honorable chairman of the committee on banking told us the other day that the paper currency of this State is between six and seven millions of dollars. One proposition is that this six millions of dollars shall be furnished by a combination of branches mutually responsible, and the other that it shall be furnished by independent irresponsible banks based upon stocks. Now, sir, that system is the least of a monopoly, the benefits of which, can be enjoyed by the greatest number of the citizens. Gentlemen object to mortgages of land being made a basis for banking, and in this I agree with them, that it would not be a sufficient basis, and that it would be very unfortunate so to encumber the freeholds of the country. Stocks, or State indebtedness, is then the only basis proposed. These stocks are not held by citizens of the State of Indiana, but by New York, and foreign bankers, and stockjobbers. The bonds of the State of Indiana are one thousand dollars each, and as soon as they are made a basis for banking they become worth in the market the full amount for which they are drawn.

To procure such a basis for banking, a citizen of this State must have at least one thousand dollars, and the man who may have twenty-five or fifty dollars, unemployed is, by this system, deprived of the privilege of banking, not being able to buy a single bond, as a basis. Thus none but the wealthy capitalist can be a banker. But, sir, if our own citizens become bankers under this system how is the currency affected? To procure the bonds to bank upon, they must take from our circulation an amount equal to the value of the bonds, and upon these bonds they issue bank bills equal to their value. By this process the currency is not increased, but a very inferior one supplied. In addition to this the banker would require in his vaults an amount of gold and silver, for the purpose of redeeming his bills when presented, equal to one-third of his circulation. If citizens of this State buy bonds as a basis for banking, and issue dollar for dollar, our currency will be reduced one-third. Sir, this can never be our system of banking, our citizens can never avail themselves of its advantages. It is a monopoly, a monstrous monopoly, in favor of bankers, brokers, and sharpers of New York, London, and Amsterdam.

But in a State Bank, based upon specie, with branches mutually responsible, the stock may be divided into shares of twenty-five or fifty dollars, so that all classes of community may invest their money in stock, and enjoy the pro-

fits thereof. And upon the establishment of a branch in any county, the farmer, the mechanic, or the day laborer, having fifty, a hundred, or a thousand dollars unemployed, may take stock as he may desire.

The gentleman from Tippecanoe (Mr. Pettit) said that he desired to see all citizens placed upon an equality, with the same rights and privileges. Let us examine the gentleman's position. He is in favor of independent banks, based upon stocks, endorsing the plan advocated by the gentleman from Cass, (Mr. Biddle.).

Indiana will have in the year 1857, when our present bank charter expires, between five and six millions of bonds outstanding, which are to be made the basis of the proposed system of free banking. Under the present law they will bear five per cent., but gentlemen say that they shall be duplicated by the issue of paper to their full amount in value, and thus they cease to be five per cent. and become eleven per cent. bonds. The capitalist who wishes to make a permanent investment of his money, could not make a better investment than in these eleven per cent. bonds; and of course these bonds will not be in market, but will be used by the holders, for banking upon.

Mr. BIDDLE. If the gentleman from Shelby alludes to me, he is mistaken. I do not propose that bills shall draw interest.

Mr. HENDRICKS. But if a banker loans his bills he will take from the borrower a note which will draw six per cent. interest, which, with five per cent. he will receive from the State, will make eleven per cent. Then I ask the gentleman from Tippecanoe where is the monopoly? Under this free banking system, our citizens are cut out from all privileges of banking, while the foreign banker, or bond holder, or sharper, may come here and do all our banking business, enjoying the monopoly and receiving all of its profits.

Now, sir, if we have a currency of six millions in this State, what is the profit upon it? At six per cent. it will be \$360,000. This sum, under a State Bank, would go to our own citizens, while, under the free bank system, it must necessarily go to those foreigners who happen to hold our bonds. Mr. President, do gentlemen desire such a result as this? Do they wish to build up such a monopoly in Indiana?—a monopoly not in favor of our own citizens, but of foreign capitalists? Sir, many of these bonds were bought up at from 18 to 30 cents on the dollar, by the present holders. A few years since they sent an agent to our Legislature, who made a bargain by which he got for them the Wabash and Erie Canal for the one-half, and bonds for the residue, soon to draw five per cent. He thought he made a good bargain for the bond-holders, a bargain which they have since accepted. That same distinguished agent is now in this city; and if this Convention should make these bonds a basis for banking,

and thus raise the interest upon them from five to eleven per cent., it will be the best bargain which the bond-holders have made off the State yet. Whether this distinguished agent has any connection with this free banking system, I do not know, but—

Mr. COOKERLY (interposing). If the gentleman from Shelby will allow me, I would inform him that Mr. Butler has been in the city every winter, for the purpose of making his report.

Mr. HENDRICKS. Yes; but Mr. Butler came very early this year; in good time, no doubt, to do all his business.

Mr. COOKERLY. No, sir.

The PRESIDENT. Order. The gentleman from Shelby has the floor.

Mr. HENDRICKS. I do not propose, Mr. President, to follow this argument any further in regard to the question of which system is the greater monopoly. I thought I would answer the very patriotic remarks of the gentleman from Tippecanoe. He proposes that all our citizens shall stand upon the same platform of political equality. Very well. So far as our own citizens are concerned with the free banking system, they would stand upon an equality; but a good deal above them in point of privilege, would stand the banker of New York, or London, or Amsterdam.

But, sir, gentlemen say that this free banking system is the only safe one for the bill holder. Now, I deny that this system makes the bill holder safe, much less the depositor. No plan that has yet been proposed secures the depositor. The gentleman from Posey (Mr. Owen) adopts precisely the plan of the gentleman from Laporte. They propose to issue dollar for dollar in value of the stocks deposited. Then, sir, let me ask what security has the depositor? None, sir, except the solvency of the banker himself. Upon what, then, does the security of the bill holder rest? Upon two things. First, that the Auditor of State, to whom is confided the whole banking business of the State, should be a faithful public servant. Sir, I do not believe much in the doctrine of bribery, as preached so frequently. I never like to hear much said of it in deliberative bodies elsewhere, and much less in the State of Indiana. But the gentleman (Mr. Owen) said that, when the State Bank comes to the Legislature with her five millions of dollars, a greater power would be exercised than if a steel-clad army were surrounding our halls of legislation. Then, sir, according to the same argument, the bond holders of the East may come here with the power of six millions of dollars. With this power of gold, they may approach the Auditor of State, who is but one frail, feeble man, and demand of him that he shall cover up their frauds—that he shall issue more than dollar for dollar upon their stocks—that he shall not register all the bills

that are issued; and if five millions of dollars in the hands of the State Bank would be enough to corrupt the Legislature of the State, I ask what would be the influence of six millions upon one man? You say, then, that we are to trust to the fidelity of one man for the safety of our currency. Now, sir, in the second place, you have not only to trust to the fidelity of one man—a sworn officer, it is true—instead of the whole Legislature, but you have also to trust that the bonds shall not depreciate in the market.

The PRESIDENT. The Chair must inform the gentleman from Shelby that his half hour has expired.

On motion, the rule was suspended.

Mr. HENDRICKS. Then, Mr. President, I assert in the second place that, upon the stability of the bonds in the market would depend the security of the whole currency of the State of Indiana. Now, what sort of basis is this to rest upon? Shall we turn back, for the last fifteen years, and judge of the future by the past? The gentleman from Cass (Mr. Biddle) said that these bonds were predicated upon the wealth and the labor of all the people of the State. Sir, let me ask, was not that equally the case eight or ten years ago as it is now? And yet our bonds, depending upon the labor and wealth of the State of Indiana, fell in the market to eighteen cents on the dollar; and for what reasons? We all know, sir, that reasons can be given now, it being past, though they could not be given before; and if we may judge of the future by the past, the same thing may happen again; for there is no property more fluctuating in the market than these stocks; and yet this fluctuating security is to be made the basis of that which ought to be the most stable of all things in the country—the currency. And yet, in opposition to past experience, gentlemen say that banks, based on such security, cannot fail—that the bill holder is necessarily secure. Now what is the theory of this system? Why, sir, it is nothing more nor less than making debt the basis of debt. Because the State in its corporate capacity owes a debt, therefore, this debt may be made the basis of other debts innumerable. We are to judge of the future by the past; and what is it? Out of a hundred and thirty-nine banks established upon this system in New York, how many have failed, and what have they paid? Fifty-one of them have failed more than thirty-five per cent. in the short period of ten years, and that, too, without any commercial crisis. It is no wonder, then, that the State Bank had to close her doors in 1837, '8, and '9. The banks of other States refused to meet the demands which our Bank had upon them; and in this ruinous crisis, which involved all the banks of the Union, ours also closed. But has she ever closed or failed to pay a dollar when there was no crisis? No, sir. Then,

I say, sir, that in times when there was no crisis, over thirty-five per cent. of the banks founded on the system which is advocated here have failed, as shown by the authority read this morning by the gentleman from Vanderburg (Mr. Lockhart); and yet gentlemen say that the experiment has been triumphant. Sir, if this is accounted a "triumph" I do not know what can be regarded as a "failure." The gentleman from Posey (Mr. Owen) told us the system had "failed."

A VOICE. No, sir.

Mr. HENDRICKS. Yes, sir; he used the word "failed." He said that the failure of the free banking system in the State of New York was owing to two circumstances: First, that real estate was made the basis; and secondly, that State bonds, other than those of the State of New York, had also been made the basis of banking.

Mr. OWEN. If the gentleman from Shelby will allow me to interrupt him for a moment, I will explain what I said. What I said was, that an objection which I had to the New York system was, that mortgages on real estate were taken as security. I spoke nothing of failure.

Mr. HENDRICKS. All right; I suppose that, if the gentleman had reflected for a moment, he would not have used the word. But the gentleman, among other causes, attributes the thirty-five failures to the fact that their currency was based upon bonds other than those of the State of New York. Now let us examine this matter for a moment. Suppose that they had had United States bonds, or bonds of the State of New York as a basis, when the run was made upon them, could they have made these bonds available for the redemption of their notes? No, sir; this fund is only available after the failure. When the banker has failed to redeem his notes, then this dead fund in the hands of the Comptroller may be made available. But let us examine this matter a little further. By the report of the Comptroller of the State of New York, (Mr. Fillmore,) in 1848, we find that, of the ten millions invested as a basis for banking, seven millions six hundred and twenty-seven thousand dollars of it was in stocks of the State of New York—a pretty fair proportion of what the gentleman from Posey (Mr. Owen) claims as a good basis. Of United States and other stocks, there was one million five hundred thousand dollars, and of real estate, about one million five hundred and fourteen thousand dollars; and yet the gentleman from Posey attributes the failure mainly to the fact of having this small proportion of their securities in real estate. Sir, the great basis of banking in New York upon this system has been upon the bonds of that State.

But I wish to call the attention of the Convention to one other circumstance. Free banking was established—that is, the law providing

for it was passed—in the State of New York in the year 1838. Immediately it was followed by a fall in the market value of State stocks; and from the year 1839 to 1844, most of the free banks were established in New York. The stocks were appraised, and on their appraised value they were made the basis of banking. Then, sir, we have these banks established at a time when stocks are very low in the market. The issues are made upon this basis; the bonds rise in the market; and yet, when the banks fail, and the system has been tested by putting up these bonds at forced sale, they failed to realize more than seventy-six cents on the dollar, according to the authority read by the gentleman from Vanderburg (Mr. Lockhart).

Now I ask gentlemen to consider of this: Suppose that when every thing is prosperous and currency plenty, and stocks high in market, and at this high rate they are made the basis of banking; and that a crisis should come upon the country; money scarce, and stocks fall, what will be the result? Certain insolvency. If they fail in the fair weather, what will they do in the storm? If the appraisement be made when stocks are high, and the issues are made upon that appraisement and a crisis comes upon the country, and these stocks are put into market when they are not in demand and money is scarce, and all the funds of the country are required to carry on the ordinary business of the country, I ask gentlemen to answer me, under all these circumstances (which every one will admit may happen) what will be the return to the bill holder? If the appraisement is made when stocks are low, and but seventy-six cents on the dollar are realized upon them, what will be the result when the stocks are appraised at their highest value, and then be forced into market when a commercial crisis has reduced them to a value almost nominal? There can be but one result. In all probability the security would not be worth twenty cents on the dollar. What, then, is to sustain this banking system? What strength has it? Gentlemen go upon the hypothesis that if you secure the bill holder it is all the government ought to do. Sir, I contend that is not one-half of the duty of the government. Who suffers when a bank fails? Who loses when there is a derangement in the currency? Not the bill holder alone, but every one interested in labor, and produce, and commerce. The whole internal interests of the country are involved in such a crisis. And yet gentlemen say that it is enough to secure the bill holder. In the crisis of 1837, who suffered the most? The men who held the bills? No sir; their loss was not a tithe of the loss that the country sustained. The loss is in having the labor, the commerce, and the business of the whole country deranged, paralyzed, leaving labor without employment, and produce without a market. There, sir, is the loss, and not

merely to the man who happens to hold a few of the notes of a failing bank.

Then, sir, I say that the security of the bill holder is not sufficient. Suppose that you establish a free banking system, and make as a basis ten millions of stocks, and that in the course of ten years thirty-five per cent of the banks fail as they did in New York, and that their currency is unexpectedly withdrawn from the country. What is the result? Why, sir, the price of labor must come down thirty-three per cent.; and the produce of labor must fall in like proportion, and all the property of the country must suffer a similar depreciation in value. And so it will ever be if we rely upon this system for our internal currency. But what is there in this free banking system to make it safe? It is not sufficient that there is a dead capital in the hands of the officer of State to redeem the notes available only after a failure. How is the bank to sustain itself in a crisis? For it is important that the bank should not break when money is particularly needed. Where then is its strength? The gentleman from Posey (Mr. Owen) proposes an active banking capital of twenty-five or thirty-three per cent., and all the rest is to be dead capital. Now, sir, I say that all experience has proven, that no single bank even with a basis of thirty-three per cent. for their issues can stand. It is impossible. But a system of banks with branches in different sections of the country, each liable for the issues of the other, and sustaining each other, may stand during a crisis, with a specie basis of one-third of the amount of their issues; but one single bank cannot sustain itself with the same means. When a crisis comes, or an opposing bank, whose interest it may be to break down a single bank, brings in a large amount of notes to be redeemed, where is the money to redeem them? On the other hand, with our present system it is the interest of each of the branches to sustain the other; and in that is the safety of the State Bank of Indiana.

Gentlemen talk of competition in banking; but what will that produce? I am in favor of free trade; I say let trade and labor go as free as the winds of heaven; but when you come to banking a different principle must prevail. Competition in trade reduces prices and increases amounts.

What, then, must be the effect of competition in banking? Free trade in the business of making paper money? It is to encourage over-issues, which must soon be followed by a depreciation in the currency, revulsions, failures, and bankruptcies. The bankers become competitors for the business, to secure which they will loan upon long time, and uncertain security, to men, to pay old debts—to merchants, to do a permanent retail business, upon borrowed capital—to speculators in uncertain adventures. A system, which in the end, must be fatal to the

banks. This policy the State Bank will not adopt; and for this reason she is bitterly opposed by the traders and speculators, in the towns and cities, and a demand is made for free banks, while no complaint is made against this system by the agricultural interest. Gentlemen demand a system of independent, opposing, competing banks, which would be constantly engaged in a warfare, striving to break one another. Sir, when a system of banks is once established, and their paper is in circulation, it is important to labor and commerce, that they shall not fail, but be sustained. Is it not, then, better to have banks mutually responsible, interested in sustaining one another, with a safe circulation, in such amount as the country requires, without a struggle and competition between the banks? Mr. President, I thought it remarkable that the gentleman from Cass, (Mr. Biddle,) who is usually so clear and logical, should condemn the State bank, upon the ground that the issues derange prices, and yet should advocate a system, the friends of which claim, as its great advantage and excellence, that it will increase the circulation, and make the banks competitors for business.

Mr. President, I will detain the Convention only to present one more objection which I have to this system of banking, based upon State debt, called the free bank system. We have abandoned the policy of the State engaging in works of internal improvement. This is certainly wise in us. But, sir, I think we are very likely to run to the other extreme of individual enterprise. Our State is being crossed in every direction by rail roads, plank roads, and canals. But our towns, cities, counties, and citizens are becoming deeply indebted to the companies that are constructing these works; and these companies, by their bonds, issued much below their face, convertible into stock, are fast falling under the control and management of eastern and foreign capitalists. The Wabash and Erie Canal, the Madison and Indianapolis Railroad, (our great public works,) and many of our smaller roads are now controlled by foreign capitalists.

Sir, it will not be long until men beyond the limits of the State will have it in their power to tax the whole produce of the State, on its way to market, as may suit their interest. Now, sir, if in addition to this power, we make the bonds which they hold upon us a basis for banking, and thereby give them a monopoly of the banking in the State, we give them a control of our currency, which they may expand and contract at their pleasure, and thereby control the price of all the property, and produce, and labor in the State. With such a controlling power over our commerce and currency, could our trade be free, our Legislation independent? Indiana would become dependent upon, and tributary to, the monied lords of the east. As much so, sir, as if they had the right to send their tax-

gatherers amongst us every year, I would rather see our beloved State progress more slowly, and retain her independence, (and I use that word in its fullest sense,) than, for any gain, to become the subject of a foreign power. Sir, no slavery is more abject than that servitude which wealth demands of her subjects.

Mr. President, I have occupied more of the time of the Convention than I intended when I arose. I will now ask my amendment to be read.

The PRESIDENT. The Chair would remark to the gentleman from Shelby, that there is already an amendment to an amendment pending.

Mr. HENDRICKS. Very well, I will offer it when it is in order.

REMARKS OF MR. MORRISON of Marion *On Banking, delivered in Convention, Jan. 6, 1851.*

Mr. MORRISON of Marion. Sir, I have a few ideas in connection with this subject, which have not been entirely used up by the eminent gentlemen who have preceded me; and, while I would ask for them a respectful consideration by the Convention, I am not vain enough to imagine that I shall elicit anything so strikingly strange as to cast a great deal of new light upon the subject.

Sir, this question of banking is one which has engrossed the best talents, not only of this age, but of many ages which have preceded it. Not only this country, but all the civilized countries of the globe, have intended by their legislation, so to arrange matters, that money might be multiplied, and that as it increased and multiplied, riches and profits would ensue. I do not think it is our duty to build up any gorgeous system of banking, whereby a few individuals or managers of banks are to be benefited; but I hold it to be the duty of the State of Indiana, in Convention assembled, so to arrange and settle the fundamental law of the land, that the rights of the people to equal and exact justice will be strictly protected, so that it may be measured out to every citizen.

The greatest error, in my opinion, which has ever overshadowed the question of banking, is the one which has endeavored to make it a special and favored idea among the people. We have been almost led to venerate the very name of a bank, from the fact that money is of that kind of power which controls, regulates, and directs the every-day business of the community. Indeed, the names of lords, dukes, and barons, are not more venerated, in monarchical countries, than are the names of presidents and directors of banks among us.

The great idea I would aim to express, is this: that hitherto, in all the systems of banking which have ever been adopted, we have con-

sidered it a privileged species of business. As has been correctly remarked by the gentleman from Tippecanoe, (Mr. Pettit,) we have never brought it down to its level—we have never considered it as a right belonging to every citizen of the community. Whenever we consider that we should not confer any special favors on any person or association, we will have done one thing which has not been done since the free banking system went partly into operation. The general banking law places every individual upon the same broad basis of republican equality. As has been said heretofore, it opens the door of competition and of equal privileges to every citizen of Indiana. And, on the other hand, it has been said that it is a monopoly that the poor man cannot participate in at all. So is the possession of wealth, in every instance, a monopoly. We open the door, however, to the poor man, so that he may, by dint of his labors, acquire wealth, and having acquired it, he may exercise the same rights as others. It is a duty which we owe to the people of the State, paramount to all others, at this peculiar crisis, to see that we lay down such special rules as will protect their rights from being infringed upon by the corrupting influences of wealth, and its dangerous tendencies. We should put into the Constitution such restrictions as will say to the succeeding Legislature, that they may go so far, but that they never shall trench farther upon the rights of the people. I feel much inclined to entertain the same sentiments as those uttered by the gentleman from Posey, (Mr. Owen,) that all our proceedings in regard to this matter should be of a negative character; that we should not undertake to make anything like a bank charter, but that we should lay down such negative restrictions, that if the people wish, at any future time, to have a bank of any kind, they may have it by coming up to the proper standard of safety to those who are interested in it, safely guarded, well secured, and affording sufficient means to facilitate the commercial and agricultural business of our people.

Sir, I could not say anything that would shed a single ray of light on the justice, fairness, safety, and propriety of a general banking law. Enough has been said on that subject, which remains uncontroverted, to establish the opinion of every member of this Convention. But, sir, we are continually brought to contrast the present State Bank of Indiana with a proper, correct, and righteous banking law. Now I have not one word to utter in disparagement of the State Bank of Indiana. I owe it no ill will; I have reason to acknowledge its kindness, so far as its officers are concerned; and while I would most willingly speak in high terms of the honor, integrity, and capacity of the gentlemen who manage that institution, that does not preclude me from finding fault with the operations of the system. I object to the system, first, because it is a monopoly. That objection

has been urged with much force by others, and I will not dwell upon it. But that monopoly shows itself in more than one particular; first, in the privileges conferred upon the directors of the State Bank to set at defiance the will of the people whenever it is their interest so to do; and were I to complain of any acts on their part, it would be of that directory which had the audacity on three occasions in my remembrance to put down and defy the express will of the people of the State, solemnly expressed in the words of a statute. The Star Chamber authority of that bank said, that although the State of Indiana had declared by a formal law that certain things were due to the rights and convenience of the people; (I refer to the law establishing branches at Covington, Logansport, and Rushville;) the directors of the bank opposed their word and will to the law-making power of the State, and thus silenced the voice of the whole people. There are more of the effects of that monopoly than have been exhibited in that single cause of action. No other branch can at any time be created except by the consent of the directors of the existing branches. Our old Constitution provided that no bank should be created other than a State bank of Indiana, and that a branch of that bank should not exist in any other than one branch in every three counties. For that reason large and commercial towns within the State are deprived of having banks within their limits. If the citizens of Madison, New Albany, Lafayette, Terre Haute, Richmond, Indianapolis, or any other large and flourishing city of the State, should grow up to the size of Louisville or Cincinnati, under the present system of banking in Indiana, it would be impossible to establish another branch within their limits. I object to the existing features of the bank in that particular. It must be wiped out. Now there is a set of rules and regulations that can be adopted by the concurrent action of these directors that operates with much disadvantage to the people of Indiana. These might exist under any other system of banking; but they exist with more facility under that arrangement which permits each branch to act with the other. The operation is simply this: by the rule of action which this bank has seen fit to act upon, no individual can be induced to come into the State for the purpose of investing his capital. Loans are only made on the most limited scale. Accommodations are not granted except to special favorites, and these under the most stringent regulations. These regulations are so stringent that they perfectly preclude the capital from other States from finding an investment here. No man comes to the State expecting to transact business on discounted paper. And why so? Because the bank has determined it will make no loans on discounted paper in many of its branches. That rule stands out so boldly that if you pre-

mented the paper of the best man you could find; endorsed by a dozen more of the best men, they tell you, "we discount no such paper" — I mean paper received in exchange for merchandise. If an individual is seeking a location to carry on any business, mercantile or other, he is sure to avoid the confines of Indiana, because within its limits his capital is circumscribed, and his business must fail. If he goes to Louisville or Cincinnati, where banking is carried on liberally, and where competition in banking exists, if he has \$33,000 it will, in the course of the year, count him an active capital equal to \$100,000; but if he comes to Indiana he must be content with the use of his \$33,000, and it must lie dead on his hands, to be used in no other manner than in the purchase of stock; which, when sold on a credit, is totally dead and unprofitable, until the paper matures and the money collected on the sale. If he goes to Louisville or Cincinnati, and invests his money, say, in groceries, or other merchandise, he takes a note from his customer, puts his own name on the back of it, goes to the bank and gets it discounted, and by this means can turn his capital four times in a year. I could elucidate this matter much further, but it is unnecessary.

I have heard, in the course of this argument, a great many strange ideas. The gentleman from Wayne (Mr. Rariden) says, that if we permit free banking (he should say restricted banking) we must permit railroad, plank road, and other joint-stock companies in the State to become bankers, and that we would inundate the State with an irresponsible currency. I can imagine that this was nothing but a fancy of the gentleman from Wayne. No such intention is deliberately entertained by any member of this Convention, but that all the restrictions which we can impose will go to prevent an operation of this kind. But as the gentleman has seen cause to allude to the idea that these railroad, plank road, and other wealthy associated companies will use their capital for this purpose, I will tell him how it can be done with advantage. Suppose, sir, that we have these railroad, plank road, and other wealthy associated companies, who are possessed of ample means, and holding profitable stocks, may not those gentlemen who own these roads, or stock of any kind, hypothecate their stock and purchase bonds of the State or of the United States, and make banking capital of them, and thereby secure to themselves the profits of two investments? This would certainly be furnishing capital and making profit upon that capital, without in the least injuring the interests of the public.

We have heard another gentleman, for whom I entertain great respect, speak in terms of horror, of the possibility of the introduction of foreign influence and foreign capital, and of the idea that our foreign bond holders might beat us in this second trade if they come to the

State and become bankers. Sir, if we intend to pay the interest upon our bonds is it worse that we should pay it at home at New York, or at the Bank of England, or to the Rothschilds of whom the gentleman from Owen (Mr. Dobson) spoke the other day? I repeat, sir, that if the people intend to redeem their obligations they care not to whom they pay the interest, but that it would be much better, for them to pay it within the limits of their own State, than to bankers in the cities of New York or London.

We have also heard it said that if we adopt this system we will flood the country with small bills. Why so? Has not the Legislature the same power to add a further restriction that they shall not be issued, if the people do not desire their issue? And, if they were issued in what worse condition would we be than at present? If we turn to the report of the State Bank of Indiana of 1849, we will find that there were \$600,000 of her issues in small bills. But, sir, gentlemen say that these small bills have appended to them the name of the State of Indiana; that they will therefore go abroad and be recognized beyond the vicinage of the State; on the other hand, let me reply, that if we should adopt a system of general banking, and bills should be issued under it, these bills will find just as wide a range as those which have impressed upon them the name of the State of Indiana. When it is known that by the Constitution, it is provided that no bill shall be issued within the limits of the State except those that shall be secured beyond the possibility of failure, I think that guarantee will be equal to the name of the State of Indiana upon the one dollar bill, or other small bills that are thus issued under the charter of the State Bank. Sir, the individual to whom such a bill might be presented would not have to enquire "is the State Bank of Indiana good," or "is the individual who issues this bill good?" No, sir; he would know that you have a provision in the fundamental law of your State making it good. That would give to such paper an additional security—such a security as would make it circulate as far as it would be necessary to circulate such monies. In addition to all this, I assert most positively, that the State of Indiana is not legally responsible for the payment of one dollar of the bills of the State Bank of Indiana, beyond the capital stock she holds in it. The name is potent; but let us not be deceived by names. It is at least calculated to mislead those who suppose that the use of the name of the State imposes any obligation for the redemption of the paper, if the State stock be squandered or lost. Of the same deceitful character is the attempt frequently made, to make the people believe that the friends of a general banking law, which is cantingly called "free banks" are in favor of the creation of anything like irresponsible banks, which may issue

paper without being able or being required to redeem every dollar and every cent they may be allowed to issue. They are more positively opposed to any thing like irresponsible notes or issues, than are the old State Bank men. We require full security beforehand for every cent of notes to be issued for circulation. They must keep specie enough on hand to redeem their paper, or they, the bankers, are to be the losers and sufferers. The public run no risk. The banker must protect himself and in protecting himself must make the public safe. If he fails to keep specie to pay his notes at all times, his securities must be sold to pay them at his loss. You thereby make it the interest of the banker to deal honestly with the people, but you do not even trust his honesty, for you compel him to secure in the safest manner, all who take or handle his paper.

In regard to the action that might be had in reference to the State Bank of Indiana, were we to adopt another system, it may be necessary to say a word. If we should not provide in the Constitution for any other than a State Bank, might there not come a day when the people would say that they would absolve themselves from such a partnership, and that the State Bank might go down, and we would consequently be left without a bank? We must certainly take care not to make such a provision as will preclude the people from establishing banks, if they wish to do so; for I am not averse to saying that I believe that the habits and desires of the people are such as to induce the belief that we will have a bank of some kind or another. This seems to be conceded on all hands. This State Bank has yet seven years in which to do active business, and two years to wind up its affairs. Now, by the time that its charter will expire, we should have another system, or a substitute forming, to supply the place of the existing institution; and it becomes the duty of the Convention to see that such an arrangement is made as will not create a vacuum at the end of that time; but to leave it so that the people may fill that vacuum, if it should occur, by such an institution as their wants may require. In regard to the name of such a concern, those of us who support a general system of banking have only to say that we care not by what name it is called. But, sir, there is a disposition on the part of some gentlemen to carry abroad the presumption that every individual is free to bank as he pleases. We are far from entertaining such an idea. It is true that each man alike—he coming up to the requirements of the law—may bank if he pleases. It is the same as when we say that every man is free to become a farmer, or a merchant, or a tradesman, or any other profession in which he may choose to employ his talents. We do not pretend to say that, because every man cannot become a banker, that, therefore, he is deprived of the right of becoming so,

if he be able. Why, sir, on the same principle, we might say that the individual who is unable to buy a farm, did not enjoy an equal privilege with his neighbor who was able to buy one. His money, or his industry, and perseverance, and attention to business will prompt him, if he desires to become a banker, or a farmer, or anything else, to endeavor to place himself in such a position, as to enable him to come within the requirements of the law in relation to any of these objects.

My friend from Putnam (Mr. Stevenson) took occasion to differ with the gentleman from Cass, (Mr. Biddle) on a mere point of terms used in his declamation. The gentleman from Putnam says that money is not the standard of value, because it will not purchase as much wheat to-day as it will purchase to-morrow, or at any other time.

Now, I will only reply that it is not the money that changes its value, but the wheat or the corn. Money is the nearest standard of any thing you can set up. The value of produce may change, and does change according to its abundance or scarcity, but the value of money does not, by any means, change in the same proportion. The gentleman from Putnam has also given us a long argument upon the imperfect action of this system of banking, with regard to changes, and alledges that our local banks will labor under a great difficulty in that respect.

I would ask him how it is that the branch banks of the State of Indiana are enabled to carry on their exchanges? We find by looking at the annual report of the State Bank that more than half the business of that institution is done through the medium of exchanges. Suppose, sir, that private banking were established in the State, with the salutary rules, which I hope to see around it, if it ever should be established; that it should require a large amount of capital, say, not less than an hundred, or two hundred thousand dollars, before the business of banking should be gone into. Would not that amount of capital enable the managers of it to provide for meeting their drafts in the Eastern States, as well as the branch banks of the State of Indiana, are provided by their means to meet similar requisitions. If you look into the branch banks of the State of Indiana, you will find but one of them with a capital exceeding \$300,000 employed in their annual business. There are but three or four of them that go up to \$200,000, and the majority of them are below \$200,000.

Well, sir, I have no idea but that banks got together on the independent principle, would go beyond that in the amount of their capital; that individually or collectively, a larger sum would be put together; that they would have as much means to buy and sell exchanges, and be as apt to sustain drains upon them by other institutions as the present branches of the State Bank of

Indiana. Ohio, with her ten millions of dollars, has no very favorable feeling toward us. They have been, and are now drawing specie where ever they have or do want to draw it. Our banks, under the system we propose, will be able in all emergencies, to meet these drafts, and to retaliate, if necessary, upon those who thus do them harm. Why may not these banks place themselves in the same attitude? There is nothing to prevent it. Any bond of union and systematic action, that will sustain the branch banks of the State of Indiana, must necessarily sustain individual banks of equal strength and capacity. Much has been said upon this subject and more might be said, but I will merely sum up my opinions and views, and give to the Convention that principle of action which will govern me in this matter.

The PRESIDENT. The Chair must inform the gentleman from Marion that his time has expired.

On motion, the half hour rule was suspended.

Mr. MORRISON (resuming). There will be presented to this Convention in the course of this debate, and before it shall have terminated, a series of sections which have undergone due deliberation by a large number of gentlemen who are in favor of a proper change in the system of banking. They conceive that these principles will not compel any Legislature to create a bank. They are simply of a negative character, permitting the people, through the medium of their representatives, to express their wishes in relation to banking. They will be presented here for your consideration. Gentlemen who are opposed to any system of banking may vote for them with the understanding that no bank can be created by this Convention without the sanction of the people.

When these sections are examined, they will be found to be on exact principles of equality to all men; that they guarantee to the note-holder the payment of the last cent that he may have in the way of obligation. Under such a set of sections as these, a banking clause may be presented to the people of the State, which will meet with their approbation. It will be strictly republican, and no one need meet his constituents and say "I have bartered off one of the rights you claim, or expect to claim." It should always be subject to repeal, amendment, or revision by your Legislature at any time you may choose. With these views I am ready to vote for this provision. I have ever been ready since the hour I first came into the Convention, to vote for a free and equal principle of banking, but I never have been willing, and never shall be willing to vote for anything that shall take freedom from one to give it to another, and to make by law a distinction of rights.

THURSDAY, JAN. 9, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. JAMEISON.

The journal of yesterday was read and approved.

The Convention then proceeded to the

ORDERS OF THE DAY,

And resumed the consideration of article No. 24—the report of the committee on banking.

The PRESIDENT announced the question as being upon the amendment proposed by the gentleman from Clark (Mr. Read) to the amendment offered by the gentleman from Posey (Mr. Owen).

Mr. OWEN. That most shrewd and powerful of all anonymous writers, Junius, has, somewhere in his celebrated letters, the following sentence: "It is a very common mistake in argument and a very dangerous one in conduct, first to look for nothing in the argument proposed to us but the motive of the man who uses it, and then to measure the truth of his argument by the motive we have assigned to him."

That is as true now and here, as it was in England, in the days of Junius. And it is to guard, if that be possible, my argument of this morning against such danger, that I now say a few words touching myself.

I have already had occasion to say to the Convention, that I am not connected, either as debtor or as stock-holder, with any bank. I add, that none of my near relatives are so. Neither am I the owner of any stock, either of the United States, of this State, or of any other of the States of the Union. I say, further, that I am not a wealthy man, though I have, with many, the reputation of being so. If the Convention have any curiosity about so trifling a matter, I add, that my property, unincumbered and affording me a moderate independence, may amount to some twenty thousand dollars.

I do not belong, therefore, to that class of men who have the means, under a general banking law, of establishing a bank, or owning any considerable amount of bank stock. I have no interest in this matter but such as I feel in common with every citizen who has made Indiana his permanent home, and expects that his children, after him, will make it their place of residence.

It has been said, that no speech here, on the subject of banking, will change a vote. I do not believe that. There is a respectable minority on this floor who are opposed to all banking; and some of them, I know, have not yet decided, when they come to choose what they regard as the lesser of two evils, what system they will take.

I have much sympathy with the opinions of that minority, so far as relates to banking, as heretofore carried on, in most of the States of

the Union. Every age has had its peculiar mode or fashion, according to which the strong and the crafty have abstracted from the millions a large portion of the proceeds of their labor. Formerly this was done by the armed hand. The noble of the middle ages, little better than a titled robber, seized, without scruple, the property of his weaker neighbor. Among us this is not permitted now. When the earnings of the poor man are taken, it is by fraud, not by force. This is an improvement on the old practice. I had rather have my money abstracted, in a quiet way, than to wake up some night and find my house on fire over my head.

As to the amount of the pecuniary loss, however, I am not at all sure, whether, under the reign of fraud, it has not equalled what it was under the reign of violence. The losses, in our country, since the first days of her independence, directly traceable to irresponsible banking alone, are to be reckoned—not by millions, not by tens of millions—but by hundreds of millions.

There must be some eminent advantage, some very great convenience, resulting from the use of bank paper; else banking, the source of losses so vast, would not continue and increase among us. There is great convenience in paper money. We all feel it, and know it. It is a rude and clumsy expedient, if I desire to make payment of twenty thousand dollars in the city of New York, to pack that amount of silver, or even of gold, into a box, and transport it, with much expense and risk, hence to that city. A bill of exchange will, indeed, in such a case, obviate the difficulty, even more effectually than a roll of bank notes. But, in some shape or other, a paper representative of value is clearly essential to the carrying on, with ordinary convenience, of extensive mercantile transactions.

Whether, ultimately, a circulating medium consisting of gold and silver and bills of exchange, will suffice for all necessary purposes, I do not undertake to say. Nor is that a practical question just now. A large majority of this Convention, guided by the wishes of a large majority of their constituents at home, are in favor of some system of banking. The question, then, is not whether we shall have banks or not; but only, what sort of banks we shall have.

The rival systems are the State Bank system and the General or Free Banking system, tested and now permanently established in New York.

Sir, to hear the gentleman from Decatur (Mr. Robinson) declaiming yesterday, one might have imagined that it was some foreign country, at war with us, he was denouncing, instead of a sister State. He conjured up visions of Wall street brokers and New York speculators, till one would have thought there was no such thing as honesty in the Empire State, and no such thing as swindling outside of it.

Nothing can be more unfair than this mode of judging; nothing better calculated to lead away from the truth than such a style of argument. Dishonesty is equally dishonesty, whether it exist east or west of the Alleghenies. Things are what they are, without reference to their location.

"Pigmies are pigmies still, though perched on Alps. And pyramids are pyramids in vales."

Sir, the gentleman knows, or ought to know, that to the State of New York we are indebted for many of the best and most spirited and enterprising of our citizens. I am aware that there is, in the minds of many, a prejudice against her. From New York came most of the money spent upon that Internal Improvement system which resulted so fatally to the State; and it has been the fashion, ever since, to talk, in this Convention, about the nabobs and shavers of Wall street. Yet who is actually in fault? they who loaned the money, or we who squandered it? I have not, indeed, forgotten, that, for some three millions of our bonds we received no value. Let the blame rest, where it belongs, on those who sold, or on those who authorized the sale of those bonds, on credit.

I know there exists prejudice, with many, against a gentleman from New York, now in this city, whose name is intimately connected with the financial history of our State; I mean Charles Butler. And, since his name occurs to me, I here take occasion to say, that I know of no one man to whom Indiana is more indebted for escape from the danger and disgrace of repudiation, than to Mr. Butler. I do not ascribe to him any special desire to rescue our State, then on the brink of insolvency. His agency for the bond holders was doubtless a profitable operation to himself, as it was right enough it should be. But I speak of results alone. And I know something about them. Mr. Butler called upon me, at the time when, as member of Congress, I had charge, in the Lower House, of the bill which granted about a million of acres of land, to aid the completion of the Wabash and Erie Canal: and he it was who first brought to my mind the distinct conviction that upon the success of that bill, as a first step, depended, in all human probability, whether the foul stain of repudiation should or should not attach through all time to the State of my adoption.

The result justified his prediction. He proposed to the Legislature, and a majority of that body adopted an arrangement.

Mr. DOBSON (interrupting and Mr. OWEN giving way) remarked, that, three years before that time, the same arrangement had been proposed to the Legislature. Mr. D. made some other remarks inaudible at the Reporter's desk.

Mr. OWEN (resuming). I am glad to hear that, three years ago, before the consummation

of the plan, some one saw and proposed a similar measure, with intent to save the State from insolvency.

But this is a digression; and I return from it to say another word to the gentleman from Decatur, (Mr. Robinson,) from whom I should have been glad to hear an argument against the principle of free banking, not against the location of the system.

The gentleman doubtless recollects that, in November, 1848, he voted for two individuals; one, now no more, for President; and the other, since promoted from the Vice Presidency to be Chief Magistrate of the Union, Millard Fillmore. I desire to ask the gentleman whether he has ever examined the opinions of this man, (who, by the aid of the gentleman's vote, reached the Presidential Chair,) on the subject of what the gentleman calls the "swindling operations" of the New York free banks? No one had a better opportunity of forming a judgment as to their character and safety, than Mr. Fillmore. In 1848 he was Comptroller of the State of New York; the very officer with whom the free banks were required to lodge their securities, and from whom they obtained their notes. His official station gave him the supervision of the free banks. He had the best possible opportunity, then, of judging whether the system was a sound or an unsound one.

Here is Mr. Fillmore's report as Comptroller, made in 1848. I ask the gentleman's attention to the following extract:

"The distinguishing feature of the free banking system is its requirement of productive and available securities, to be pledged with a State officer, as a guarantee for a redemption of the whole circulation. This system has been tried and tested by nearly twelve years experience, and may now be regarded as *firmly established in public estimation as the basis of all future legislation on the subject of banking.*"—Page 137.

How strong are the words! This system may be regarded as "firmly established in public estimation." It will be, says Millard Fillmore, the "basis of all future legislation on the subject." This is the very same "swindling concern"—the very same "bantling of New York shavers and speculators"—which the gentleman denounced so roundly. Is the gentleman he helped to make President its aider and abettor?

But here is a little more of our whig President's opinions, from the same report:

"The practice of granting exclusive privileges to particular individuals invited competition for these legislative favors. They were soon regarded as a part of the *spoils* belonging to the victorious party, and were dealt out as rewards for partisan services. This practice became so *shameless and corrupt* that it *could be endured no longer*; and, in 1838, the Legislature sought a remedy in the general banking law. This was the origin of the free bank system."

Still stronger, sir! The old system of granting exclusive charters, advocated by the gentleman from Decatur, had become, says Mr. Fillmore, so "shameless and corrupt" that it "could be endured no longer;" and the general banking law was adopted as a remedy for shameless corruption.

Either Mr. Fillmore is a very ignorant man, or a very dishonest one; or else great weight ought to attach to this declaration. I believe him to be an honest man. I believe him to be an able man. I did not vote for him; but I trust I can render justice to a political opponent.

Mr. ROBINSON (interposing). The gentleman is mistaken; I have no harsh feeling towards New York; nor did I say a word against Mr. Butler. I spoke of the banks of New York, and endeavored to show, by quoting from Mr. Fillmore's report, that one-half those banks had gone by the board. And when I spoke of the free banks of New York, I spoke of their practical effects upon the country. As I said before, I entertain no feeling against either the State of New York or her citizens.

Mr. OWEN. I made no assertion that the gentleman had attacked Mr. Butler. Of the general tenor and tone of his remarks regarding New York speculators, the Convention will judge. Enough for my purpose, however, that the gentleman predicted but disaster and bankruptcy from the free bank system—the system which Mr. Fillmore considers as a refuge, and the only refuge, from shameless corruption—the same system which Mr. Fillmore declares to have firmly established itself, after long trial, in public estimation.

Another brief lesson on the subject of banking from Mr. Fillmore's report:

"Suppose banks were required to *pay in all their capital*, and the *most satisfactory proof should be required of the fact.*" (This is just what the gentleman from Decatur proposes that a State Bank shall do. Now hear Mr. Fillmore.) "Even that is no security to the billholder. The capital paid in is *left in the custody of those who paid it.* They can withdraw it at pleasure."

Mr. Fillmore then proceeds to remind us that, under such a system, where the security is left in the custody of those pretending to give it, a dishonest President and Cashier might prove, one week, that their capital was all paid in, and the requisite amount of specie actually in their vaults; the next, they might issue their bills for property easily convertible; and the week after, leave with that property for California.

If it be said that this is doctrine from a whig source, I reply that it is true and wholesome doctrine, come from what source it may.

Thus the matter stands. There ought to be complete security for the bill holder. This should be certified to the satisfaction of every one to whom the bill may be tendered. But

who is to certify? The banker who issues the bill? What! in his own case?

Here (said Mr. O., holding up a bank note,) is a dollar bill of the State Bank of Indiana. It bears the attesting signature of my friend, Judge Morrison, as President of the Bank, a very good officer and prudent man, as was President Merrill before him. He virtually certifies, on this bit of paper, to the fact that there lies, in the vault of the Bank, a silver dollar, with which the bill may be redeemed. But is he the proper person to certify to such a fact as that? What would you think, sir, of a man going his own security? or issuing, to satisfy the public of his veracity, some such document as this: "I hereby certify that I have, on all occasions, spoken the truth."

If it be right and proper that the public should be satisfactorily assured that a bank is solvent and trustworthy; that there lies, somewhere in safe deposit, the wealth of which a bank note is the representative; it is clearly not the banker himself who should tender to his fellow-citizens that assurance, but some one else for him.

Here is the great leading difference between a State Bank and a free bank system. In the one case, the security (if it be security) remains in the custody of the banker; in the other, it passes into the custody of the Government. Which is the safer system for the bill holder? Beyond all question, the latter.

But there is another marked difference between the two systems. In the one, the State is a partner; in the other she is not. This point I have already discussed. I believe that a majority of this Convention agree with me in the opinion, that the State ought not to become a stockholder in any corporation whatever. She ought not to be a banker, any more than she should be a railroad maker, a canal digger, or a plank road builder, or engage in any similar occupation. These things, in my judgment, are not within the legitimate province of State legislation. They are far better left to the sagacity of individual enterprise.

Again, I think a State ought not to place her funds where they may be lost or stolen. Have they been lost or stolen in the State Bank? No; because the Bank managers have been prudent and honest. To their prudence and honesty we owe it, not to the system, that the funds are yet safe.

What is the third difference between the rival systems? Some will say it is in favor of the State Bank. I speak of the mutual responsibility of its branches; the distinguishing feature of our State Bank system, alluded to by the gentleman from Shelby (Mr. Hendricks). This very feature may be incorporated into the free bank system. I do not say it ought to be; nor that it is a desirable feature, except as between the branches of one

mother bank. But there is nothing in the free banking system to exclude it, if the Legislature see fit to adopt it in a General Banking Law.

There remains yet another difference between the two systems to be noticed—an important one too—namely, that the one is an exclusive monopoly, granted to certain individuals, and refused, under the same conditions, to others; while the other is a system under which equal privileges are granted, on the same conditions, to all alike.

I know the gentleman from Decatur has told us, that the free bank system is itself a monopoly; the worst of monopolies, that of wealth. Says he—

"Talk of free banking! None but wealthy men are privileged to set up free banks. None other can purchase the bonds demanded, under that system, as security."

That is beautiful argument! To make the bill-holder safe there must be security for the redemption of the bills. That security must be in money, or in that which is readily convertible into money. To furnish such security, (says the gentleman from Decatur,) a man must be rich. Of course. It only follows (what we all know) that none but a comparatively wealthy banker can issue bills that are safe.

And is this to be made matter of complaint? And are we to be told that this is a monopoly, because the poor man cannot engage in it? So, by parity of reasoning, you might say of every business requiring large capital, whether mercantile, manufacturing, or of any other character. Say that the gentleman from Decatur has ten thousand dollars to spare, and I the same sum. We put our funds together, a capital of twenty thousand dollars. Are we to complain of the monopoly of wealth because we are not allowed to issue a hundred thousand dollars of notes on a capital of but one fifth that amount, while a free banker, depositing as collateral security the full hundred thousand dollars, is allowed to issue bills to the amount thus secured? Has he any privilege over us? None whatever. He is richer than we, and can do a larger business; that is all.

In the very nature of things, there must, in banking, be wealth; or there must be irresponsible paper. Either a banker is to be allowed to issue notes beyond the amount of property, readily convertible into money, which he owns; or else he is not. In the first case, his notes bear a lie on their face. In the second case, his notes may be made safe; by his wealth, undoubtedly; for nothing else but actual wealth, to back up paper promises, can make them more than empty promises, a trap for the unwary, a means of defrauding men of the bread they earn. In the whole range of arguments against free banking, there is not one so ridiculous as this.

But experience, says the gentleman from Shelby, is altogether against a general system of banking; and he alludes, in proof of his position, to the New York system, as a failure.

The PRESIDENT here intimated that the time allotted to the gentleman under the rule, had expired.

It was moved and seconded that the rule be suspended.

Upon which motion,

Mr. BRACKEN demanded the yeas and nays, and the same being ordered, were had, and resulted—yeas 103, nays 25—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Ballingall, Barbour, Beach, Beard, Bicknell, Bidle, Blythe, Borden, Bourne, Bright, Brookbank, Carr, Carter, Chapman, Chenowith, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Foster, Frisbie, Garvin, Gibson, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hendricks, Hitt, Holman, Howe, Johnson, Jones, Kelso, Kent, Kendall of White, Kinley, Lockhart, Maguire, March, Mather, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tannehill, Taylor, Trimby, Wallace, Walpole, Watts, Wheeler, Wiley, Wunderlich, Yocum, and Mr. President—103.

NAYS.—Messrs. Badger, Bascom, Bowers, Bracken, Butler, Chandler, Clark of Hamilton, Coats, Conduit, Davis of Parke, Fisher, Foley, Gootee, Helm, Hogin, Huff, Mathis, McClelland, Morgan, Ritchey, Tague, Thomas, Wolfe, Work, and Zenor—25.

So the rule was suspended.

Mr. OWEN. I am greatly indebted to the Convention for its courtesy, and to the gentleman from Rush (Mr. Bracken) for affording me a little breathing time. I had not intended, nor do I now intend, to occupy much more time, in completing my remarks, than that which has been consumed in calling the yeas and nays.

I desire briefly to advert to the history of free banking in the State of New York.

The system was first established by an act passed in the month of April, 1838, and the general provisions of the law were as follows:

First. It required a deposit of United States stocks, or of such State stocks, equal to five per cent. stock, as might be "approved by the Comptroller."

Second. But half the amount, instead of bearing stocks, might be mortgages, bearing six per

cent. on real estate, taken at half its appraised value; the mode of valuation to be prescribed by the Comptroller.

Third. No individual liability beyond the stock and mortgages deposited.

This system was very defective. In the first place, to make the security good, the stocks should have been, or should have been made, equal to six per cent.; and the power to accept or reject particular stocks ought never to have been given to the Comptroller. Next, the mortgage system is a bad one, especially when the mode of appraisal is left to a public officer. In this western country, at least, mortgages, however complete their ultimate security may be, are not readily converted into cash. And finally, there was no individual liability of stockholders.

It was under this system, imperfect and ill-guarded as it is, that the failures alluded to by the gentleman from Shelby (Mr. Hendricks) took place. The gentleman from Decatur (Mr. Robinson) is, however, entirely mistaken when he speaks of one-half the banks going by the board. Out of a hundred and four banks, (with a capital within a fraction of ten millions,) thirty-one (with a capital of less than a million and a half) failed. They ultimately paid *seventy-six* cents on the dollar; making the actual loss to the bill-holders about *one-third* of a million, or *one-thirtieth* of the entire capital invested. This is equal to a loss of *three and one-third per cent.* on that capital. And this occurred at a time of the most trying commercial difficulties, when nothing saved our own State Bank, but a law authorizing it to suspend specie payments. Had it been left like the New York free banks, to its fate, the loss, in all human probability, on its notes, would have been far greater than that on the notes of the free banks.

Thus, by this system which has been denounced here as an infamous scheme of swindling, even under its earliest and very faulty provisions, the entire loss to the public was but a twentieth of that suffered in Mississippi, and less than a twentieth of that suffered in Louisiana, under the special charter system. Arkansas, under the same system of bank monopoly, lost ten times as much, by her banks.

But let us look, now, to the improved free bank system of New York, under the amended Constitution of that State; and let us inquire what have been its results?

Its provisions are as follows:

First. It requires a deposit of United States stocks, or of New York State stocks; the stocks of other States being excluded. The stock is to be, or to be made, equal to stock bearing six per cent.

Second. But one-half may be mortgages, bearing seven per cent., on real estate, taken at *two-fifths* its appraised value.

Third. There is individual liability of the stockholder, over and above his stock, to an amount equal to his stock.

Under this amended system, since the adoption of the new Constitution, in 1846, what failures, out of a banking capital of about eleven millions, have occurred? In substance, not one. Walter Joy's bank, in Buffalo, suspended payment, at one time, for about a week. At the end of that week it resumed specie payment, and its notes, strange to say, had actually appreciated in value. This is easily explained. By the general banking law in New York, all country free banks are compelled to make arrangements, so that their notes shall be redeemed, at some bank in the city of New York, at a half per cent. discount. But when Joy's bank suspended payment, the corresponding house in New York immediately gave notice, that it would redeem the notes of that bank, *at par*; which it continued to do, until the panic subsided.

There is but one other example, under this new system, of temporary suspension; that of the bank of Corning, in Steuben county. Here, again, the suspension did not extend beyond ten days. It was caused by a fire, which consumed the banking-house, and by which, it was rumored, the bank had lost a large amount of property. There was a run on the bank. She gave up part of her notes, withdrawing from the Auditor a corresponding amount of stocks, sold these out at once, and, within ten days, she had resumed payment.

These are the only examples, under the amended system, even of temporary suspension—failures they are not. They furnish the strongest argument in favor of the sound and wholesome character of the system. They prove its power to secure the bill-holder, under all accidents; for not one dollar was lost to a single individual, holding the notes either of Joy's bank, or of the Corning bank. The gentleman from Allen (Mr. Borden) informs me, that Joy's paper, circulating at Fort Wayne, passed, even during the very week of suspension, almost as currently as before; so strong was public confidence in the certainty of its speedy redemption.

Now, let the friends of special banking show us, in any State of the Union, results, under their system, to match these. If they point to our own State Bank, which is, perhaps, as favorable an example as can be named, I remind them, that she would have gone down long ago, had she not, by express enactment of law, been released from her obligation to redeem her notes in specie. And I remind them, further, that her suspension of payment extended, not to a week only, as did that of the suspended free banks of New York; not to a year only; but to some four years. No suspension of specie payments was ever granted by law to the New

York free banks; nor should it ever be granted, to any bank whatsoever.

Now, sir, the system of free banking, as proposed in the system I submitted, is more stringent than the amended system of New York. It requires, as does that system, a deposit of stocks, made equal to six per cent.; but it excludes all mortgages. Its further provisions are these:

First. The State shall not be a stockholder.

Second. The deposit of stock, to secure the payment of notes issued, shall be dollar for dollar.

Third. There shall be no suspension of specie payments.

Fourth. Bill-holders shall be preferred creditors.

Fifth. Stockholders shall be individually liable, to an amount, beyond their stock, equal to the amount of that stock.

Sixth. No greater rate of interest shall be received by banks, than is permitted to be received by individuals.

Seventh. Laws creating banks shall be, at all times, liable to be repealed.

I believe, sir, that these restrictions, though stringent, as they should be, will not discourage or prevent a judicious system of banking. They but strike out from the system of special and irresponsible banking that has prevailed in most of our States, those fatal features which have so often rendered it a curse, instead of a benefit.

I read, the other day, sir, in some English newspaper, an account of the feats performed by certain Indian jugglers, who handled with impunity snakes of the most poisonous character; for example, the cobra of the East. At first, it was supposed that these dreaded reptiles were, by some mysterious influence, charmed into submission, and withheld from inflicting their fatal bite. But it appears, that the explanation of what seems a marvellous feat, is, in fact, a very simple one. Before the juggler plays with the cobra, he extracts, with scrupulous care, the bag whence its poison is ejected; and thus it becomes innocuous. So have I endeavored to extract from the fatal system of banking, which has so often shed its deadly influence over our commercial prosperity, its poison-fangs. Great will be the boon to the community, if we succeed in so doing.

Before concluding, I must notice one item—an important one—strongly marking the difference between the two systems. The actual profits of the State Bank, at this time, exceed twelve per cent., while the dividends declared by the free banks of New York, average less than eight per cent. The one system, in its practical operation, extracts from the people, directly or indirectly, upwards of fifty per cent. more than the other.

This is a remarkable fact, and should, in my judgment, have much weight with the Conven-

tion. These free banks, organized under a system which has been denounced as little better than legalized swindling, have not been able to realize more than eight per cent.; while, under the State Bank system, (the moderation of which is here so often vaunted,) twelve per cent. profit, at least—some have put the rate much higher than that, reckoning the surplus fund, converted, from time to time, into additional stock—but, at all events, twelve per cent. profit is drawn, in one way or other, from the community. How does this tally with the opinions expressed here by friends of the State Bank, as to the relative amount of tax, levied on the public, in the shape of interest on discount, by the two systems.

We have now to choose—between a monopoly, whence is realized twelve per cent. profit, and a system of equal privileges yielding eight per cent. only; between a plan of banking under which the security pretended to be given remains in the custody of the giver, and one in which the security given is lodged in the vaults of the State; between a union of bank and State, or no union of bank and State; between a favored bank with an exclusive charter for a term of years, and a general banking law, repugnant at all times.

Experience, while recording the vast losses following in the train of exclusive banking, has set his seal of approval, not indeed upon the old free bank system of 1838, but upon the system as it has prevailed in New York under the amended Constitution, and as it now exists in that State.

And in shaping our course according to these teachings of experience, we are carrying out a great and just principle: that which condemns special legislation. This principle is coming to be generally recognized among us. Few matters occupied a more a prominent place in the canvass of last summer than the manifold evils of special legislation. Shall we then fasten upon the State, special legislation in one of its most dangerous forms?

One last argument remains to be noticed. It was made by the gentleman from Laporte, (Mr. Niles,) and has considerable weight. He says we ought not to declare United States stock the sole security in free banking; seeing that in fifteen or twenty years the debts, both of the General Government and the States may be paid off, and no stock may remain, to be deposited as security.

That may be. But it is not certain that before that time, the issue of bank notes may not become unnecessary also. We may find a system of currency comprising gold and silver and bills of exchange alone all sufficient for current and commercial purposes. And if we do not, it is easy to introduce an amendment to the Constitution, so as to meet the exigencies of the case. At all events, I think that for some ten or fifteen years to come, we ought to

restrict the security demanded, to State and United States stocks. They are more readily convertible than any other securities; and it is a cardinal principle in sound and safe banking, that whatever the banker depends on to redeem his issues, should be not only ultimately secure in the future, but capable of being converted at a very few days notice into that gold and silver which his outstanding notes promise and represent.

[Mr. WALPOLE next spoke on the question at some length, his speech will be published hereafter.]

Mr. MAGUIRE. I desire, Mr. President, to make some remarks upon this subject that my views and action may be fully understood, and that I may reply to some of the arguments and statements of some gentlemen who have preceded me in this debate. I choose to do so because some of those statements and arguments have not been noticed by those who in the main agree with me, and because I am compelled, in the multiplicity of questions that arise on the subject of banking, to give votes, which, considered separately, may not be fully understood.

I have been constrained, by a sense of duty, to differ from a portion of my colleagues in several votes which have been taken on this subject. I have no fault to find with them, being responsible only for my own action. I am of the opinion, that a large majority of the people of Marion county, outside of Indianapolis, are in favor of a State Bank and Branches, with such modifications and amendments as the experience of sixteen years has pointed out. This I have learned, as well from the information I received during the canvass previous to the election, as from an extensive intercourse with the people since the commencement of the Convention; and it might well be regarded as a dereliction of duty on my part if I were to remain silent, and not contribute my mite to relieve that institution from the misconceptions entertained in regard to it and the unfounded imputations thrown upon it by gentlemen who are desirous to break it down. In doing so it is not my purpose to attack free banking or any other system of banking, nor do I desire to advocate the present to the exclusion of all other systems of banking.

It is not necessary, sir, that I should disclaim all party feeling on this question, for it cannot have escaped the observation of the least attentive spectator of our proceedings that the two great political parties are wholly disorganized on the question now under consideration, and I may be permitted to express the hope that the question of banking and currency may never again become elements in a party controversy.

I have no interest in any bank save as a citizen of the State, whose interest in the State Bank is very large. I own no stock in any

bank, nor do I expect to become a banker under any system that may be established, unless indeed a plan of banking be adopted, by which, according to the arguments of the gentleman from Laporte and others, the poor as well as the rich may engage in the business. I did once own a little stock, but I sold it long ago, under the conviction that I could do better with the money. I have no relative either in the State Bank or in the branch at this place, nor is there any personal consideration that could influence my action in reference to the continuance of the present system. It is no more than justice however that I should say, that, so far as I know, those who manage the State Bank as well as the branch at this place are gentlemen of no doubted capacity and integrity.

It is not requisite that I should say a word as to whether we should have banks or no banks. If it were an original question here, and if there were no banks in other States, the subject would of course be a debatable one, but as banking is carried on extensively by our sister States, and as if we have no paper currency of our own we shall be compelled to use that issued by other States, the profits of which will be realized by them, I take it for granted that, without any question, banking upon some plan will be continued in our State. Besides it has been already settled by several votes that a majority of this Convention are in favor of some sort of banks.

When the Constitution of Indiana was adopted—some thirty-four years ago—there was a clause engrafted in it having reference to banking, by which all systems were excluded except a State Bank, and the number of branches limited to one for every three counties. When we take into consideration the condition of things at that time, the restrictions seem to be very natural. The independent banks in surrounding States had given way under the effects of a commercial crisis, and a State control and a State interest were doubtless deemed indispensable to the safety of a banking system. Our population at that time was very small, perhaps not exceeding sixty or seventy thousand. The entire country, from forty miles south of here to the northern line of the State, now abounding in cities, and towns, and villages, and productive farms, was then an entire wilderness, inhabited only by the red man and the wild beast. To the framers of our Constitution a bank to every three counties, therefore, seemed quite sufficient. But things have changed; our population has increased to near a million, and the necessities for commercial facilities have increased in proportion. A prominent objection to the present banking system is that it is not adequate to the wants of the country. I admit the objection in all its force; but that objection could and would be obviated in the establishment of a new bank. An increase in the capital stock and in the number

of branches could be made to any needful extent.

Another objection to the charter of the present bank, and one which has doubtless had much influence in exciting opposition to it, is that provision which requires the unanimous assent of the branches to the establishment of an additional branch. I admit the force of this objection, and I doubt not that the action of the branch at Lafayette, in one or more cases of this kind, has brought upon the bank a very large amount of the hostility manifested to it upon this floor. I shall not defend that branch or any other that may have acted on so narrow a principle. I do not think that such action is at all defensible; but if it be I leave it to the very intelligent gentlemen who represent Lafayette in this Convention, and who take a leading part on the subject of banking, to make that defence. That objection also could be remedied in a new charter.

The argument that the Bank is a monopoly, and that none but the rich can become bankers, would apply equally to all other systems. At the commencement of our banking system the door was thrown wide open, and any one who had the means, and chose to do so, could have purchased stock; and now any man who chooses can buy stock at the estimated value. I need not add that a poor man may participate in Banking on our present as well as any other system, unless there be one established in which stock shall be furnished gratuitously.

The gentleman from Clark (Mr. Read,) referred to a report of the Auditor of State, made in 1847, to show that the million of dollars lost some years ago was properly chargeable to the State Bank system. The same charge had been made before by the gentleman from Laporte (Mr. Niles) and others. Now, sir, let us look carefully and candidly into this matter and see how it stands. In February, 1839, the Legislature of Indiana, under a full belief that the operations of the State Bank had resulted in advantage to the State, directed the commissioners of the Sinking Fund, through the agency of the President of the State Bank or Fund Commissioners, to contract, on the part of the State, for the loan of one and a-half millions of dollars for the year 1839, and seven hundred thousand for each of the five succeeding years, the object of which was to increase the stock of the State Bank and establish additional Branches. Now, Mr. President, there is no evidence that the Bank had anything at all to do with this loan. For any thing that appears it was wholly a legislative matter. Ascertaining that the experiment of the State Bank system had proved a safe one, and that very fair profits had been realized by the State from her stock, the Legislature doubtless regarded it as good policy to extend the system and enlarge the profits. Mr. President, I have examined this act with some attention, and I find in it several peculiarities.

Section four directs how the loans and discounts shall be made, providing that they shall be distributed as near as may be among the counties, according to the State tax in each. The seventh section prescribes a mode of loaning and a rate of interest different from those authorized by the Bank Charter. And the fifth section provides that the profits of the stock created by virtue of this act, shall be appropriated to *internal improvements*. Now, sir, it is known that the profits of the State Bank, by the charter, are applied to common schools. I can put no other construction upon the action of the General Assembly than this: They were satisfied that the State had made a large profit for common school purposes, and were anxious to extend the benefits to the internal improvement system, so that the interest on internal improvement bonds might be partly paid from that source, and thus relieve the people, to that extent, from taxation. There is no evidence that the Bank asked this extension, or had any knowledge of it. On the contrary, the probability is strong, that the Legislature, in passing the act, was influenced by a laudable desire to advance the interest of the State, by increasing the benefits of what was deemed a safe and profitable institution. The attempt to carry out the purpose of the Legislature, in consequence of a monetary crisis, unfortunately proved disastrous, and but a small portion of the money was obtained, but I ask, in all candor, whether that has any thing to do with the merits of our banking system? Does any gentleman contend that the State Bank is responsible for this loss? Does the gentleman from Clark, who is a stockholder in this institution, desire to involve himself and the other stockholders in the responsibility of the loss? That gentleman defended the practice of selling bills of exchange, as a legitimate operation, and alleged that with all its privileges the Bank had divided only about eight per cent. per annum; and I inferred from his remarks that one of his objections to the continuance of it was that it did not yield per cent. enough.

Mr. READ of Clark. The gentleman from Marion misapprehended me. I did not say that the stock did not yield sufficient per cent.

Mr. MAGUIRE. I understood the gentleman to say, in replying to the objections that the Bank dealt in bills of exchange and thereby increased its profits, that the stock yielded but about eight per cent. per annum, when, as he alleged, money was worth ten per cent., and I drew the inference from his argument that he thought he could make more out of his money by other investments. I assure the gentleman that I do not design to misrepresent him. He did not say that the profits were too small. I only drew the inference from his argument that he thought so.

The gentleman from Laporte (Mr. Niles,) argues zealously that the State should have noth-

ing to do with banking—that she might as well enter the market and buy produce, or enter into any other enterprise in competition with her citizens. That is a question concerning which there is much difference of opinion, and which I have not time now to discuss. I will barely remark, that the experience of this State on the subject of Banking—and an ounce of experience is said, by a very wise man, to be worth a pound of theory—is decidedly against the gentleman's argument. He declares that if it were true, as the friends of the Bank allege, that that institution had produced large profits to the State, he would still say that the principal was radically wrong, and should not be tolerated longer than during the existence of the present charter of the bank. But, continued the gentlemen, it is a sufficient answer to the argument in favor of the bank on that account to say that it had in fact earned nothing.

Mr. NILES. Will the gentleman from Marion allow me to interrupt him for a moment.

Mr. MAGUIRE. Certainly.

Mr. NILES. What I said was that when the account of the Bank came to be balanced and the loss deducted from the profits it would be found that nothing had been earned.

Mr. MAGUIRE. I shall not misrepresent the gentleman. If he has paid any attention to my desultory remarks he will have understood me as contending that, from the law and the facts of the case, the loss to which he refers cannot be pleaded as an offset to the profits. But the gentleman from Laporte and others contend that if the State Bank had never had an existence this loss would not have been sustained. Mr. President, this forcibly reminds me of an occurrence which I heard of many years ago. A gentleman owned a very fine spring from which issued a branch at which it was customary to water the stock. There was a rapid descent from the house to the branch. The father put his little boy on the horse and directed him to ride him down the hill and water him. On the way down the animal stumbled and fell, doing considerable injury to the little boy. The father was much enraged, and pronounced an execration upon the spring, declaring that if it had not been for the spring his boy would not have been injured. Now I submit whether it was a good argument against the spring that a misfortune occurred in one instance while seeking a participation in its benefits. And is the argument any better against the State Bank that the State authorities, in endeavoring to extend its benefits at a critical period in the history of the country, met with a misfortune? I have already shown that the profits of the proposed increase of banking capital were to be applied to a purpose different from that to which the profits of the present banking system are devoted, and that so far as can be ascertained the misfortune arose out of a laudable desire in the Legislature to increase the

commercial facilities of the country, and to use the credit of the State for the purpose of relieving the people in some degree from the burthens of taxation.

Is it fair, then, Mr. President, to allege that the State Bank has earned nothing for the State. You have already seen by the report of the cashier, made in reply to a resolution at an early period of the session of this Convention, that the profits are already nearly a million of dollars—that in all probability the profits at the end of the charter will be equal to the sum borrowed originally for banking purposes, viz: \$1,390,000—and that if the charter were to continue until the period when the bonds for banking purposes fall due, (some seven or eight years after the expiration of the charter,) the whole profits would reach two millions. It has occurred to me as worthy of deliberate consideration, whether, in view of these facts, it would not be sound policy, even if the State Bank system should be totally abandoned afterwards, that it should be continued until near the time when the bonds are payable, so as to retain within the State until that time, the use of \$1,390,000 at five per cent. per annum. But as a majority of this Convention seem determined that the State shall have no interest in banking after the expiration of the existing charter (in 1857,) I shall press that subject no further at this time.

Mr. President, I am free to admit that there is a good deal of complaint in the neighborhood of the Branch Bank at this place, as to the manner in which its business is conducted, and the same objection may exist elsewhere. It is the practice of the Branch at Indianapolis to give a preference in its loans to those who use the money in the purchase of the agricultural products, and the stock of the country. I understand a rule was adopted some years ago, and is probably still in force, which limits the discounts to two hundred dollars, unless it be for such purposes as that to which I have referred, or the promotion of some of the industrial pursuits of the country. For the payment of debts, or the purchase of goods, I believe they limit their discounts to two hundred dollars. They contend that, as their means are inadequate to meet the wants of the country based upon unquestionable paper, sound policy and the best interests of the community demand that such a discrimination should be made. Whether their course be right or wrong is a matter that I do not feel called upon to determine. I only state the facts. That such a rule should produce discontent is perfectly natural. Those thus aggrieved, as they think, demand that there be other banks authorized, and an increase of banking capital, and the demand is not an unreasonable one. In this connexion I must refer to a remark made by my friend from Clark (Mr. Read) on the subject of granting loans. He told us that one of the causes

which break up banks is that they refuse to loan to farmers, and grant their accommodations to favorites who never pay them back. That may be true as to the Branch in which the gentleman holds stock, and in which he of course has some control; but from what I have stated it will have been seen that it is not applicable to the Bank in this place. The complaint here is entirely the other way.

The gentleman from Cass (Mr. Biddle) at the opening of this debate, made a very able speech against the State Bank, and in the opinion of some against all Banks. In that speech, if I understood him correctly, he objected to the State Bank system that it expanded and contracted the currency at pleasure, and thus regulated the value of property and agricultural products, and argued that under the Free Banking System the currency would remain undisturbed and regular. I shall leave the argument of this question to others, contenting myself with a few facts. I had the curiosity, after hearing that gentleman's speech, to examine whether the issues of the State Bank were indeed so fluctuating. I obtain from the official reports the following facts upon that subject: In 1845 the circulation of the State Bank was \$3,527,351. In 1846 it was \$3,336,533, a reduction of \$190,818. In 1847 it was \$3,606,452, an increase over the previous year of \$269,919. In 1848 it was \$3,552,210, a reduction of \$54,242 compared with the preceding year. In 1849 the circulation was \$3,304,260, a reduction of \$247,950. In 1850 the circulation was \$3,421,445, a reduction of \$117,185. Now, sir, I ask if this statement does not show a remarkable uniformity of circulation, and whether the objection of the gentleman from Cass is not overthrown by the facts?

The gentleman from Tippecanoe (Mr. Petit) stated in his speech a few days since, that not one Bank out of five hundred had wound up solvent heretofore, and that hereafter there will not be one in five thousand that will pay their debts. Now I will not raise a question of veracity with the gentleman, nor will I undertake to compete with him in prophecy; but I will say that if I sincerely believed, as he affects to believe, that no Bank will ever wind up solvent, I would go with all my might against the establishment of any sort of a Bank. I would not aid in imposing, or permitting the Legislature to impose, upon the community, any such an institution. Now I believe that gentleman is regarded as a leading and able supporter of free banking, with a full apprehension, according to his own doctrine, that they will wind up insolvent and swindle the public. His argument, I should think, would not give much aid to any system of Banking.

i That gentleman declared further, in the most impetuous and vehement manner, that the idea of vested rights was a perfect fallacy, and that

he hurled such doctrine to the winds as trash, as totally without foundation. He intended that his declaration should apply immediately to the State Bank and his purpose was to show that its charter could be destroyed at any time, but his argument would apply equally to all Plank Road and Rail Road Companies, and, as I suppose, to all private contracts between individuals, not excepting the marriage contract. I should think it totally unnecessary to attempt to refute such an argument. The mere statement of it is sufficient to demonstrate its monstrosity.

The gentleman, after declaring the State Bank insolvent, gave a most graphic and pathetic account of the loss of the trust funds of the State. He seemed to be full of patriotic misgivings about the loss of the College Fund, the Saline Fund, the Bank Tax Fund, and the Common School Fund. Now, Mr. President, it might be a sufficient answer to the declamation of the gentleman to say, even if the funds referred to were in fact in the custody of the Bank, that no member who has examined the reports of the Bank, or knows any thing of its condition, has any doubts of its solvency, and that it will close up with a handsome profit to the State. But, sir, even if the Bank be utterly insolvent, the gentleman's patriotic fears will still be in a great measure groundless. The College Fund cannot well be lost, for the Bank has not, and never had, a dollar of it in its custody. That fund, as is known to every gentleman who has paid any attention to the official documents of the State, or who knows any thing about the laws on that subject, is loaned out by the Auditor of State on mortgage, the interest of which, and the principal when returned, are paid into the State Treasury. That fund therefore cannot be lost by the Bank unless its officers break into the Treasury and steal it. The Saline Fund is next in order, and of that, according to the report of the officers of the Bank, that institution holds only about \$5,000. A part of this Fund is also managed by the Treasury Department, loaned out on mortgage, and distributed annually, as it is returned by the mortgagors, to the several counties according to the number of polls, and, together with former distributions, is managed by the counties for the benefit of common schools. Of this Fund only \$5,000 can be lost if the Bank becomes insolvent. We come next to the Bank Tax Fund. This Fund, as is known to the Convention, is derived from a tax of twelve and a half cents per annum on each share of stock held by individuals in the several Branches of the State Bank, as provided in the 15th section of the Bank Charter. A considerable amount of this Fund had accumulated in the Bank some years ago, which, according to an act of the Legislature, was paid over to the State Treasury, and afterwards, by another act passed in January 1845, was distributed to

the several counties in just proportions, and applied, like the Saline Fund, to the benefit of common schools. The Bank is required annually to pay over to the State authorities the amount derived from this source, and this sum, together with what comes in as principal and interest from a portion still on mortgage for loans made by the Treasury Department, is annually distributed on the 1st of March to the counties, and applied as before stated. If therefore the Bank break, as the gentleman supposes, there can only be a loss of one year's accumulation, which is something short of \$3,000. The common school fund is the next and last to which the gentleman referred. How this is derived may be seen by reading the 14th section of the Bank Charter. This Fund is also directed by law to be paid over as it accumulates to the State Treasury, and remains then a permanent fund, (drawing six per cent. interest,) for common school education, under the direction of the General Assembly. According to the last Auditor's Report, \$652,185-53 have already been received by the Treasury. If the President of the State Bank complies with the law (as I doubt not he will) there can be no loss of this Fund by the insolvency of the Bank. What then becomes of the gentleman's terrible forebodings, and of his pathetic arguments based upon them? They are "gone like the baseless fabric of a vision."

The gentleman from Wayne, (Mr. Rariden,) in his able argument in favor of the State Bank system, referred to the discrepancy in the valuation of property for taxation for State purposes and corporation purposes, in Indianapolis, Madison, and New Albany. Reference was made to the Governor's Message as proof of the existence of such discrepancy. As these statements have gone before the public, and may, if unexplained, leave the impression that there is something wrong in the assessment of property in the cities referred to, I will in a few words explain how this difference happens so far as relates to Indianapolis. It will be recollected that the latest valuation of real estate for State purposes was made in 1846, at a time when property was comparatively low. The valuation for municipal purposes is made every year, and the one referred to by the gentleman from Wayne was made in 1850, four years subsequent to the time when the valuation was made for State purposes. Now it is very well known that property, all over the State, has appreciated rapidly since that general valuation, and more especially in particular localities, such as Indianapolis. In addition to this, the City has extended over much territory which in 1846 was only suburbs, and property, valued then by the field or by the acre, has since been divided into small lots, and is now valued as such for corporation purposes. This will perhaps sufficiently explain the discrepancy to which the gentleman from Wayne referred, predicated up-

on the Governor's Message. It might be added, that as the charter forbids the levy of a higher rate of taxation than fifteen cents on the hundred dollars, the corporation assessor may suppose it proper to assume a high scale of valuation. I am satisfied that the valuation of real estate for State purposes in Indianapolis was fully up to the average, and I think above the average, of property throughout the State.

In relation to the valuation of corporation stock, I would remark, that the stock held by citizens of Indianapolis in the Madison and Indianapolis Rail Road Company is not taxed any where as corporation stock, but is given in at the office at Madison and taxed as personal property. And the stock held by our citizens in the Branch Bank is given in by the Bank and the tax is paid there and deducted out of the dividends. This will explain, what seems not to be understood, why the return of corporation stock is not larger than it is reported to be.

While upon the subject of taxation, permit me, Mr. President, to explain the facts in regard to the taxation of stock owned by individuals in the Branches of the State Bank. I deem it proper to do this because the facts seem not to be understood, or, if understood, perverted. By the 15th section of the Bank Charter, as has been stated before, 12½ cents on each share of individual stock is deducted from the dividends for school purposes. That is equal to 25 cents on the hundred dollars. In addition to that, the stock is taxed precisely as other property is in the respective counties in which the Branches are located, provided that the whole tax shall not exceed one per cent. Several movements have been made with a view to have Bank stock taxed as other property is taxed. Of course the stockholders would not object to such a provision, inasmuch as their stock is now taxed, in most cases, higher than other property. The amount realized per annum for school purposes from the tax of 12½ cents per share is a little short of \$3,000, and the amount derived for State revenue is a little over \$5,000—making together about \$8,000 per annum. The stock held by individuals is something over \$1,000,000. If this amount were taxed as high as the laws permit, (to-wit, one per cent.,) the amount received would be \$10,000. The reason so much is not realized is that the amount charged upon other property, added to the school tax, will not produce it.

Mr. President, there are several other matters to which I intended to refer—some of them perhaps more important than those to which I have called the attention of the Convention—but I feel that I have occupied as much time as propriety would dictate, and I will therefore bring my desultory remarks to a close.

Mr. President, I have made no attack upon the free banking system nor upon those who

advocate it. I have said before, and now repeat, that I do not advocate the present system of banking to the exclusion of all others. I am perfectly willing to leave the matter in the hands of the people to adopt whatever system or systems of banking they shall deem most conducive to their prosperity. I have examined with some care the New York Banking system, but I choose to leave the discussion of its merits and demerits to others. My object has been principally to place in a true light some facts connected with the State Bank, and to correct some misapprehensions and misrepresentations in regard to it.

I have only to say in conclusion, that I shall vote hereafter against any proposition which precludes the continuance of our present banking system with suitable modifications, until it be fully settled that it shall not exist in any shape; but that, at the same time, I do not desire to prohibit in the Constitution all other systems of banking, being entirely willing to leave the determination of that question to the sound discretion and honest judgment of the people.

On motion of Mr. SMITH of Ripley,
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

Mr. SMITH of Ripley. This discussion, Mr. President, has progressed for a very long time. I have been a very attentive hearer to all that has been said, and I have said nothing myself, in the hope that the discussion would soon be brought to a close.

If I recollect right it is now eight days to-day since this discussion was opened. That is a long time to continue a discussion on any one subject connected with the amendment of the Constitution. For my part however I can see no probability of this discussion being brought to a conclusion unless some gentleman comes up and takes the ground that time enough has already been expended upon this question. Until yesterday it was not my intention to make a single remark upon this subject. The people whom I represent are united to a man upon this question. On this subject no diversity of opinion was expressed by any man in the county. Then, sir, understanding the feelings of the people of my county, I was prepared at any time to vote upon this question.

Mr. President, I cannot shut my eyes and my ears to what I hear and see going on around me. I know that there is a strong disposition manifested in the countenances of gentlemen all around me—and not in their countenances alone, but gentlemen have come to me and expressed a strong solicitude that the Convention should be brought to a vote.

Mr. President, wishing to accommodate myself to the feelings and wishes of gentlemen much rather than on this occasion to inflict a speech upon the Convention upon a threadbare and worn out subject, I cheerfully yield the floor that gentlemen may make any disposition of this question which they may think proper.

Mr. EDMONSTON. I am satisfied, Mr. President, that all the speaking that can be done in this Convention at this time will not change the mind of any gentleman on this floor; and, sir, for one, I had prepared to "set myself right" before my constituents upon this question. But I yield all desire of speaking to the importance of voting; and I do solicit from the hands of other gentlemen a like sacrifice of their feelings on this occasion. Because it is evident, Mr. President, that if we do not cease speaking, and turn our thoughts to action, the time when we will get away from here is yet to be judged of by futurity. Then, sir, for the purpose of bringing this Convention to a direct vote at once, that we may see what the will of the Convention is, I will move to lay the section and pending amendment upon the table. ["Consent" from several voices.]

Mr. BORDEN. I demand the yeas and nays on the resolution of the gentleman from Dubois.

A division of the question was called for.

The yeas and nays were ordered.

The PRESIDENT. The question will first be on laying the amendment to the section on the table.

Mr. COOKERLY. I move a call of the Convention.

The motion for a call of the Convention was agreed to, and the roll being called,

Mr. BORDEN moved to dispense with further proceedings under the call.

The motion was not agreed to.

Mr. EDMONSTON. I think it is highly important that every delegate who is in town should be present. I move that the absentees be sent for.

The question being taken on the motion to send for the absentees, it was decided in the affirmative.

After some time spent in waiting for the absentees,

Mr. BASCOM inquired whether it would be in order to move to re-consider the vote by which the absentees were ordered to be sent for.

The PRESIDENT answered in the affirmative.

Mr. BASCOM. Then I move that the vote ordering the absentees to be sent for be re-considered.

Mr. ROBINSON. I would like to inquire whether the gentleman from Wells voted in the majority?

Mr. BASCOM. I believe I did.

The PRESIDENT. But the gentleman must be certain about it, otherwise he is not entitled to move a re-consideration of the vote.

Mr. BASCOM. Well I am pretty certain I did.

The question was then taken on the motion to re-consider the vote ordering the absentees to be sent for, and it was decided in the negative.

Mr. SHOUP. I move to dispense with further proceedings under the call.

Mr. DOBSON. I hope that will not be done. The other side have got all their folks in, and we now want ours in.

The question being taken on the motion to dispense with further proceedings under the call, it was not agreed to.

After some further waiting for the absentees,

Mr. SHERROD moved to dispense with further proceedings under the call.

The motion was agreed to.

The PRESIDENT. The question is on laying on the table, the amendment to the amendment proposed by the gentleman from Clark (Mr. Read) to the amendment of the gentleman from Posey (Mr. Owen).

Mr. WOLFE. I would inquire, Mr. President, whether we can according to the nature of things, make a good solvent bank out of our indebtedness?

The PRESIDENT. That is not the question before the Convention. If the gentleman will direct any inquiry in regard to the order of business, the Chair will be happy to afford him any information in his power.

The yeas and nays being demanded and ordered on laying the amendment to the amendment on the table, they were taken with the following result:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Barbour, Bascom, Beard, Beeson, Blythe, Borden, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Garvin, Gootee, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Hendricks, Hitt, Holman, Huff, Johnson, Jones, Kent, Kinley, Lockhart, Maguire, March, Mathis, May, McLean, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Naye, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Rariden, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tanehill, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wheeler, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President.—103.

NAYS.—Messrs. Beach, Biddle, Bourne, Bryant, Chandler, Chapman, Chenowith, Coats, Cookerly, Davis of Parke, Dick, Gibson, Harbolt, Helmer, Kendall of White, Mather, McClelland, McFarland, Miller of Fulton, Morgan, Niles, Nofsinger, Read of Clark, Ristine, Taylor, Wiley, and Work—27.

So the amendment to the amendment was laid upon the table.

The PRESIDENT. The question now recurs on the motion to lay the amendment of the gentleman from Posey (Mr. Owen) on the table.

The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 91, nays 46—as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Beeson, Blythe, Borden, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Coats, Cole, Colfax, Conduit, Davis of Madison, Dobson, Dunn of Jefferson, Duzan, Edmonston, Farrow, Fisher, Foley, Frisbie, Gootee, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Holman, Howe, Huff, Johnson, Jones, Kelso, Lockhart, Maguire, March, Mathis, McLean, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—91.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Bourne, Bryant, Chandler, Chapman, Chenowith, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Elliott, Garvin, Gibson, Graham of Miami, Kent, Kendall of White, Kinley, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Morrison of Marion, Mowrer, Murray, Niles, Nofsinger, Owen, Read of Clark, Ristine, Shoup, Sims, Smiley, Taylor, Trimble, Wheeler, Wiley, Work, and Wunderlich—46.

So the amendment was laid upon the table.

The PRESIDENT. The question now is upon laying the section upon the table.

The yeas and nays were ordered and taken, and there were—yeas 76, nays 62—as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Barbour, Bascom, Beard, Beeson, Blythe, Borden, Bowers, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Duzan, Edmonston, Farrow, Fisher, Frisbie, Gootee, Graham of Warrick, Haddon, Hall, Hardin, Hawkins, Helmer, Hendricks, Hitt, Holman, Huff, Johnson, Jones, Kelso, Kinley, Lockhart, Ma-

guire, March, Mathis, May, McLean, Miller of Gibson, Milligan, Mooney, Moore, Mowrer, Nave, Newman, Pepper of Ohio, Prather, Rariden, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Wallace, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—76.

NAYS.—Messrs. Allen, Anthony, Beach, Berry, Biddle, Bourne, Bracken, Bryant, Chandler, Chapman, Chenowith, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dunn of Jefferson, Elliott, Foley, Garvin, Gibson, Graham of Miami, Gregg, Hamilton, Harbolt, Helm, Hogin, Howe, Kent, Kendall of White, Mather, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Morgan, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Clark, Ristine, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Thornton, Todd, Trimble, Wheeler, Wiley, Work, and Wunderlich—62.

So the section was laid upon the table.

Mr. COLFAX. I now move to amend the article under consideration by adding the following:

“The Legislature shall not have power to grant special charters for banking purposes, but may pass a general law making the business of banking free to all, based on the principles of ample stock security for circulation, registry of notes by some State officer, preference in payment to bill holders in case of failure, and individual responsibility to stockholders to an amount equal to their stock. *Provided, however,* that at the expiration of the charter of the present State Bank, the Legislature may, in addition to such general system, grant a charter for a bank and branches; but the State shall not be a partner directly or indirectly, in any such banking institution, and if the trust funds, or any portion of them, should be invested therein as a loan, their safety shall be guaranteed by the State. Stockholders in any such bank, shall be individually responsible to the same extent as those acting under the general law.”

I desire simply to explain the reasons which have induced me to offer this amendment. It must be evident to every gentleman in this Convention, that there must be some compromise on this question. The great objection to the present system, is that it excludes all other banks—that it positively prohibits the Legislature from authorizing any other system, no matter how much it may be demanded or desired by the people, or how far superior it may be in its excellencies or benefits. Besides this, it is evident—it is indeed conceded that in the progress of our State, it has grown so rapidly and business has increased so largely, and the facilities for the transaction of business have increased to such an extent, that no one bank can or should furnish all the banking facilities

necessary for our continued prosperity. I think these have been the reasons why we have had so much discussion on the subject of free banks in the State, and why they are desired so generally as they are, at nearly every business point within its limits.

The votes that have been cast here on previous days, as well as on this day, clearly indicate that there must be some compromise. They indicate also, that if we incorporate in the Constitution one system to the exclusion of another, we will array against it the same determined and bitter opposition among the people, which we have seen manifested on both sides of this Hall. Each party will see that by that Constitution, they can have no hope that the Legislature will adopt or establish the other system. I know that some friends of free banks contend that we must have an exclusive general bank system. They say that if we do not have this, the State Bank, being a larger institution, will crush the smaller ones. Now, that assertion is fallacious, for two reasons. The charter of the present State Bank will expire in 1857; and if such course of conduct was attempted—a course always deemed dishonorable amongst banks—to cripple or prostrate each other, it would be a powerful and controlling argument against her re-charter. In the second place, by that time the free banks, which will have been established in the different towns of the State, would be numerous enough to form a defensive alliance and compact among themselves, and they may thus become equally as strong as the State Bank.

There is one point in which the section I have offered differs from other propositions, namely, that the safety of the trust funds shall be guarantied by the State. If adopted, it would show the Legislature that in chartering that bank, it must reserve to itself sufficient control over the institution, to guarantee that these funds shall be kept sacred, and secured irrevocably in case that by mismanagement the bank should fail.

It also embraces another principle which is that the stockholders of this State Bank shall have the same individual responsibilities resting upon them as are placed upon the stockholders of the free banks.

Mr. President, in addition to this, it lays down in brief and condensed language, those general principles of both systems, which have been the most commended and approved in this body. It says that the Legislature may adopt either system, as the people—our constituents and theirs—may direct; but that whichever they may adopt, it shall be made safe by the restrictions that are thrown around it, that in the free bank system, there shall be a registry of notes; that in case of insolvency, the bill holders shall have preference in payment; that there shall be ample security for the redemption of the bills, and that the stockholder shall be responsible to

an amount equal to his stock. And that the State Bank system shall be guarded and controlled as I have explained.

It seems to me that this is a fair compromise, and it was advocated by me before the people who elected me to this place, as I do here now. To them—both in a circular address and in speeches at public meetings—I declared myself, openly and unequivocally a Free Bank man. But at the same, I declared to them that, in my opinion, the greatest objection to the State Bank was the monopoly of Banking that that system enjoyed to the exclusion of all others. And while I pledged myself, as I now here repeat, that I should oppose a continuance of that exclusive monopoly—I declared that I should also oppose the adoption of a monopoly in the Constitution, in favor of the system that I preferred to the exclusion of all others. The error of the old Constitution should not be followed in the new. But the new Constitution should expressly authorize the General Banking principle—and it is in order to secure that recognition—and because I feel that the matter must ultimately be settled by compromise of conflicting opinions—that I offer this proposition to the Convention.

Mr. SMITH of Ripley. I propose the following amendment to the section proposed by the gentleman from St. Joseph:

"The banks chartered under the provisions of this article shall be mutually liable for the redemption of the circulation of each other, to the amount and in the manner to be prescribed by law; and no bank hereby contemplated or allowed to exist in this state, shall ever be allowed to issue for circulation, any note or bill of a less denomination than ten dollars, or circulate or pay out at its counter or at any other place, as payment on bank account, any note or bill of a less denomination than ten dollars."

My object in offering this amendment, is in view of the probability that we will have a system of free banking, or in other words "free plunder," all over the State of Indiana. In view of this, I propose that they should be made individually liable for the issues of each other. It has been admitted on all hands, by gentlemen who have spoken on the subject, that the safety and solvency of the State Bank depended more upon their being mutually bound for the issues of each other, than upon any other cause. This being the case, gentlemen can readily see the necessity of the mutual liability system. All of them will be interested in keeping the circulation good.

Another idea which I have inserted here, and which is for the good of the people generally, and especially for the laboring poor of the State, is that no bank shall be permitted to issue notes or bills of a less denomination than ten dollars. The old banks were, for a time, confined in their issues to bills of not less than five dollars; but they soon found means to evade

that provision, and to issue one dollar bills. But I want to have it declared in the Constitution, that these banks shall not issue bills of a less amount than ten dollars; and by adopting a provision of this kind, we will get rid of a great deal of spurious paper. If the banks do not naturalize the small bills of other States, we shall get rid of them. We shall then have that kind of currency which is not liable to be adulterated, and which is not so easy to be counterfeited.

These are the objects which I have in view by offering the amendment. They are easily comprehended, and as I believe they are good, I hope the amendment will be adopted.

Mr. COOKERLY. I move to lay the section and amendment on the table.

Mr. COLFAX asked for the yeas and nays.

The yeas and nays were ordered.

Mr. SMITH called for a division of the question.

The yeas and nays being first taken on the amendment, they resulted as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Biddle, Blythe, Bracken, Brookbank, Bryant, Butler, Chandler, Chenowith, Clark of Hamilton, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Duzan, Elliott, Fisher, Gibson, Gregg, Hamilton, Helm, Helmer, Hoggins, Howe, Kent, Kendall of White, Mather, May, McFarland, McLean, Miller of Fulton, Milroy, Morgan, Murray, Newman, Niles, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Sherrod, Shoup, Sims, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Wolfe, and Zenor—51.

NAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Beeson, Berry, Borden, Bourne, Bowers, Bright, Carr, Carter, Chapman, Clements, Coats, Cole, Davis of Parke, Dick, Dobson, Edmonston, Farrow, Foley, Frisbie, Garvin, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbort, Hardin, Hawkins, Hendricks, Hitt, Holman, Huff, Johnson, Jones, Kelso, Kinley, Lockhart, Maguire, March, Mathis, McClelland, Miller of Clinton, Miller of Gibson, Milligan, Mooney, Moore, Morrison of Marion, Mowrer, Nave, Owen, Pepper of Ohio, Prather, Ritchey, Robinson, Shannon, Smiley, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Work, Wunderlich, Yocum, and Mr. President—76.

So the amendment was not laid upon the table.

The PRESIDENT. The question now is on laying the section offered by the gentleman from St. Joseph on the table.

Mr. SMITH of Ripley. The Convention has refused to lay my amendment upon the table. Now I would like to inquire of the Chair, what will become of my amendment, if the Conven-

tion should lay the section offered by the gentleman from St. Joseph upon the table?

The PRESIDENT. It would be in exactly the same position as the lever of Archimedes, when he said that if he had a fulcrum to rest it upon, he could raise the world. [Laughter.] But there being no fulcrum on which to rest the lever, the world could not be raised; and if the Convention should vote down the additional section, the amendment of course will go with it.

The yeas and nays being taken on the motion to lay the additional section on the table, they resulted as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Bascom, Beard, Beeson, Biddle, Borden, Bourne, Bowers, Bright, Brookbank, Butler, Carr, Carter, Chandler, Chapman, Chenowith, Clements, Coats, Cole, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Dobson, Duzan, Edmonston, Elliott, Fisher, Gibson, Gootee, Graham of Warrick, Haddon, Helm, Hendricks, Hoggins, Holman, Huff, Johnson, Jones, Kendall of White, Kinley, May, McFarland, McLean, Miller of Fulton, Milroy, Mooney, Moore, Mowrer, Nave, Newman, Nofsinger, Owen, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tannehill, Taylor, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—90.

NAYS.—Messrs. Allen, Barbour, Beach, Berry, Blythe, Bracken, Bryant, Clark of Hamilton, Colfax, Davis of Parke, Dick, Dunn of Jefferson, Farrow, Foley, Frisbie, Garvin, Graham of Miami, Gregg, Hall, Hamilton, Harbort, Hardin, Hawkins, Helmer, Hitt, Howe, Kelso, Kent, Lockhart, Maguire, March, Mather, Mathis, McClelland, Miller of Gibson, Milligan, Morgan, Morrison of Marion, Murray, Niles, Pepper of Ohio, Pepper of Crawford, Sims, Steele, Stevenson, Thomas, and Work—47.

So the section and amendment were laid upon the table.

Mr. WATTS. I offer the following, as an additional section to the article:

"There may be established or incorporated in this State, a State Bank and Branches, in any or each county in said State, when a specie capital is furnished for said branches, as may be prescribed by law."

Mr. RARIDEN, having obtained the floor, was proceeding to address the Convention, when

Mr. KELSO, amidst much uproar, said that the gentleman from Wayne was speaking, as it were, both against wind and weather. That it was impossible, either for him to speak or the Convention to hear, amid so much noise; that gentlemen would probably be much more willing to listen in the morning, and that with the

consent of the gentleman from Wayne, and on the understanding that he should have the floor in the morning, he would move that the Convention adjourn.

A division being called for on the motion to adjourn, there were for the motion, ayes 52, against it, 49.

So the Convention adjourned.

SPEECH OF MR. KELSO,

On the question of Currency and Banking; delivered in the Convention, January 4th.

Mr. KELSO. Mr. President: It is true, I may be entirely mistaken about this matter, but if I am not, then two-thirds of the argument of the gentleman from Cass (Mr. Biddle) is right, and an equal amount of the conclusions which he has deduced therefrom are wrong. But, sir, I am under great obligation to the gentleman for the very candid manner in which he has stated to the Convention his plan of a substitute for the State Banks.

He, sir, is the first and only man who, thus far, has occupied the floor in favor of free banking, and opposed to a State Bank, that has attempted to advise us *in extenso*, the kind of system they would supply the place of a State Bank with, if the same be stricken out of existence.

The gentleman from Tippecanoe, (Mr. Clark) it is true, on Saturday last spoke of the causes which induces their preference for this sort of system; but, sir, in even that particular, the two gentlemen widely disagree.

It has been truly remarked, sir, by gentlemen who have preceded me, that we have in this Convention, three parties on the subject of banking, viz: a State Bank party, a free bank party, and a party opposed to all banks. Well, sir, it is pretty clear we cannot all be in the right; hence, some of us must be wrong, and the paramount object with each and all of us should be to diligently inquire, and learn if we can, wherein consists the error, and who is in the wrong.

Sir, as the advocate of a system of State Banking, I do not appear upon this floor as the champion of the present State Bank, nor shall I attempt to defend either the details of her charter nor the conduct of her managers under that charter. That there are defects in that charter I am free to admit, and that in some of the branches there has been bad management on the part of the bankers I am as free to admit.

But, sir, the fault is in the present bank charter, and not in the Constitution under which that Bank charter was framed.

If it ever should be the policy of the people of Indiana to re-charter the present State Bank, or, by charter, create a new State Bank, the errors in the charter of the present bank

should, and doubtless would, be corrected by the power creating the new charter. And I am decidedly in favor of placing in the Constitution such safe guards and restrictions as may be deemed necessary to force the banks to a faithful and honest discharge of their legitimate functions and duties.

But, sir, before I proceed further in the argument of this cause, allow me here to define my true position, so there shall hereafter be no mistake in the matter. I am, sir, for myself, in opinion and judgment, against all banks and banking institutions.

But, sir, the people who I, in part, represent are friendly to a well regulated system of State Banking, or at least a great majority of them, are partial to such a system. It, therefore, becomes my duty as a faithful representative, to contend for the reservation of such a power in this Constitution. And let me say I am opposed to any and every thing like free banking, and in this particular a majority of my people and myself most cordially agree.

The section before us proposes the broadest possible scheme of free banking, nothing more and nothing less, without even permitting the creation of a State Bank with branches, under any circumstances. Several gentlemen have spoken, some of whom have called the thing by its right name, *free banking*, whilst other gentlemen, most probably pledged to the people at home, to oppose free banks, are attempting to escape responsibility by a mere change of name, and they very gravely call it *general banking*, a very high sounding military title, to be sure, but not sufficient, sir, to satisfy the people, nor save the public servant from a strict accountability at home.

The gentleman from Tippecanoe (Mr. Clark) tells us, very truthfully too, that one of the main objects in banking is to furnish a greater supply of circulating medium for commercial purposes. But the gentleman from Cass (Mr. Biddle) tells us on the other hand, that so far as free banking is concerned, they have no such object in view; this, sir, is a wide difference of opinion between friends of the same measure, and, too, upon a point of no ordinary magnitude.

But, sir, if the object of banking in Indiana is not for the purpose of increasing the quantity of circulating medium, why, I ask, have any banks? They are unquestionably unnecessary. I maintain, sir, that the increase of circulating medium is the only legitimate excuse for banking, and certainly, in that case, a State Bank system has the preference, because they do increase the quantity of what they are pleased to call money; they do increase the quantity of circulating medium in the shape of bank paper, promising to pay money, and it is used in the place of money; and in that, sir, consists one of the strongest arguments in favor of banks, and at the same time it is among its most ob-

jectionable features, viz.: the power to increase and decrease the quantity of circulating medium at pleasure.

But the gentleman from Cass (Mr. Biddle) tells us the bills of the free banks will contain all the elementary principles of bills of exchange, and will, in practice, have the same operation and effect upon the commercial community to a greater extent than in any other way. This, sir, may be all true, and if so, it furnishes an irresistible argument against the establishment of the system, for there certainly can be no necessity for the establishment of from one hundred to one hundred and fifty banks, to do what every trading company, every manufacturing company, every commercial house, and every individual in the community has a right to do, and a right that will always be continued. And further, the State Banks have all the necessary powers in regard to bills of exchange, and that is one of the powers which I have no doubt the bank has abused to a greater extent than any other. I fear, sir, the gentleman's fine system of free banking will be found to be very much like the beautiful monument he has described, built upon the water. The same gentleman states that he is opposed to the use of real estate securities.

I am greatly obliged by that gentleman's frank admissions as to the plan of free banking, and we are not now entirely left to mere speculation. Let us then, sir, for a moment examine this (to us) new system of banking. It is at least worthy of a little time and attention.

The plan, as I understand it, is this, or about this: a general law is to be passed by the Legislature, authorizing any and all who choose to go to banking, not, however, without restrictions, and one of their strongholds is the security they offer to the bill-holder; and what is that, sir? It is a deposit of State bonds of this State or of some other State, or bonds of the United States. The word State bonds, however, having long since become odious, they sugar-coat the pill by calling them State stocks, and governments stocks. Well, sir, this very uncertain and fluctuating kind of security is to be deposited with some officer of State, and upon that, issues dollar for dollar of paper money, countersigned by the officer of State who issues it, and put in circulation by the banker, as money. From what source, I now ask, are these stocks to be gathered, and how are we to procure them?

I ask the question in all sincerity, is it to be proposed to enter into a mammoth scheme of free banking upon the evidence of our own indebtedness? are we to be told that the State bonds we now owe, are to become the foundation of a general system of free banking? Sir, it is bound to result in that very proposition. Well, sir, I have heard tell of men living upon the interest of the money they owed, but this is the first intimation I have ever had that they

could not only live, but that they could become bankers upon the notes, bonds, and due-bills which other men held against them.

But, sir, such a proposition is in itself so ridiculously absurd, that I will not pursue it further.

I will now turn my attention to the more plausible scheme of the State furnishing a sufficient supply of stock for the occasion.

Should the State ever think of such an extravagant proposition, let us see to what it must inevitably lead. I have taken some pains to examine the question, and for the purpose of illustration, I have put down a list of a portion of the principal commercial towns and villages in Indiana, with the amount they would very probably invest in the business of banking under a general provision for free banking, as proposed by the section before us. They are as follows:

Mt. Vernon, \$500,000; Evansville, \$1,000,000; Leavenworth, \$500,000; New Albany, \$500,000; Madison, \$1,000,000; Lawrenceburg, \$500,000; Brookville, 200,000; Richmond, \$300,000; Fort Wayne, \$500,000; Vincennes, \$300,000; Terre Haute, \$500,000; Covington, \$300,000; Lafayette, \$500,000; Michigan City, \$300,000; Logansport, \$300,000; Indianapolis, \$1,000,000; Columbus, \$100,000; Greensburg, \$50,000; Shelbyville, \$50,000; Rushville, \$50,000; Knightstown, \$50,000; Bedford, \$50,000; and Bloomington, \$50,000.

There, sir, is a list of twenty-three towns in this State, that would readily invest in banking, under such a provision, the aggregate sum of \$7,700,000; to this I may safely add thirty others, viz.: Rockport, Troy, Cannelton, Rome, Jeffersonville, Charlestown, Lexington, Vevay, Rising Sun, Cambridge City, Versailles, Vernon, Salem, Greenfield, Paoli, Washington, New Harmony, Princeton, Corydon, Brownstown, Greencastle, Crawfordsville, Clinton, Eugene, Perryville, Williamsport, Laporte, South Bend, Pendleton, and Muncietown. Each of these points, sir, will invest \$20,000, on an average, in banking operations, making an addition of \$1,300,000. Now, sir, I have doubtless, missed some quite important points that should have been added to the list.

A VOICE. You have missed Connersville.

Mr. KELSO. True, sir, I have missed Connersville, which is quite an important point, and would, no doubt, want, and have, a bank; and I doubt not I have missed several others equally important, but this, sir, goes to prove the correctness of my arrangement, and that I have not been extravagant. I think no one will say but that my allowances for bank capital at each point is within proper bounds, and is in no case too large. It places the banking capital of the State at \$9,000,000.

SEVERAL VOICES. That is not too large.

Mr. KELSO. Then, sir, how are the citizens to obtain the nine millions of stock to deposit as collateral security? Suppose the State should

issue her stocks to that amount; they must bear an interest of at least six per cent., for that is the banker's hope of gain; and if he be honest, his only hope is the interest he receives on his stock, and six per cent. on his money to be issued on the stock, making an interest of twelve per cent. for the banker. Now, how is the banker to obtain the State stocks? They must not be given to him—he must purchase them. If the purchase is to be made with cash, why not bank on the money, and never mind the State stocks. But, as it has to be dollar for dollar, that would not produce twelve per cent. interest beside exchanges.

Now, sir, suppose the State issues her stocks to the amount of nine millions of dollars, bearing interest at the rate of six per cent. per annum; the interest will be just five hundred and forty thousand dollars per year. The next, and by no means an unimportant inquiry, is, who pays the interest on these stocks? The State pays it. And where, pray tell me, does the State get the money to pay that interest with? From the pockets of the people—every man in Indiana, according to what he is worth, must contribute his share to help pay that five hundred and forty thousand dollars of interest annually. And who, I ask, reaps the profits to be derived upon such stock? The banker. The man with money banks upon it at the expense of the man without money; and this, it is said, is no monopoly—this, they say, is free to all. To all of whom is it free? To all who are already rich—to all who have means to get possession of the State stock, upon which the poor laboring man pays the interest—upon that stock he draws from the poor man six per cent. He then loans money upon that same stock, dollar for dollar, upon which he draws another six per cent., making a profit of twelve per cent. upon his money; one-half, at least, of which is paid by the poor and laboring men of the country, for which they never do receive back one single farthing.

Sir, I have made a calculation of the necessary amount the people will have to pay under this arrangement. I have carried it down twenty-five years; paying the interest annually and four per cent. of the principal, the amounts are very heavy. The amount to be paid the first year, of principal and interest, is nine hundred thousand dollars; almost a million of dollars. The second year, eight hundred and sixty-four thousand dollars. The third year, eight hundred and twenty-nine thousand dollars. The fourth year, seven hundred and ninety-six thousand dollars. And the fifth year, seven hundred and sixty-four thousand dollars; and so on gradually decreasing by deducting four per cent. of the principal annually. Name, sir, on that debt of nine million of dollars, the people of Indiana will pay in twenty-five years the sum of eight million six hundred and eighty-three thousand eight hundred and seventeen dollars, for interest

alone; and they will have paid during the same period, of principal, the sum of five million seven hundred and twenty-six thousand two hundred and ten dollars.

The yearly average of interest for twenty-five years, is three hundred and forty-seven thousand three hundred and fifty-two dollars each year. The average amount of principal is two hundred and twenty-nine thousand and forty-eight dollars each year.

The whole amount of principal and interest paid the first twenty-five years, will be fourteen million four hundred and ten thousand and twenty-seven dollars. The average amount to be paid of principal and interest, for the first twenty-five years, is five hundred and seventy-six thousand four hundred and one dollars each year; and at the end of twenty-five years, the State will still be in debt three million two hundred and seventy-three thousand seven hundred and ninety dollars, upon which they are still paying interest. The debt would not be paid at the end of thirty-five years.

I ask, sir, are the people of Indiana prepared for such a course as this? We are already sufficiently in debt, and have we not had a hard scald of State indebtedness from eighteen hundred and thirty-six up to the present time? An oppression from which we are by no means yet relieved.

Again, sir: Suppose we adopt this system and a free bank is established. Upon fifty thousand dollars of these stocks deposited as security, fifty thousand dollars of the paper of that bank is put in circulation among the people; eventually some other bank or some rich broker makes a run upon the bank for specie, the bank has not the specie on hand, it is not contended the bank shall give dollar for dollar stock security and keep on hand dollar for dollar in specie.

Well, sir, the run is made and the specie fails. Who is to be the loser? Not the rich, for they are not only able to wait but able also to contend for their rights. But, sir, the poor laboring man, with five, ten, or even twenty dollars in his pocket, the earnings of a hard week's labor, upon which himself and a helpless family are dependent for their daily support; he, sir, is the man who is bound to be the loser. He, sir, cannot afford to travel from the extreme parts of the State to the seat of government, where those delectable securities are deposited. And, sir, suppose he should, what must be his fortune? Why, sir, when he presents his twenty dollar bill to the Auditor, or the State Treasurer if you please, that officer will present him in return with a thousand dollar State bond; neither of them can make the change. What is he then to do? Why, sir, quietly sit down and patiently wait until the bonds can be sent to New York, or to London, and sold and the money brought back to Indiana to redeem the bill.

This, sir, the poor laboring man, with a family to support, cannot do. What then, sir, must be his inevitable fate? Sir, he must appeal to the heartless money shaver, and receive at his hands whatsoever he may please to give him; and that will be little enough, in all conscience. The shaver can wait, and will eventually get his money, making about fifty per cent. off the hard earnings of the poor man. And this is all accomplished by means of this splendid system of free banking.

Gentlemen talk about converting these State bonds into money, as if it was something that could be done in a day. Sir, that cannot be done. And let it be remembered that the refusal of a bank to redeem her issues in specie, is looked upon as the breaking up of the bank. This invariably produces, to some extent, a panic; then, of all others, is the time when State stocks will depreciate in value, and they will always have to be forced into market at the very time when they are certain to bring the lowest prices. Sir, I cannot but regard the whole affair as an unsafe experiment, and one that we should keep clear of, as we now are entirely clear of any connection with it or anything like it.

It was truly remarked by the gentleman from Cass (Mr. Biddle) that the system thus secured by State stocks must, and would, be safe, for so long as seed-time and harvest lasted, people could and would make enough to pay the interest on the stocks, and keep them up at par value.

That, sir, is the very thing I object to. I am opposed to the laboring class being taxed to furnish capital for the speculator to bank upon. Although the people of the State may enjoy an unparalleled degree of prosperity, and reap abundant harvests, and sell the same at high prices, yet all of that does not justify the conclusion that exorbitant sums of money shall be exacted from the people in the shape of taxation, merely for the purpose of enabling the rich to grow richer at the expense of the poor.

The gentleman from Cass (Mr. Biddle) has plainly stated, at different times during his speech, that no matter how much money was issued and put in circulation, or how little, by banks thus constructed, it would not and could not affect the relative value of property in the community. Now, sir, I flatly deny the correctness of that position.

I care not how you organize banks, or any other monied institution, with power to expand or contract the currency, and every time a change is made to any very considerable extent, it must and will derange the relative value of both property and labor.

Suppose free banks were instituted, and they furnished to the people of Indiana a circulation of two million of dollars, and with that circulation the property of Indiana would be three million of dollars. Should the banks expand

that circulation to four millions, would not that make the property in Indiana worth just double? Unquestionably it would. The property would remain just the same in quantity, while the money would be doubled in quantity; and as there would be double the amount of money to be applied to the purchase of the same property that was worth three millions of dollars, with a circulation of two million, the property must inevitably rise in value from fifty to one hundred per cent. And here, sir, is the great objection to banking. The banks throw out large amounts of money; they thereby enhance the value of every species of property; that begets an insatiable thirst for speculation; flattering prospects of high prices induce men to go in debt.

When prices are high, property in demand and money plenty, the rage for speculation reaches its zenith. At this point the banks contract their issues; times, as to money matters, become tight; the prices of property sink; bankruptcy and ruin follow in the train; the banks purchase property at half price; they immediately commence expanding the issues; prices go up; prospects brighten; money is plenty, and commerce is again in a flourishing condition. The banks are now ready to dispose of their property at double what it cost them; they sell on credit; take good security; and again, at the proper time, reduce the quantity of money, and with it reduce the value of property, and again become purchasers. This has been done, and it can and may be done again.

But we are told the free banks never do this. Now let us make a comparison between the State Bank of Indiana and those glorious free banks of New York, about which we have heard so much that is favorable.

In 1847 the entire issues of our State Bank was three million six hundred and six thousand four hundred and fifty-two dollars. In 1848 it was three million seven hundred and eight thousand and thirty-one dollars—being an increase of one hundred and one thousand five hundred and seventy dollars—less than half a million in twelve months.

In 1849 the issues amounted to three million three hundred and four thousand, two hundred and sixty dollars—being a decrease from 1848 of four hundred and three thousand seven hundred and seventy-one dollars—still less than half a million in another twelve months.

How is it in New York? Here we have quarterly reports. We can see the increase and decrease of circulation produced under their system for every three months, commencing with March, 1848.

Circulation, - - - - \$23,047,826

June, 1848, circulation, - 20,718,826

A decrease of \$2,329,000 in three months.

From June to September, 1848, the increase was \$1,882,226 in three months.

In the next three months the increase was \$604,778; in the next three months a decrease of \$696,847; in the next three months a further decrease of \$597,366; in the next three months there was an increase of \$1,773,912; in the next three months there was a further increase of \$497,452, and so on, showing that the increase or decrease of the circulation of the State Bank of Indiana was never as large in amount during any period of twelve months as was the increase or decrease of the circulation of the banks of New York, during any period of three months, from March, 1848, to December, 1849.

Which, I ask you now, has been the most unsteady and fluctuating in her currency, New York with her free banks, or Indiana with her State Bank and branches? No State has had a more fluctuating and unsteady circulation, as to quantity, than New York, for the last three years, with her boasted system of free banking.

We have repeatedly been told that there is no danger of banks organized upon this collateral stock security plan ever failing; and we are continually pointed to New York, with her free bank system, for proof and examples.

Let us, then, as requested, turn our attention to the history of the New York banks. Here it is, sir, in full; and from it we learn that the free bank fund consists of bonds, and mortgages, and stocks, deposited with the Comptroller, and moneys receivable on the same, and held by him for the redemption of the circulating notes, issued by banks and individual bankers under the general banking law. The whole number of bank associations is fifty-three; the whole number of individual bankers fifty-one, making one hundred and four free banks.

The stocks deposited as the security for the redemption of the bills of these banks are, seven million six and twenty-seven thousand ninety-two dollars, to which add, of New York State bonds, bearing interest from four and one-half to seven per cent., one hundred and fourteen thousand dollars; of United States stocks, bearing interest at five per cent., six hundred and forty-six thousand nine hundred and forty-six dollars; of Illinois six per cent. bonds, four hundred and twenty-four thousand dollars; of Arkansas six per cent. bonds, six thousand six hundred and fifty dollars; thirty-four thousand dollars of Alabama five per cent. bonds; and two hundred and twenty-two thousand six hundred and eight dollars of six and seven per cent. bonds of the State of Michigan; making nine millions seventy-five thousand two hundred and ninety-six dollars; in stock securities, such as they are, they have over and above this; of mortgages and the bonds of individuals, one million five hundred and fourteen thousand nine hundred and seventy-nine dollars. This is, to say the least of it, a small branch of the securi-

ties. But altogether it amounts to ten million six hundred and forty thousand one hundred and eighty-two dollars.

The amount of their circulation is stated at \$9,993,762, almost \$10,000,000; it only lacks \$6,238 of that amount. They have of actual money, to redeem the \$9,993,762, the amount of \$49,906, or about twenty cents to the dollar, a fraction over.

In December, 1847, the securities were increased \$568,973; and in December, 1843, they were decreased \$1,020,044, leaving the securities a shade above \$10,000,000, and the circulation a shade below \$10,000,000, with a fraction over twenty cents to the dollar to redeem with in cash.

In case of refusal to redeem their issues in cash, the Comptroller has power, and it is in fact his duty, to close the bank and wind up her affairs. Thirty-one of these banks have been thus closed by that officer, with an aggregate circulation of \$1,417,545; and the Comptroller redeemed \$1,357,424, being \$60,121 less than the amount they had out in circulation.

The Atlas Bank of Clymer, failed in Dec., 1847, and never did pay over ninety-seven cents to the dollar. On the failure of the St. Lawrence Bank, Illinois stocks sold for seventeen and a half cents on the dollar; Arkansas (one of the Western States) bonds brought twenty-seven and seven-eighths cents on the dollar; other bonds and mortgages sold for fifty-six and seven-eighths on the dollar. In other words, \$81,277 of stock securities sold for \$27,232, an average of thirty-three and one-half cents on the dollar. When the New York Banking Company failed, Illinois bonds sold for sixteen and three-fourths cents on the dollar; Michigan bonds brought seventeen cents on the dollar. Another bank failed at Buffalo, and her Illinois stocks sold for sixteen and seven-eighths cents on the dollar; and in another instance, the stocks of the State of New York herself sold for ninety-six cents on the dollar. This proves the correctness of what I had before stated, viz.: that these securities were always forced into the market under the most unfavorable circumstances; and here we see the beautiful practical workings of the free bank system. One great objection to the State Bank is, that it is said to be a monopoly. So is every bank in the world. Mere money in a man's pocket is a monopoly. You never can create any system that will not, in a greater or less degree, be a monopoly. That, sir, is, in the monetary affairs of all countries, an incurable evil.

But, sir, we are told, and with much apparent earnestness, that the conduct of our present bankers is insufferable, and that there must be competition allowed, to force the State Bank to discharge her duty to the people. Sir, if that be true, that, to cure one evil, we must create sixty, eighty, or an hundred more of the

the very same kind of evils, then, sir, I am egregiously mistaken. I think the less we have of them the better.

We see, sir, by reference to the reports of the Comptroller of the State of New York, that they have experienced failure upon failure, to the number of thirty-one banks, the closing up of which had to be brought about by the interposition of that officer. From the same source we derive satisfactory evidence that a large amount of securities, not less than \$1,470,000, sold in the stock market at an average of thirty-three and one-half cents on the dollar, being a sacrifice of two-thirds the amount of the securities.

Is such a history by any means flattering? Certainly not. I ask if anything which has yet been presented as testimony in favor of free banking is entitled to the weighty considerations claimed by the friends of that system? certainly think not.

All this clamor about equal rights is more humbug than reality. In the banking business there is no such thing as equality; it is useless, sir, to attempt to conceal the truth; there is, I repeat, no such thing as equality. None can be bankers but such as have means to bank upon; and no friend of free banking has yet hinted at a plan by which the means to bank upon are to be furnished to the poor man, who is now without it. None will be offered—none can be. Then, sir, where is your boasted equality gone, sir? To the four winds. Sir, the only freedom which there really is in it, is the extra freedom with which the rich may fleece the poor—the extra power which is given to the man with money already at command. He, sir, it is, who will reap all the benefits of such a system, and not the man with ordinary means—not the day laborer—not the common class in general. Disguise it as you will, it is decidedly clear that no advantage is to be derived by the mass of community from the introduction of free banking among us.

Many and serious objections are urged against our present State Bank, and some of them are weighty. But, sir, all these objections can, and should be, and I have no doubt will be remedied hereafter, should another ever be chartered.

I am one that believes that the men who are to come after us to legislate for the people of Indiana—to build a code of laws upon the foundation which we are now attempting to lay—will be as wise and sagacious—pure, patriotic and disinterested as we fancy ourselves to be; and that they will correct apparent evils in each and every department of State affairs, when and wherever it may be found to exist. I do not believe that this is the last body composed of honest, noble, high-minded, patriotic men that will ever assemble in Indiana. I, sir, have full confidence in the good sense of the people; I believe they possess sound and dis-

criminating judgment, and will always look well to their own interest in every department.

I have already said I was individually opposed to all banks; and I give it as my opinion, that a majority of the people in my district are in favor of trying to get along without any bank, rather than have the country flooded with a spurious issue of free bank shipplasters.

And, sir, let me here remark, that the idea of doing without any bank is not so preposterous as many suppose. In the first place, there is vastly more money in the country, than is in active circulation. Secondly, large sums of money are loaned in other States, by our citizens, because their laws regulating interest, are more liberal than ours. Suppose we should allow the rate of interest to be placed at ten per cent. by contract, such a provision would recall within our limits, the capital now invested abroad, and call into active circulation that which is now, in many cases, lying idle.

Then, sir, I would introduce into general use, individual bills of exchange. They will be found to be amply sufficient, and much more safe than the bills or notes of any bank. They are not based upon the wind; they always have (when dealt in as they should be) a corresponding value, in something behind them, to satisfy the demand.

I find, sir, in the Democratic Review, an article on that subject, which explains the position I contend for much better than I can. I will, therefore, adopt it as a part of my argument, or I will borrow from it a few ideas. Almost the entire business of any commercial country may be said to be conducted through the operation of individual bills of exchange, each one of which represents a specific commodity, the delivery of which fulfils the obligation of the bill, and completes the transaction, without the use of money at all.

As thus: in the year 1846, the United States exported \$109,583,246 worth of goods and produce to other countries. For this, no money was paid, but individual bills followed each shipment, requiring, on the face, payment of money. Instead of money being paid, however, the demands of the bill were satisfied by the delivery of goods, which, to the amount of \$117,934,065, invoice valuation, were imported into this country during the same period, which canceled the bills of exchange. It is true that gold and silver was both imported and exported during that time, but the amount each way was within a trine of equal. But the main international business was transacted without money at all.

There was the amount of \$227,517,309 worth of commodities interchanged by means of individual bills, each of which was created by the possession of a specific quantity of an article, and canceled by the delivery of some other article in exchange for it. This position is true to a much greater extent, in the internal trade of the country, because the magnitude of the

exchanges of the products of industry, turning on individual bills of exchange, far exceeds that of the external trade.

Not only are all exports, as in 1846, amounting to \$109,583,244, the basis of individual bills, but all the produce consumed on the Atlantic border, sent down from the interior, are also the basis of individual bills of exchange. For instance, in 1847, the raw produce delivered from the Erie Canal, amounted to \$73,092,414, and from the Mississippi there was delivered at New Orleans, produce to the amount of \$90,033,256, making, at these two points alone, \$103,125,670, all of which was followed by internal bills of exchange, drawn from the shippers and payable in the cities where the produce was shipped to, and canceled by the purchase of goods, foreign and domestic, in those cities, to carry back into the country.

Money enters very little, if at all, into these heavy commercial transactions. The cotton planter upon the banks of the Mississippi, sends his cotton to his factor at New Orleans. The factor exchanges the cotton for supplies for the plantation. The goods sent up usually about balance the cotton sent down. The cotton is sold for a bill. Goods may be paid for by the same check or bill of exchange which is created by the sale of the cotton to the shipper, who, in sending it forward, draws against it a bill of exchange, which will probably be sold in New York, and the proceeds of the bill will be drawn against from New Orleans at sixty days. This bill may be sold, for the commercial credit is transferred from the cotton shipper to the factor. On its maturity in New York, it becomes a commercial credit, to be transferred to a letter of goods by his country debtor, who has purchased it in the way of trade, in the valley of the Mississippi, where it had been sent from New Orleans, in the course of purchasing supplies for the cotton plantation. This credit is again transferred to the importer of goods, by whom it is made over to the seller of foreign goods. He sends it home in discharge of his debts, where it is met by the cotton shipped from New Orleans, and there canceled. In all this matter, not a dollar of money or of bank paper is necessary. The individual bills perform the whole.

All western produce either does or may follow a similar process. And it is by no means extravagant to say that ten thousand millions of dollars worth of merchandise is bought and sold in a single year, exclusively through the medium of private bills of exchange, whilst the whole bank circulation of the Union does not exceed one hundred millions of dollars—showing the great disproportion between the quantity of paper money and private bills of exchange in actual use in the commercial world.

This proportion may be very correctly ascertained by reference to a return made by Mr. Loatham an English banker, who discovered

by the stamps issued by the stamp office, that there was circulated in one year 528,493,842 pounds sterling of private bills of exchange, equal to two thousand five hundred millions of dollars. That there was standing out and in active use and circulation at one time 132,123,460 pounds sterling of private bills of exchange, while at the same time the whole amount of bank circulation was only 27,270,000 pounds sterling, or a proportion of only about twenty cents on the dollar.

The business currency of the country may be said to consist of three classes, viz.: private bills of exchange, gold and silver, and bank paper, and what is to a great extent a misfortune is that in all discussions upon currency we are externally directing our whole energies to what ought to be considered the least important class of our currency, viz.: the bank paper. So far as the legitimate transactions of business are concerned it cuts but one indifferent figure.

Nevertheless this branch of the currency is chargeable with nine-tenths of all the derangements that happen to the currency, for instance, all the fluctuations of commerce, most of the speculations that have preceded revulsions, and the disorders that have interrupted the regular course of industry, are attributable to the irregularities of the issues of paper money. The sudden and extensive increase and decrease in quantity, in fact almost all the financial evils that arise and grow out of this branch of the currency, and for the reason, that it represents mere credit, while every individual bill of exchange in circulation represents some specific commodity ordinarily of equal value with the amount of the bill, every movement of which commodity cancels a bill, and may—very often does at the same time give rise to a new one. This mode of commercial proceeding requires no chartered regulation, and carries with itself the safeguard against disaster. Gold and silver represents nothing, they are the thing itself sought after in exchange for all other commodities and therefore not susceptible of discredit.

On the other hand bank paper originates in nothing, they promise to pay gold and silver, but they are based upon no commodity, the delivery of which will consummate and cancel the obligation expressed on the face of the paper. The promisers have not the thing they promise, and their operations are based upon the hope that fulfilment of the obligation will not be required, and if required that some turn of fortune will enable them to meet it, this hope proves fallacious always at the moment of necessity. It is very clear to my mind that so far as it is necessary to use paper in the commercial transactions of the country, private bills of exchange have greatly the preference, they are equally convenient and vastly more safe. I might, Mr. President, carry this argument much further in defence of my position,

viz. that all the commerce of the country can be carried on in an active and healthy condition without any bank whatever.

I here repeat, let us propose a fair interest for money, not over ten per cent., it will bring out large amounts into circulation which is now hoarded up, and with the proper use of private bills of exchange there will be an abundance of money in the country to answer all her commercial wants.

But, sir, if gentlemen are so anxious about free banks, I have this proposition to make to them, and I make it in good faith. If they will agree to submit the question of banking to the people of the State as an isolated and distinctly separate proposition to be voted on by the people, I will consent that if the people adopt the bank, then the Legislature may make for them any sort of bank they choose. But if they cannot trust the people to settle the question for themselves whether they will have free banks, or State banks, or no banks at all, then, sir, I confess I have no confidence in them and so long as I can raise my voice against the scheme, I shall continue to oppose it.

I now, sir, return my sincere thanks to the Convention for their kind indulgence, and shall hereafter mainly content myself with listening to the arguments of others, and with voting against free banks.

FRIDAY, JAN. 10, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. COOPER.

The journal of yesterday was read and approved.

The PRESIDENT announced that he had received a communication from the Auditor of State.

The communication was read.

Mr. FOSTER requested the privilege of recording his vote on one or two questions that had been taken the previous day. He stated that it was a very unusual thing for him to absent himself from the Convention; but that he was sick, and confined to his room. Under these circumstances he asked the privilege of recording his vote. [Cries of "consent," and "no, no."]

Objections being made, the gentleman from Monroe was not allowed to record his vote.

CAPITAL PUNISHMENT.

The subject of capital punishment having been made the special order of the day,

Mr. COOKERLY moved that the consideration of the special order be further postponed until Thursday next.

The motion was agreed to.

COPY OF THE JOURNAL.

Mr. CHAPMAN presented a report from the committee on accounts, in relation to compen-

sation for making an extra copy of the journal of proceedings.

Mr. C. said he would like to offer a word of explanation. The law under which the Convention was held, required the President and Secretary of the Convention to make out a copy of the proceedings of the Convention, to be handed over to the Secretary of State. The Convention had thought it right that this should be done while the Convention was in session, but the committee on accounts had not thought it proper to audit an account for an officer who was not provided for by the Convention. It was thought that it was the duty of the Secretaries to do the work, but they had had so much to do, that they were wholly unable to make this additional copy in season; and the question was whether an assistant should be employed or whether the secretaries could and should do the work after the final adjournment of the Convention. This was a matter for the Convention to decide; and the committee had thought it proper to lay it before the Convention before they passed it.

Mr. SPANN. I believe that the Convention on a former occasion made an order that one of the Secretaries should assist the Secretary of State. I would ask whether this is the matter on which that order was made?

The PRESIDENT. The Chair would remark to the gentleman from Jennings in reply to his inquiry that the Secretary of the Convention tendered the services of one of his Secretaries to the Secretary of State, and that they were not excepted.

Mr. BASCOM. If I understand this matter, it is for a duplicate copy of the journal to be filed with the Secretary of State.

The PRESIDENT. Yes, sir.

Mr. BASCOM. Certainly all that can reasonably be asked of the Secretary of the Convention is to make one copy. ["Consent."]

The PRESIDENT. The Chair would remark that in the early part of the session the Convention passed a resolution requiring that there should be a copy of the journal kept for this purpose by the secretaries. The Secretary inquired of the Chair what he should do in the premises—whether it was understood that the copy should be prepared as the Convention progressed. The Chair was of opinion that it should be done while the Convention was in session, and directed the Secretary, if his force was not sufficient to do the work, to employ additional force.

Mr. BORDEN would inquire whether the business of the Convention having now decreased, the Secretary could not detail one of his clerks to do this duty. He was satisfied with the account so far.

Mr. GIBSON said it took two secretaries now to make the journal, and he was convinced that they could not get along with less clerks than they had.

Mr. DOBSON. The individual should be paid by somebody if he has rendered the services; but I think from this time forward there will be no necessity to employ any additional services for this business. So far as this account goes I suppose we are bound to pay it, and that there will be no question about it. I will state in addition that by the act, calling the Convention, this was required to be done; and if under that law an individual has been employed to do the work, I think we are bound to pay him.

Mr. BASCOM moved that the account be allowed, and that it be audited and paid.

The motion was agreed to by consent.

CREDENTIALS OF A MEMBER.

Mr. KELSO, from the committee on elections, reported that the committee had examined the credentials of the gentleman from Daviess county, (Mr. Clements,) and that he had been duly elected a member of the Convention.

ORDERS OF THE DAY.

THE BANK QUESTION.

The Convention then proceeded to the consideration of the orders of the day, the pending question being on the additional section offered by the gentleman from Dearborn (Mr. Watts).

Mr. SMITH of Ripley. I rise to a point of order. I understand the question is on an amendment, and I want to know what is the time allowed in the discussion.

The PRESIDENT. In this case it is thirty minutes.

Mr. SMITH. I understood it was only fifteen minutes on amendments.

The PRESIDENT. The gentleman's understanding is at fault. For the satisfaction of the gentleman from Ripley I will read the rule on the subject.

[**The PRESIDENT** read the rule, as already published.]

Mr. RARIDEN. **Mr. PRESIDENT:** Having obtained the floor, it is my purpose to discuss, not so much the question of currency and banking, as the influences which act upon the direction of a State Bank, organized as ours is, and keep it in its proper sphere—the agencies which produce, conduct, and have much to do in directing it. I desire to say, in the general, that credit, or that confidence which man reposes in his fellow, and which is but another name for credit, is the result of civilization and moral culture, and any attempt at its destruction, is virtually an attempt to impede and destroy civilization itself, and to throw man back upon his individual resources for protection, and to fit him, by producing in him a feeling of insecurity, for rapine upon his fellows. Such insecurity moreover renders the perception of right and wrong

less acute and throws us into a continued position of self-defense.

This thing of credit and confidence in pecuniary matters, is developed in its most simple form through banks; and gentlemen need not suppose that any clause in this Constitution, or any legislative restriction concerning banks can lessen or diminish the amount of gold and silver or bank paper. Trade will bring to the country money, it being the means of trade, and it will go where it can be most profitably employed, in spite of unwise restricting legislation; and convertible paper always will have just the value, in exchange, of gold and silver, and it cannot be prevented; and if we do not provide for ourselves a sound and convertible paper currency, our neighboring States will provide it for us, and that, too, to our cost. For gentlemen cannot but know that the present age is committed to the system of paper currency. Look at Kentucky, Ohio, and every State east of us, and with whom we trade. They are in for it, and we cannot, if we would, avoid it. But why should we, if we could? Do not our enterprise and industry want the same stimulants to bring them forth, that others do? Does not our labor deserve the same amount of reward? Most certainly. But the gentleman from Cass (Mr. Biddle) tells us that paper money, upon our present system, although convertible, is fatal to industry and the general prosperity of a country, because, he says, "that paper money, although convertible, is of less intrinsic value than the precious metals, and therefore, that increasing the currency by a medium of less intrinsic value than the precious metals disturbs the relation between the subjects of trade and money; and therefore does harm by provoking fluctuations in prices,"—because, he says, "the prices always depend upon the quantity of currency seeking investment." Now, sir, not one of these things are true, because, if the thing by which money is represented is to be estimated by the intrinsic value of the substance out of which it is made, then we could obviate the difficulty which he suggests, by substituting iron and steel, which is of more intrinsic value than gold or silver, and quite as easily procured as paper, and if he means that convertible paper money is of less value in exchange than gold or silver, he is mistaken; for it is of just the same value in exchange. Nor does the price of commodities depend, in any great measure, upon the quantity of money, except so far as competition will go. "The price depends upon the demand and supply." The price at home depends upon the market at the selling point, and competition brings the home price and the foreign price nearer to approximate, and diminishes the profits of the speculator. This is all the effect, sir; for you can readily perceive that if the multiplication of paper money increased proportionably to the price of commodities, the banks could very speedily enrich the producers:

but then when it rose to so great a price, where would they find purchasers and consumers? The truth is, sir, it is all error and sophistry, and the gentleman does not understand the subject he talks about. Two other gentlemen, (Mr. Pettit and Mr. Owen,) and other free bank gentlemen, object to our State Bank charter, on the ground that it is a monopoly granted to the Bank to coin, in the shape of paper, two or more dollars out of one—a privilege which, they say, is not common to all the citizens of the State; and they declare they will grant no power or privilege to any bank of any character that is not common to all the citizens of the State. Well, sir, this is very patriotic, and perhaps will take well with the people; but is it true that the right of the bank to issue two dollars in paper for every one in the precious metals in their vaults, is the grant of a monopoly to the banks, and that citizens have not that right in common with the bank? I would like the gentleman to show me some law restraining them or any other man from giving their notes for more than they have in their pockets, or vaults, or for more than they are able to pay. There is no such legal restraint—they can issue their notes in double, or ten times the amount they are able to pay or have on hand; but the difficulty is, no one will take them. Issued upon their bonds, they will not go; they may not be convertible; but if that indispensable element I first spoke of—confidence—is with them, their notes will pass and answer just the purposes of money. Here is the secret; and I say further that it is not the bank charter, or any monopoly secured by it, that gives credit to the issues of a bank; it is the confidence of the people in the men—in their means, and dispositions of honesty. That is it, sir. But enough of this. As my time is limited to thirty minutes, I must proceed to my purpose of contrasting the influences favorable to honesty, which surrounds the directory of a State bank, with those which must necessarily surround the directory of a free bank, or a private loaner, just as the gentlemen favor through a currency upon our State indebtedness.

Well, sir, the interest of the stock-holders in a State Bank, necessarily suggests to them to select for its managers, men of standing, property, and business habits; and men who are like the rest of the world, who have the good opinion of society, as well as money. Well, sir, it may so happen that a part of a directory may be men of just the reverse character; but in the general, you do not find usurers or Shylocks, blending their pecuniary interests with others. They can manage it better themselves. They hate the cowardly portion of mankind, who shrink from extortion and are troubled either with conscientious scruples, or fears of a loss of public favor. But it may so happen that some of such men may get upon a State board. Then, sir, such men are restrained by the other mem-

bers of the board, and do not take its direction though they may influence it. But we have acting upon such a directory, public opinion,—their interest in reputation, and their sentiments of justice and humanity—if these fail, and avarice prevail over the influences which I have named, we still have another security—a State Board of salaried directors, whose wages do not depend upon the profit of the bank. They have a supervision over the branches, and can control their action, or wind them up, if refractory. Well, sir, this State board has a reputation to maintain, and they are directly responsible to the representatives of the people, and really have no temptation to do wrong themselves, or to permit others to do so.

Now the continued presence of this latter responsibility of the branch boards, and their liability to the rebuke and control of the State board, has so far maintained and, I believe, will continue to maintain, general integrity in their administration.

Again: all the gentlemen maintain that it is an outrage upon common rights, to allow bankers to double or treble their actual bankable means, although it may be convertible, whilst others cannot. Well, sir, I have explained why others cannot, I will now explain the equivalent which the banker gives the public for that confidence which enables him to do it—it is the stimulants which the increase of the circulating medium which they create gives to labor and production; and I freely confess that if the increased production and the increased prices and competition do not equal the interest which is paid for the increased amount of the circulating medium, the country gains nothing. But if, on the other hand, it exceeds it, they are both gainers.

Now, sir, I do not pretend to say what may have been the action of banks in particular cases. They may have acted securely, but I have endeavored to indicate the influences which have been around them, and which will most generally direct their action. But this, also, should be recollected, that whilst the banks are watched with jealousy, least they oppress or extort, they, on their part, have to watch and guard the interest of their patrons; and such directors and bank officers are not generally favorites with those whom they feel it necessary to watch. And if they watch with that vigilance which thwarts and defeats the stratagems of those who would circumvent and thrive at the expense of the bank, by circumvention, they are called Shylocks, rag-borrowers, and oppressors of the people and the people's friends; and the abused and denounced must necessarily remain silent, and to explain their conduct or give their reasons for it would do harm in society.

It may further be said for our State Bank, that they have maintained a sound and convertible currency. They have managed the

trust funds of the State without cost to the fund or State; and they have made to the State more than one million of dollars of clear profits, and now maintain the perfect confidence of the world, so that their issues are as good as gold or silver at all points within the range of our trade. What more, I ask gentlemen, was expected. Why, some of the gentlemen, the gentleman from Marion especially, (Mr. Morrison,) says that it has been partial in its accommodations, and discounts upon the most stringent terms, unless to such as are favorites. This may be so. Punctuality is very much regarded by honest banks as well as honest men; and those who once deceive have some trouble in becoming favorites, and perhaps something more may afterwards be required of them than of those who never deceive. But would you expect every one to be accommodated by an institution whose whole capital was not one-third equal to the trade of the country? That would be unreasonable, and yet gentlemen treat their not doing it as a grievous charge; and had they done it, and a collapse followed, which would have been inevitable, the gentlemen would have held the bank and its friends responsible for all the injury brought upon the country by its expansion.

The truth is, it has at all times, when money was wanted, gone to the full length of its power. I have no unnatural regard for the State Bank. I know their means are too limited and their capital insufficient for the wants of trade; and that is what most of the charges of partiality in the selection of its customers have grown out of. This might be remedied by enlarging the individual stock in the branches, and if the State stock in them was diminished from one-half to about one-sixth, and the election of the president and cashier rested in the branches, I am very certain there would be less of politics in its administration than now is. Was my judgment consulted, I would increase the individual stock in the branches, at the business points, at least three-fold, or establish two branches at the same point, if the business required it; and for the State stock in the new branches to be established, I would take it from the old ones, and thus diminish the stock of the State to the point I have indicated. That feature of the charter which places all the private stock as a guarantee of the State stock, whilst the State has in reality the power of directing the action of the branches through the State board, is not very liberal, and has most certainly been a main cause of confining the branches to limited usefulness. If a new branch was to be established, it would be adding eighty thousand dollars to the liabilities of the private stock-holders of the other branches, besides the other risks incident to starting a new concern. Who, then, could blame men of capital for eschewing such risks to their capital, when there was no earthly hope of gain under

any contingencies? I could not. Now I have enumerated some of the griefs that gentlemen have urged against the State Bank. Others of them complain that the banks take more than six per cent. for the use of their money, and that they do it by refusing to discount notes payable at their counter, and appropriate their means in the purchase of bills of exchange, payable at distant points, charging and taking off, at the same time, exchange upon those bills so purchased. This may be true for aught I know, and I confess that if the loan is made in that form, merely to get the exchange, and without the expectation of having such bill paid at the distant point, it is wrong and ought to be looked into. But if, on the other hand, it is done *bona fide* to meet the wants of the different seasons and kinds of trade, then it is just and right, and is the cheapest and best method of transferring money from one point to another. For instance, our exchange is carried on with the Eastern States through pork and flour, and with Europe in those articles and cotton—I mean mainly. The process is this: a trader desires to buy pork; he has no money, but is in good credit; he goes to the bank and proposes to draw a bill on Philadelphia, New York, or Boston, the point where he expects to sell his pork; the bank buys his bill at four or five months, always giving him time to close his operation, and pays him in money; he invests that in hogs, packs them and ships them to the point of sale, and when he sells there is his bill. This saves the trader the risk and expense of bringing his money home, and at the same time possesses the bank of a fund to draw on for the mercantile trade. The merchant in the neighborhood of the bank is now ready to start East to recruit his stock of goods; he has his money on hand, but does not choose the risk or trouble of its transportation, so he calls upon the bank and exchanges his money for the avails of this pork bill, and pays him the exchange, and all are accommodated. And so the process goes on through all seasons and subjects of trade; the bank furnishes the means and others take the risks and active agencies of trade.

The fluctuations of bank issues result partly from the growing and maturing seasons, and partly from the demand and supply of the subjects of trade, and not from design; and I should like gentlemen to inform me how it could be otherwise, was there not a paper dollar on earth.

Now, sir, I have passed through most of the objections that are urged by the free bank party against our present system of State Banks, and I have indicated what changes I should like to see engrafted upon the State Bank system. And here let me ask gentlemen who have manifested so much hostility to the State Banks on account of their partiality among customers, and their usurious action, if they

expect by disintegrating the Bank capital and restoring to its owners their several portions, let me ask them if they suppose that that will diminish their power or dispositions to make the most of it? It will then become a transaction between two men—the lender and the borrower—and they are brought together by the most potent influences that can be brought to bear upon human conduct. The one is allured by avarice, and the other driven by necessity. The money lender with his scales ready to weigh the pound of flesh, and his hapless victim before him, pinioned for the operation, no generous spirit standing by to advise mercy, and no Daniel to sit in judgment between them to decide how much one may demand, and how much the other can yield. All is left to avarice. Not even the poor excuse of a directory to modify the extortion, or limit concessions. Is this that perfect state of society that gentlemen desire to bring about by disintegrating the capital of the State Bank, withdrawing it from the use of society, and restoring it to the absolute control of its owners, thus teaching the rich man to rely upon himself alone, and to make him feel that, although surrounded by wealth, he is insecure in its enjoyment, and to make him act upon the feeling that society has no sympathy for him, and that he will pay it back in its own coin? Sir, this is a state of barbarism, where no confidence exists, or sympathy is felt; and, I ask, is it for this solitary and unhalloved, unrestrained liberty of action that the world is longing?

Now, Mr. President, let me inquire for what reason the State Banks are to be put down, and for what benefit, and what interests are to be subserved by displacing them and re-placing them with what is called free banks, founded upon State bonds. I understand gentlemen to say they want no special incorporation; that they want the State to allow them, or for the State to issue for them a scrip equal to the amount of State bonds that they will produce, and that that should be the circulating medium put into their hands to be loaned out; and that they will promise to keep its credit good. They want no incorporation; but they desire to act just as men can act controlling large amounts of money; and they tell us that this keeps clear of that odious thing about a State Bank which is called a monopoly—the right to issue two or more to one; and that this kind of banking is accessible to every one, and has no exclusive privileges about it. Now, is this true? Is it reality, or is it mere humbug to get clear of the creeds they have professed all their lives, or, at least, ever since they turned patriots, and placed themselves alongside of the people to watch and guard their rights? Is it true that every one can go into this kind of banking; or, if they could, would it be safe to them or the country? From whence are to

come the State bonds in sums of fifty and a hundred thousand dollars? Are they to be bought? If so, that much real money leaves the State, and the bonds take its place. But how, I ask, is the poor man, and the man in medium circumstances, to get them? Are they to be given or issued by the State gratis? Not so; they are to be got somehow; and I will tell how by and bye. And do not gentlemen know, whilst they declare that it is open to all, that the poor, and indeed all but the most wealthy, are as perfectly interdicted from everything concerning it, except its evils and frauds, as if they were excluded by a decree of Heaven? Where would the poor man get fifty thousand dollars in State bonds to begin upon? Nowhere; and it is doing injustice to popular intelligence to suppose they can be thus duped and hoodwinked by any such shallow and vicious pretences. But let me turn your eyes for a few minutes to the quarter from which and the gentlemen from whom comes this novel and startling proposition. Look along the lines of transportation from Madison to Indianapolis, and from the Ohio river to the north end of the State, along the Wabash and Erie Canal, and about its north extremity, on the borders of the Lake, whose trade is immediately with New York (though I must exclude many who represent the agricultural interest from this). It is mainly in those locations you find the advocates of this new and untried experiment. There are some, indeed, in other sections, who are smitten with the novelty of a scheme which promises so beautiful a harvest to those who have the credit to get State bonds, and to become bankers. But look along the line of those works, and there you will find the friends, advocates, and projectors of this scheme of aggrandizement. Let us look out for the real object in view; let us look behind and beneath the specious pretexts of the friends of this museum of curiosity, and see if any other interests than the interests of the State and the people may be suspected of prompting this great love of the people and equal rights that we hear so much of, and who feel so much hostility to monopolies, as though they could not be quiet in their graves if one remain upon earth. What is this Canal, and who are its owners and controllers, I ask? Why, sir, they are the same men, and they foreigners who reside in their own country, who hold the most of our bonds for the money which constructed it. They have the Canal and its use, and we pay to them five per cent. upon the bonds into the bargain, which is as it should be; and they now propose, for our good, that we shall just double the amount in small notes for them to loan out to the people at interest, so that they can get the five per cent. from the State, and also as large a per centage from the people as they can make by loaning to them or trading with them, and that they will keep the credit

of the small notes good in the people's hands, or forfeit their bonds.

This is a fair statement of what is proposed as a substitute for the State Bank and Branches, with its convertible paper circulation. This is the system of banking which the gentleman from Cass (Mr. Biddle) tells us is founded upon so safe and pure a foundation that nothing short of a visitation from Heaven can defeat or discredit it, meaning thereby that it is intended to be rooted in the soil, and that its resources are to be nurtured by the toil of the farmer, and its profits gathered with his harvests. Well, sir, no doubt but this is the intention, but I desire to inquire for a few minutes whether this would be a profitable relation to establish between the farmer and banker, and whether the farmer, in that relation, would be able to maintain his independence, and a just reward for his toil. I think not. All the weapons, offensive and defensive, by this arrangement, would be in the hands of the banker. In the first place, he has the carrying of all products to market, and the fixing the price for it; for there is no competition with a railroad or canal to bring down or regulate prices. Whoever owns them, charges what he chooses. This is one weapon those bankers upon State bonds would have over the farmer in this arrangement.

In the second place, they are, moreover, to have the exclusive control of the currency, and if the theory of the gentleman from Cass is correct, that the prices at home depend upon the quantity of circulating medium at home, then these banks which control that circulating medium and fix the prices of commodities must necessarily select the persons to whom they will give the means of purchasing, and who will be the buyers of all commodities and the carriers of it to market. I say this on the ground that the bond-holders who are to be our bankers own the Wabash and Erie Canal, and by having the power over the price of transportation, can necessarily, by discriminating between produce purchased with their money and that purchased with other money, prevent investments in any other money than their own, and that too, at the prices they may fix. And through the same power, and with the view to self-preservation and security these republican money-kings must indicate and most probably own the warehouses to which this produce must be shipped, and control its consignees. Then, sir, although the banker's share of the crop of the farmer may not, to the superficial observer, be more than seven per cent for the use of his money yet when we remember that he also fixes the prices of products by limiting the amount of money to be invested, as the gentleman from Cass, (Mr. Biddle,) a free bank advocate, informed us, and by the power to prevent the influx of foreign capital through a discriminating price of transportation, and when we add to this the selection of purchasing agents and ware-

housing, and commissions, &c., I cannot but fear that the producer will have but a beggarly account of his share of the crop. And what influence, think you, those agents of our foreign bond-holders, who must themselves be aliens in everything but location, with the power thus to regulate our circulating medium, to buy our crops, to ship it to market, and sell it, must necessarily have over the politics of the country? If it be true that "money is power," as philosophy informs us they will designate your legislators, if they do not choose to do that business themselves; and the whole country and its institutions will be theirs; and thus and our people, now so happy and prosperous, who have, by the sweat of industry converted a wilderness into a paradise, are to become serfs and tillers of the ground for the profit of others, and are to yield their allegiance to the mere bondsmen and hirelings of our foreign bond-holders; and the fruits of their toil are to be swallowed up merely to double the interest to our creditors and to afford employ to their liege men and emissaries. The object of the prompters of this scheme may have been a lower aim than this, I admit; and with less princely game in view. Their whole object in this much ado about money and the public interest may only be to enhance the price of their bonds, and to make a demand for them with our own people. If that is all, I can forgive them; and it will settle down among the bulls and bears of the times. But if the scheme is to be consummated, and the iron driven to the marrow, then, in the last resort, I appeal to men of sympathy, especially my friends of abolition tendencies, who have heretofore kept their tears for the black race. I call upon them to look over this new field of human degradation—this not new theatre, but new play, with new plots and fancy scenery. Witness the husbandman, lately a king, every inch of him, with all the attributes of true sovereignty about him; see how changed, how fallen. But yesterday, he was as I have described him; but now a bondsman—the bondsman of the State, humbled in all his aims and aspirations, if he submits thus to be shorn of all his strength, and places the keeping of his interests in the hands that I have indicated. Divert, gentlemen, I entreat you, those tears from those accustomed objects of sympathy, and give us a drop for these new subjects of commiseration who are about to be bound hand and foot. We have heard too long about the anti-republican tendencies of associated wealth not to dread a union between the western canal, our bond-holders, and the Madison and Indianapolis Railroad, which will take with it all the railroads in any way connected with it in interest, separated as they are now supposed to be, I am not sure that their power has not been felt in our legislation, through their patronage and princely revenues, and if we, in the

Constitution, construct a platform upon which all these interests can unite and harmonize in banks to be founded on their bonds, or the bonds of the State which they own, and in this way give them the absolute power over the whole circulating medium of the country, and pay them legal interest into the bargain for employing the currency we create for them—they now having the whole carrying trade—if, I say, we do this, and the people submit to it, and yield up the power that we provide, to place it in the hands of our bond-holders, if we are not then serfs and slaves, it will not be our or the people's fault. The liberty we shall enjoy will be from the clemency of our masters, and will be really undeserved. But some of the free bankmen tell me I am mistaken; that it is not their purpose to base these free banks upon State bonds, but simply to use them as collateral security for their issues, and not as the basis of issue. This may be true, and the bonds may be only introduced to conceal the purpose of issuing five or six dollars of paper to every one of paper to redeem them. If so, it is designed to establish an old-fashioned bank of issues, without any of the wholesome checks and restraints suggested by modern experience, except the restraint of individual liability.

I have, as yet, seen no project drawn out in detail of one of these free banks; and can only discuss it from the outgivings in the speeches of gentlemen on this floor; and I must say, if they have given its lineaments truly, they cannot gain my favor. The gentleman from Posey (Mr. Owen) and the gentleman from Tippecanoe (Mr. Pettit) have, in their speeches, contented themselves with denunciations of every scheme of banking that the wit of man ever has yet devised, except the New York free banks, and these they neither commend nor condemn, because they say they do not understand their guards and machinery entirely. At the same time, they pour out all the stereotyped denunciations of the last eighteen years against banks, their privileges and monopolies, frauds and villanies, as if no one ever before hated them as they do. The latter gentleman, especially, taxes his ingenuity for coarse terms of vituperation, and closed by telling us what he will not do; and what kind of banks he will not support or countenance. Yet these gentlemen fail to tell us what kind of banks they will support. This is a very safe course for a politician who is content with a negative position; but I doubt if either of the gentlemen will be content to play so negative a part in politics hereafter.

Now, sir, I have passed through the subject in a very general way. I have said very little about commercial banks—nor shall I go into a delineation of their use or action. I esteem them as the inventions of prosperous commerce, as its helper and handmaid; and they

had their credit in that confidence which exists among mercantile men; and that confidence and credit must be destroyed by virulent attacks upon banks through which, I repeat, that confidence and credit is organized in a very simple form. It will exist independent of the organization, and if you destroy this particular organization, it restores itself in another form, and performs its functions at the requisition of its parental head. And gentlemen talk about bills of exchange and their utility, and that all the little spawn of the free banks will be bills of exchange drawn upon the actual products of industry—a fund they tell us, that nothing but a visitation of heaven can dissipate. Paying this eulogy upon this form of credit, for it is nothing else, do gentlemen remember what gave bills of exchange their great credit? It is not the form of the instrument, or the pretty pictures upon it, or its name; nor is it any particular fund upon which it is drawn.

No, sir, none of these to any great extent. It is the commercial pride of the men engaged in it, their inveterate and habitual punctuality, and fulfilment of all their pecuniary engagements—that pride in the mercantile man which makes dishonorable and highly penal in a commercial point of view the least deviation from punctuality in pecuniary engagements. This commercial pride, sir, is the parent of credit in the shape of bills of exchange. Think you that those free banks will have it—those hired agents of our bond-holders—the buyers and the carriers of our produce to market? They may have it, and they may not.

Mr. PEPPER of Ohio. I think the subject has been very fully discussed, and I want to see the Convention take some action upon it. I asked the gentleman (Mr. Rariden) when he commenced his remarks this morning to do me the favor to let me offer an amendment to the amendment, which was not accorded to me. I now offer the following amendment to the amendment:

The amendment was then read by the Secretary. It provides that the State shall not be a stockholder in any bank after the expiration of the charter of the present bank; nor shall the State lend its credit for the purpose of aiding in the establishment of any bank or moneyed incorporation whatever; and that the State Bank shall be closed at the expiration of its present charter.

Mr. PEPPER of Ohio. I wish merely to remark that the proposition contained in the amendment to the amendment, can be supported by gentlemen who are in favor of free banking. There is no objection to support it on the part of gentlemen who desire to establish State Banks, other than such as the State shall be a stockholder in. Nor, sir, is there any objection to support it on the part of any gentlemen who are not in favor of continuing in existence, the present State Bank. The latter clause of this

amendment was suggested to my mind by information which I recently received, that there is a proposition now before the Legislature to re-charter the State Bank for twenty years longer. I propose therefore, that latter provision in the proposition to meet this case. It is therefore, so far as it goes, a compromise measure. It does not interfere with the wishes or desires of gentlemen who may hereafter apply to the Legislature to give them such a bank as the majority of the people and their representatives should be in favor of. I am satisfied, notwithstanding all we have heard, and all that has been boasted, that the attempts of any one to sustain the State Bank and its branches, and to present it to the Convention or the people of the State, in any attitude other than that of a monstrous monopoly, have failed. I know—I am satisfied that this State is not willing to continue in existence, that monopoly. But I will not attempt to answer the arguments made by gentlemen in their endeavors to sustain the reputation, character, and soundness of that institution. I did not desire to make a speech, but merely to obtain an expression of opinion on the amendment I have offered.

Mr. HITT. I do not desire to make a speech, but I do desire to define my position. The comparative merits and demerits of each system of banking, have been ably discussed; and although I have listened with pleasure and delight to the able arguments of the gentleman on both sides, I must say that I think the subject more appropriately belongs to a legislative assembly than to a constitutional Convention. I do most sincerely think, sir, that we should place in the Constitution sufficient guards and restrictions, with the proper basis, and leave it for the people through their Legislature, to adopt what system of banking they may desire, subject to the constitutional restrictions we may think proper to impose. I think the friends of each system are willing to adopt the most stringent, restrictive, constitutional guards which appropriately and legitimately belong to the Constitution. We should not go farther. Why not stop here? Why not leave legislation where it properly belongs? Should we adopt any one system, as is proposed, and exclude all others, I predict it will do more to endanger the adoption of the Constitution, than anything we have done, or hereafter may do. Let us look back at the causes which operated mostly in calling this Convention. It has been a subject of remark all over the country, that if there was one subject more than another that influenced the people to call that Convention, it was this very question. It was said that the people's hands had been tied up for the last thirty-four years, restricted to one system of banking—that the people wished to be untrammelled in this matter, and hence the call of the Convention. Now, what is proposed here? Why, to impose the very same thing upon the public.

Some gentlemen wish their favorite systems adopted to the exclusion of all others. This, I think the people will not submit to, and for one I will vote to leave out of the Constitution, every subject of a legislative character. Pending the canvass last summer, I took this position; it met with a general acquiescence. I well recollect the admonitions and cautions I received at the hands of my constituents. I was cautioned not to put too much into the Constitution. The people were well satisfied with the old Constitution, under which they had lived and prospered. They thought it good yet in the main, and they wished but few amendments to be made in it. It was a very general circumstance for all of them to caution us against putting too much in the Constitution—that was all their fears. But Mr. President, if the Convention see proper to take a different course, and adopt any one particular system of banking in the Constitution—if I be forced to the alternative of voting for one system or the other, I shall certainly vote for a State Bank and branches. I dislike monopolies; but monopoly is a feature objectionable alike in all banking institutions. But I do like the mutual liability clause. It is a safe guard that I admire, and one not applicable to independent Banks.

I do hope the Convention will take the proper course and be contented with engrafting on the Constitution sufficient guards and restrictions, with a proper basis, and leave the people to choose their own system in their own way. I will here close with an old maxim, and it is a very good one, "that the best government is that which governs least," and I think very applicable when applied to this Constitution.

Mr. McFARLAND. It was my intention at the commencement of the discussion of this question, to have attempted to make an elaborate speech upon the subject.

I had prepared notes for that purpose, sir, but each member who has preceded me upon the subject has anticipated me in a portion of what I desired to say, and in most instances, perhaps, presented the subject better than I could have done it.

I shall only attempt then, upon the present occasion, to present some few arguments that have not been fully brought before the Convention, and, perhaps, endeavor to reply to some of the arguments of others.

I must say that the gentleman from Cass (Mr. Biddle) gave to the Convention in the early part of his remarks, a view of this question which very nearly accords with my own.

From the first portion of his speech I could see no escape from the conclusion that the issuing of paper money, whether predicated upon gold and silver in less quantities than the paper issued, or upon paper surities, dollar for dollar, must, by disturbing the relations of value, be essentially pernicious in its effects upon the

varied interests of the people. From his premises he draws one conclusion, and I another.

He thinks we must have a paper circulation in comparatively small bills, issued by banks; while I believe that gold and silver, with bills of exchange, will answer the wants of our commercial people, and avoid the "disturbance in the relations of value" which he so justly depreciates.

The illustration used by the gentleman (Mr. B.) when he compared the stimulus of bank paper upon the trade and commerce, to that of ardent spirits on the individual struck me as being peculiarly forcible.

Different nations have been trying for centuries to use bank paper temperately; few, if any, have succeeded; and similar results with individuals in reference to intoxicating drinks, attest the correctness and force of the analogy between the two.

The visionary schemes of a people intoxicated by the stimulus of an excessive quantity of paper money, bear a striking resemblance to the fancied wealth of a drunken man, and the sober hour no more certainly brings the conviction of squalled beggary and want to the latter, than it brings wide spread distress and bankruptcy upon the former.

Under the influence of the stimulus of paper money, the American people have alternately been drunk and sober since the foundation of the government.

We were intoxicated, perhaps, to the highest possible extent in 1836, and our recovery for a time might have been thought doubtful, and the memorable campaign of 1840 which followed that national debauch, could only be excused upon the ground that we were laboring under the untold horrors of that species of delirium which follows the worst grades of drunkenness.

While reason and correct notions of political economy dictate, in my judgment, "total abstinence" from the stimulus of paper money, habit demands the continued use of banks of circulation, and it can hardly be considered doubtful what would be the result were the Convention to prohibit in the new Constitution the creation of any further banks in this State.

Believing, Mr. President, that we are destined to have banks in this State under the new Constitution, not from a real, but a fancied necessity for their existence, as a practical question, it remains only for us to inquire what kind we will adopt.

The friends of the State Bank insist that that institution should be continued, that it has made money for the State, that it has furnished a good circulation of uniform value.

In the brief space of time allowed to me under the rules, I shall endeavor to examine the claims of that institution as set forth by its friends.

Let us first consider the claim based upon the supposition that it has made money for the

State. By reference to the Auditor's report (page 12) it will be seen that nearly two millions and a half of dollars in bonds have been "issued for the State Bank of Indiana," which the State must redeem at some future period. The statement of the officers of the bank shows that the State has but little over one million of stock in the institution. It will not be claimed that the bank has made enough to cover even this deficiency. But it is said that the loss of one million of bonds, for which nothing was realized, was an accident for which the bank is not accountable, although the bonds were sold by the President of the bank, and the whole affair managed by the officers of that institution.

The claim is that the bank has made a little over a million of a profits for the State, and the documents show the loss of over a million in bonds, issued and sold by the President of the bank, and one would naturally suppose the account about balanced; but not so, say gentlemen; this loss was an accident, and one that will not occur again.

It is true that these gentlemen will not admit that any losses can properly be supposed to have resulted from accident in free banks. It was no accident that the free banks of New York failed to redeem their paper, because the State of Indiana refused to pay the interest due upon her bonds that had been deposited with the Comptroller as security for their circulation.

From this reasoning it would appear that the President of the State Bank had every reason to believe that a New York Canal and Banking Company, the stock of which was fifty per cent, below par, was abundantly safe, while the State of Indiana, in 1838, when her bonds were at par, was not entitled to credit. I must confess, Mr. President, that I was mortified and pained to hear the gentleman from Shelby (Mr. Hendricks) exult over the failure of a few free banks in New York, when that record which he read proved equally clearly that the failure of which he complained was caused by the utter faithlessness of the State of his birth, and my adoption.

The utter fallacy of the reasoning of gentlemen on this subject must be apparent to every unbiassed mind—and the loss in capital stock alone will be admitted to be more than equal to all the profits realized to the treasury of the State from the profits of the bank.

If the losses resulting from the bank indirectly are taken into the account they amount to an enormous sum. It is admitted on all hands that this institution refused to pay specie for its paper for four years and a half since its creation.

It will not be denied that exchange on New York during that time was over an average of eight per cent.

The citizens of the State consumed during that period no doubt at least eight millions of dollars' worth of foreign and domestic goods per annum, upon which at least eight per cent. exchange was paid by the merchant first, and being added to the cost of the goods together with a profit of 25 per cent. would increase their price to the consumer at least ten per cent.

To the citizens of the State then, sir, this brought a loss of eight hundred thousand dollars a year, and over three millions and a half during the suspension of specie payments. But this, Mr. President, I suppose will be regarded as an *accident* too.

I assume, sir, that it was an *accident* that the bank did not fail entirely in 1842—that it is the merest *accident* in the world that it has not lost all the State ever put in it, or that it has ever paid anything to the State at all. Such *accidents* have seldom occurred in the management of State Banks any where else.

It is but justice, sir, to those who managed the State Bank to say that the results, disastrous as they have been to Indiana, are much less so than they have been in most of the other States where States Banks have been tried.

Having already shown, Mr. President, that the citizens of the State have lost about four times as much as the Bank has made for the State, let us inquire, sir, whether there is not now an annual loss which will more than equal the profits derived from the existence of this institution.

The cost of transportation of specie to New York from this State, including insurance and interest while on the way, would be an average little if any over one half of one per cent. To avoid the trouble of delivering the specie there the merchant would give a half per cent. exchange, and if the paper of the bank were as good as specie here that would be the price of exchange on New York. But to secure a large circulation the branches of the bank put their notes into circulation at distant points from the place of issue, so that to convert them into coin will cost on ordinary sums about one per cent. Practically then the notes of the bank are one per cent. below par. Upon the articles consumed by the inhabitants of the State, purchased in the Atlantic cities, one per cent. more is paid because of the depreciation of the paper of the bank, and that too when the paper enjoys the confidence of the people as much as it ever did.

This item will amount annually to at least one hundred thousand dollars. A larger sum than the bank can possibly make for the State in a year in the most prosperous times.

The people of the State lose thus, sir, every year more by this bank than this Constitutional Convention will cost.

In disputing the claim of the bank to a continued existence based on the profits received by the State, I have been compelled to show the utter fallacy of the claim of the friends of that institution that the bank has furnished a safe sound currency.

Nothing but an utter confusion of ideas would make a man excusable for making the declaration that the State Bank of Indiana had furnished a sound currency to the State. Never less than one per cent. below specie in value, and one fourth of the time from eight to twelve per cent. below par.

If this is what gentlemen mean by a sound currency we shall hereafter be able to comprehend the idea they intend to convey. It is certainly not what is understood to be a sound circulation by the mass of the citizens of the State.

If we are to have paper money let us at least require it to be equal to specie during a time of general confidence. It is certainly enough that the citizens of the State shall suffer the consequences resulting from an expanding and contracting currency ever marring and disturbing the relations of value without paying an annual indirect tax equal to that required for the support of the State government in consequence of its uniform depreciation.

Mr. President, aside from other questions of profit and sound currency, there are other reasons which should be conclusive against the longer continuance of that institution. Such institutions exercise a dangerous influence over the destinies of a State. The million of bonds sold in 1839, for which little or nothing was obtained, were disposed of under an act of the Legislature authorizing the sale of four millions more. The bank was in truth managing the finances of the State. It was the "power behind the throne stronger than the throne itself."

From the nature of an institution of that sort it assumes the control of the finances of the State. That act was passed under the delusive hope perhaps honestly entertained by the bankers themselves, that the State Bank could so manage the finances of State as to carry the mammoth internal improvement system through.

I hazard little in saying, sir, that that institution has controlled the Legislature of this State wherever the interest of the bank were at stake. No one can read this little book Mr. President, (holding up a volume containing the bank and sinking fund laws,) without seeing the most conclusive evidence that the bank possessed an almost unlimited control over the Legislature.

By the original act incorporating the bank, the institution possessed the exclusive right to issue paper money, but the interest upon the loans of the branches was never to be at a higher rate than six per cent. per annum. It is well known that by various devices the bank

avoided that provision of its charter. In 1843, when it became doubtful whether under the decisions of the courts the principle of such loans would not be forfeited, a provision was inserted in the resumption law legalizing the past and all subsequent usurious loans. Up to that time the State participated with the bank in a violation of her own laws against usury, and since that period has enjoyed with her associates the exclusive right to take a usurious rate of interest.

There are many texts in this little volume of laws in reference to the State Bank, each of which would afford ample food for useful reflection, but my limited time will only permit me to present one thing more, and that is the certificate appended to each amendment to the charter of the bank, that the "assent of the State Bank and branches to the act amendatory of its charter" &c., had been filed in the office of the Secretary of State.

Suppose the bank had refused its *royal assent* to an act of the Legislature passed even by a unanimous vote of that body, it would have been as effectually vetoed as if it had been passed by the parliament of England and her majesty Queen Victoria had withheld her signature approving it. Much has been said here against even the qualified veto power given to the Governor, but in reference to one of the most important interests in the State, this institution possesses the absolute veto power.

A power to forbid legislation possessed not by an officer elected by the people and amenable to public opinion, but by an independent, irresponsible monied institution. The thought is humiliating in the extreme, that no difference how much the public interest require a change in the policy of the State in reference to banking, the kingly negative of the bank effectually controls the legislative power of the State. The legislative power of a sovereign State prostrated before a moneyed monopoly.

In conclusion, Mr. President, I will venture the prediction that the closing up of the present State Bank will result in showing a large loss instead of a profit upon the money it has absolutely received from the State. Gentlemen arrive at different conclusions based upon the reports of the affairs of that institution. Without intending to impeach the integrity of a single officer of the bank, I must express my conviction, that he who adopts the conclusion that their reports are not illusory will in the end find himself most egregiously mistaken. If in the final winding up of the business of the bank its condition should be as good as it is now supposed to be by its friends, the result will differ materially from the experience of the world in banking everywhere else.

The experience of every country where banking has been carried on is that the reports made by the banks are utterly illusory, and although the annual statement of the bank with

other reports made to this body seem to indicate that the State's interest is worth perhaps twenty per cent. more than the par value of the stock, I will with great pleasure vote for a proposition to sell the interest of the State at twenty per cent. less than the bank represents it to be worth.

The allotted half hour having expired, Mr. McFarland resumed his seat.

It was moved that the rule be suspended in order to allow the gentleman from Tippecanoe to terminate his remarks.

Mr. COOKERLY deindeed the yeas and nays.

The question being upon the suspension of the rule, the yeas and nays were ordered, and taken, and resulted—yees 69, nays 54, as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Barbour, Biddle, Bourne, Bright, Brookbank, Bryant, Carr, Carter, Chapman, Colfax, Conduit, Cookerly, Crumbacker, Davis of Vermilion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Foster, Graham of Miami, Hall, Hamilton, Harbolt, Hawkins, Hendricks, Hitt, Holman, Howe, Kelso, Kent, Kendall of White, Kinley, Lockhart, Maguire, March, May, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Morrison of Marion, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Rariden, Read of Monroe, Ristine, Robinson, Shannon, Sherrod, Shoup, Snook, Smith of Scott, Spann, Taylor, Wallace, Wheeler, Wiley, Work, and Wunderlich—69.

NAYS.—Messrs. Ballingall, Bascom, Beach, Beard, Beeson, Bowers, Bracken, Butler, Chandler, Chenoweth, Clements, Coats, Cole, Crawford, Davis of Madison, Davis of Parke, Farrow, Fisher, Foley, Frisbie, Garvin, Gootee, Haddon, Hardin, Helm, Helmer, Hogin, Huff, Kendall of Wabash, Mathis, McClelland, McLean, Miller of Gibson, Moore, Morgan, Nave, Prather, Ritchey, Schoonover, Sims, Smiley, Steele, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Watts, Wolfe, Yocum, Zenor, and Mr. President—54.

So the rule was not suspended.

Mr. BORDEN desired to make a suggestion which he thought the Convention would be willing to adopt. It occurred to him that, from the manner in which the Convention proceeded, they were not likely to come to any definite conclusion. He thought that, if a select committee were formed of one from each Congressional district, to be chosen by the delegates representing the district, and the whole subject referred to them, such a committee would be very likely to hit upon some plan that would meet the views of most of the members of the Convention. [Cries of "No! no!"] He would, therefore, move the adoption of a resolution embracing in substance what he had suggested.

The PRESIDENT. The Chair would remark that it is not in order to introduce a resolution at this stage of the business.

Mr. BORDEN. Then I offer it in the form of a motion.

The PRESIDENT. The Secretary informs the Chair that it is in the form of a resolution.

Mr. BORDEN. Well, I will strike out the word "resolved."

Mr. BORDEN. I make this motion to refer, as before stated, because I think it will have a tendency to expedite the business of the Convention. I am satisfied that if something of the kind be not done, and the wishes and views of the different portions of the country thus brought together, we will be engaged here day after day in noting down amendments, and in a month will be no nearer a conclusion than we are now. We can do more towards settling this matter by sitting down in a committee constituted as I have suggested, than we can by public discussion here.

Mr. KILGORE. I rise to a point of order. The motion, I understand, is to refer the section and pending amendments to a committee. Yesterday the section was laid on the table.

Mr. BORDEN. It is the section under consideration.

The PRESIDENT. The Chair would remark to the gentleman from Owen that the motion has reference to the subject under consideration.

Mr. PEPPER of Ohio. I am entitled to make an inquiry. Was not the first section, sir, laid on the table?

The PRESIDENT. Yes, sir.

Mr. PEPPER of Ohio. Then, of course, it cannot be referred.

The PRESIDENT. Of course, a motion could not be made in relation to a matter not before the Convention. The report of the committee on banking is now before the Convention. The first section of the report was laid on the table yesterday. The article is now up, and a section is now under consideration, with pending amendments. The gentleman from Allen now moves to re-commit it and the remainder of the article.

Mr. BORDEN. I understand the first section was laid upon the table yesterday. I propose that the section and pending amendments, together with the whole of the subject of banking, be referred to a select committee, as before said. Will gentlemen understand the matter now? The Chair has decided the motion to be in order, and I hope gentlemen will see that it is in order. I say let us refer the subject now; if we do not, my word for it, in some weeks hence, you will be just where you now are. You will have to refer it then. It is perfectly idle for us to waste time here voting to lay gentleman's motions and amendments on the table, in order that men may get in their own favorite plans. I think the plan I have suggested is

about the best course we could adopt in relation to this subject. I readily admit that this is a question upon which I do not know much, but it is one in regard to which I have strong principles.

I do desire, sir, the wisdom and good judgment of this body in a committee, to calmly investigate this whole subject, and decide upon a plan calculated to consult the best interests of the people. For, sir, no question that has come before this body goes so directly to affect the interests and welfare of the community as this currency question. It is a question, of all others, in the treatment of which we should lay aside everything of personal consideration, and have no object in view but that of arriving at the best possible conclusion.

Mr. SMITH of Ripley observed that, whatever report this proposed committee might make at some future day, gentlemen would still offer their amendments. It occurred to him that the present was the best time for gentlemen to present their propositions; let them be taken and voted upon, until we could strike upon something that would meet the wishes of the majority of the Convention.

Mr. RITCHEY hoped the motion to re-commit would not prevail. We had heard speech after speech; and he was of opinion the Convention was not one inch nearer the settlement of the question than when they began the discussion. He thought gentlemen should propose a general isolated restriction, and have a vote taken upon it. They could easily ascertain if there were a majority in favor of the proposition; and then let some other gentleman propose another isolated restriction. He was of opinion the Convention could never attain its object by gentlemen proposing a batch of restrictions at a time.

He was not willing that the Constitution should go forth to the people without its containing some restrictions upon the banking system that might be adopted. Gentlemen would recollect that, during the last session of Congress, discordant matters, not appertaining to each other, were negatived when combined in one bill; but, when taken up singly, they were adopted. He alluded to the so much talked of Omnibus Bill. We should (continued Mr. R.) follow the example of Congress in that respect. I am satisfied that if you refer this subject, as proposed by the gentleman from Allen, you will have the same difficulty to obviate that we have been endeavoring to wade through during the last week. I think we ought to adopt something like that proposed by the gentleman from Ripley last evening. Let us take a vote upon that. I think a majority of the Convention will agree to the proposition; if they cannot, then let some gentleman propose that this bank shall be responsible—

[The remainder of the sentence was lost in the noise.]

I have no doubt but that it will carry, and in that way we can get along without saying a word about State or free banks. I care not whether we have State or free banks; all I want is, to have them properly restricted. I voted to lay all these "Omnibus" propositions on the table, one after another, because I did not approve of any of them. And, sir, I will say here, that if it be proposed to authorize the Legislature to establish a State Bank, I will vote against the proposition. I am opposed to all banks—to use a vulgar phrase, "they are of the same breed of dogs." [Laughter.] They are all evils; and perhaps at the present time we cannot say which system of banking will be the most productive of benefit or injury to the people. But let us place proper restrictions on all kinds of banks; if we are to have any, it is the proper course. I hope the Convention will not, by referring this subject, give an opportunity of having the question re-opened at another day.

Mr. PEPPER of Crawford moved that the motion (Mr. Borden's) be laid upon the table.

Mr. PETTIT. The Chair has already decided that a verbal motion cannot be laid upon the table.

The PRESIDENT. The Chair still adheres to that decision. It is not a verbal motion, but a written one.

The yeas and nays were demanded upon the motion to lay on the table.

But the Convention refused to order the yeas and nays.

The question being upon the motion of Mr. PEPPER of Crawford, to lay the motion to re-commit, &c., &c., upon the table,

It was decided in the affirmative—ayes 71, noes not counted.

So the motion to re-commit to a special committee, &c., &c., was laid upon the table.

Mr. COOKERLY. Would it be in order, sir, for the gentleman from Ohio to withdraw his amendment?

The PRESIDENT. It would not be in order.

Mr. COOKERLY. Then, sir, for the present, I will make a motion in regard to it. But before I do so, I shall state, that I am in favor of the amendment; and if it should be laid upon the table, I will move, at the proper time, that it be taken up. I now move to lay the amendment of the gentleman from Ohio on the table.

The amendment was here read, by request, at the Secretary's desk.

A DELEGATE. What is the motion?

The PRESIDENT. The motion is to lay the amendment of the gentleman from Ohio on the table.

The question being upon the motion to lay on the table,

It was decided in the affirmative—ayes 62, noes not counted.

So the amendment was laid upon the table.

Mr. COOKERLY. I now move, sir, to lay the amendment of the gentleman from Dearborn (Mr. Watts) upon the table.

The motion was agreed to—ayes 72, noes 62

So the amendment was accordingly laid upon the table.

Mr. OWEN. I propose to offer an additional section. I offer it in consequence of the remark made by the gentleman from Johnson, (Mr. Ritchey,) "that we ought to vote upon one restriction at a time." The section I offer now is only a sort of frame-work. We all agree that there must be some restrictions—that we shall not have a banking system without restrictions. The section is as follows:

"SEC. — The General Assembly shall not have power to establish or incorporate, in this State, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this article."

If you adopt that, you can then go on and say what these restrictions shall be.

Mr. BORDEN. I have a proposition to offer. It is a matter of very little consequence to me what the body does with it. I have here drawn up what I would propose in regard to free banking, and if it be voted down I shall vote against all banking. I propose the following amendment to the proposition of the gentleman from Posey:

The amendment was sent up to the Secretary, and immediately after,

The PRESIDENT remarked that it would not be in order to offer a series of sections, by way of an amendment.

Mr. BORDEN. The Chair is right, I believe.

Mr. LOCKHART handed in an amendment which he proposed making to the section under consideration.

A DELEGATE. I move to lay it on the table before it is read. [Laughter.]

The PRESIDENT. Which one of the series of amendments does the gentleman propose? He cannot offer the whole series.

Mr. LOCKHART. The proposition of the gentleman from Posey says, "under the conditions prescribed," &c., &c. Now I go on to say in my amendment, what shall be the first, second, third, &c., &c., conditions and restrictions.

The PRESIDENT. The gentleman has not the right to offer a series of sections as an amendment.

Mr. PETTIT. I propose to amend the proposition of the gentleman from Posey, by striking out the word "article," at the end of the section, and inserting the word "Constitution."

Mr. OWEN. I accept the amendment, Mr. President.

Mr. RARIDEN. It is evident to me, that we can never come to any conclusion by the presentation of isolated propositions. I would

suggest, that a select committee, composed of two State bank men, two anti-bank men, and two free bank men, be appointed to take the whole matter into consideration. [Cries of "ugh!"] I say that is the only way by which we can do justice to the country. I do not think it would be as well if the Convention adjourned and left the question an open question. I think we can harmonize, if a committee of six be appointed, as I have suggested. They can ascertain, by associating together, what plan will meet the wishes of a majority of the people. I make the motion.

Mr. BASCOM. I think I can say, in behalf of the anti-bank men, that we will not enter into any league with the bank men. We have got the subject before the Convention, and here let the matter be settled. I venture to say, for myself, that no committee shall bind me, or sway my vote. I care not what their report may be, if it be not one which suits me, I will not go for it. Neither do I want any committee to frame out for me any system of banking. Therefore I hope the Convention will go to work and vote. I agree with what has fallen from gentlemen, that the only legitimate way to get at the matter is to vote directly on each proposition that may come up.

The section before us does not say that we are to have any banks. But I say I will vote against all banks. However, sir, as I remarked a few days ago, I hope the Convention will settle the question. Let us have a direct vote upon the subject, and if the majority says we shall have some kind of banking, then I am willing to vote whether it shall be State or free banks. I have no particular sympathy for either, but I wish the matter decided, and we never can decide it, so long as we bring up whole series of propositions at a time. If those who act with me vote against the free bank, and then against the State bank system, their power is thus thrown against both, and consequently we cannot settle down upon either. But if the Convention will settle directly the question of "bank or no bank," then I think the hard money men are driven to an issue; and, when that question is settled, as a *dernier resort*, must choose what system we shall have. Then the question will be tested, and we can frame the restrictions. I would then be for the most strenuous restrictions. I would impose all the restrictions that the invention of the human mind could throw around these banks; nothing can be too strong for me. Therefore I hope the subject will not be re-committed, and that the vote will be directly taken upon the proposition of the gentleman from Posey.

The question being upon re-committing to a select committee of six,

It was decided in the negative.

Mr. WATTS moved to amend the section in the following terms: "and that all banking in

this State shall be on a specie basis, actually paid in."

A DELEGATE. They could pack up their specie, and send it off, whenever they pleased.

Mr. KENT moved the previous question. [Cries of "Oh no!"]

The call for the previous question was not sustained.

Mr. PETTIT. I now move to lay the amendment of the gentleman from Dearborn on the table.

Mr. WATTS. I demand the yeas and nays upon that motion.

The yeas and nays having been ordered, were taken, and resulted—yeas 53, nays 82—as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Bicknell, Biddle, Bourne, Bright, Bryant, Chandler, Chapman, Chenoweth, Coats, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Elliott, Foley, Garvin, Gregg, Hardin, Helm, Hitt, Howe, Kent, Kendall of White, Mather, McFarland, McLean, Miller of Fulton, Milroy, Morrison of Marion, Niles, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Trimble, Wheeler, and Wiley—53.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Beeson, Blythe, Borden, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Davis of Parke, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Graham of Miami, Graham of Warlick, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hendrick, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mathis, McClelland, Miller of Clinton, Milligan, Mooney, Moore, Morgan, Nave, Newman, Nofsinger, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—82.

So the amendment was not laid upon the table.

The question recurred on the adoption of the amendment.

Mr. OWEN. The question now is upon the adoption of the amendment. If this amendment be adopted, it will destroy free banks, as of course every gentleman knows. The no bank men, and the State bank men, together, have sufficient strength to vote down the free bank men; and then, on the other hand, if the no bank men join with the free bank party, they can destroy your State bank. That is perfectly clear. The only reason why I desire that no such amendments as this should be presented, is because it will bring us to a stand still upon the question.

Mr. WATT'S. I wish to say a word or two on this subject. There have been many intimations thrown out against free bank men, and against State bank men. I never had a dollar in a bank, and never have had any interest directly or indirectly in any bank. But if we go into banking in Indiana, I want our system to be founded upon a specie basis, so that the great mass of the community may be safe against all shaving operations. Sir, when we establish a bank upon the basis of what we owe, we can take ourselves by the waistbands of our trousers, and lift ourselves off of the floor. [Laughter.] We never can establish any other kind of safe banking, but that which is placed upon a specie basis.

I am willing to go as far as other gentlemen to throw restrictions around all these banks; but to say that we can furnish the people with a sound circulating medium, based upon our own indebtedness, is to me impossible of accomplishment. It may be that I want strength of intellect to perceive the possibility of the plan. But, sir, I have lived long enough to have seen the time when I was obliged to shave my money three times a day, when traveling, in order to buy my breakfast, dinner, and supper; and I can assure this Convention, sir, that I have no desire to see such times again.

I want, if we are to have any banks, to see them established with sufficient restrictions thrown around them. It is not the banker, or the stockholder, or the broker, who suffers during periods of monetary depression. They make money by the depression of the currency. It is the poor man, who digs his subsistence and that of his family, who suffers during such times. Therefore it is that I desire to have our banks established on such a basis as will enable them to redeem in specie their issue, when presented. That was the reason why I offered the amendment.

Mr. COLFAX. Is it in order to move an amendment to the amendment of the gentleman from Dearborn?

The PRESIDENT. No, sir, because it is an amendment to an amendment.

Mr. COLFAX. Would it be in order to move to refer the section and pending amendments with instructions?

The PRESIDENT. It would, sir.

Mr. COLFAX. I move now to refer the section and amendment to the committee on banking, with these instructions: "Add these words: 'said specie basis to be equal in amount to their entire circulation.'"

Mr. KELSO. I would be glad to have that amendment made.

Mr. PETTIT (having taken the floor at the same time as Mr. K.). I did not know that the Chair recognized the gentleman from Switzerland.

The PRESIDENT. The Chair recognized the gentleman from Switzerland.

Mr. KELSO was in favor of having dollar for dollar. He put it upon this ground, that if it were safe to bank upon a paper basis, it was safer to bank on a specie basis. Instead of going forth to buy stock as a security for the billholder, let them put that same money with the same officer of State, as a security for the billholder, and bank on the specie. Then, they might call it a State bank, or a free bank, or a general bank, or whatever bank they pleased. If they put in safe custody a dollar in specie for every dollar of their circulation, he for one did not care how soon they embarked in banking. But, for his life, he could not see the necessity of taking the money out of the State, and going to Wall street, to buy from the bankers there the bonds of the State or of the U. S., and then bring them back to Indiana to bank upon. Far better would it be to take the proposition of the gentleman from Dearborn, engraft it upon the section offered by the gentleman from Posey, and afterwards add the amendment of the gentleman from St. Joseph. He would be allowed to say to the gentleman from Posey that he did not fear his threats, but would go with the State bank men or with any other party, to place our banking system upon the basis now proposed.

Mr. OWEN. I disclaim for the past, present, or future, the slightest intention, by insinuation or otherwise, to offer any threat to this body.

Mr. KELSO. Certainly the gentleman denies it, as any other man would, who possessed the sense that the gentleman does. Perhaps the word "threat" is too harsh—"explanation" is better. It amounts to saying—"Now gentlemen, beware of what you do. Here is a proposition to put banking upon a specie basis, and we choose to bank upon paper—if you put us on the specie basis we have the power to destroy you." The gentleman spoke with a bland smile—there was no threat, but it was a direct remark that ninety-nine out of one hundred would have taken for a threat. I hope the Convention will adopt the proposition, and say that if we have any banking system, it shall be a safe one.

Mr. BIDDLE moved the adoption of the following additional instruction:

"Said specie to be paid into and kept by an officer of State."

[Cries of "consent."]

Mr. OWEN. One, single word in reply to the gentleman from Switzerland. I had no intention of doing more—and I did no more—than to state a fact that is known to every member of this Convention. It is known that the "no banks" cannot carry in this Convention, and that the "free bank" or the "State Bank" cannot carry in this Convention. I did state to or remind this Convention of an acknowledged fact. And if any motion carries

upon its intrinsic strength here, it will destroy one or other of the two plans, and we shall have lost all the time we have spent in talking upon the subject.

Mr. STEVENSON next took the floor, but owing to the great noise and confusion which prevailed, his remarks were not at all audible at the table. He was understood to say that he did not consider that the favorite proposition of any of the three parties in the Convention could be adopted; there would be an amalgamation of two of the three parties against each proposition. He did not think that referring the subject would relieve the Convention of the difficulty under which they labored. All that could now be done was to arrange some compromise between the State Bank and the free bank men. That this object might be accomplished and a proposition of the nature of the one alluded to introduced, he would move to lay the section and pending amendment upon the table.

Mr. BORDEN. I want to know if the gentleman includes in his motion all of the sections behind?

Mr. STEVENSON. No, sir, only the section under consideration.

The question being upon the motion to lay the section upon the table,

Upon this motion the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 49, nays 80:

YEAS.—Messrs. Allen, Badger, Barbour, Bascom, Beach, Berry, Bicknell, Biddle, Norden, Bourne, Bracken, Bryant, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Elliott, Farrow, Foley, Frisbie, Garvin, Graham of Warrick, Gregg, Harbolt, Hardin, Helm, Kendall of White, Kinley, Lockhart, May, Milroy, Morrison of Marion, Niles, Nofsinger, Pettit, Ristine, Shoup, Stevenson, Thomas, Todd, Wheeler, and Wiley—49.

NAYS.—Messrs. Alexander, Anthony, Ballingall, Beard, Beeson, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Chandler, Clark of Hamilton, Clements, Cole, Dick, Dobson, Duzan, Edmonston, Fisher, Foster, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Maguire, March, Mathis, McClelland, McFarland, McLean, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Nave, Newman, Owen, Pepper of Crawford, Prather, Rariden, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tague, Tannehill, Taylor, Thornton, Trimby, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—80.

So the section and pending amendment were not laid on the table.

On motion, by Mr. WATTS,
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the Bank question, the pending question being the motion of the gentleman from Cass (Mr. Biddle) to re-commit with instructions.

Mr. BORDEN. I rise simply for the purpose of making a suggestion to the advocates and friends of both the free bank and the State Bank system. It has been already decided that the business of the State shall be open to all alike—the no-bank party voting with the free bankers to carry the measure.

There is another proposition which has been laid on the table providing that the credit of the State shall never be given or loaned in aid of any corporation or loan, nor shall the State ever become a stockholder in any company or association. Now if the free bankers will go with us anti-bankers, and take this proposition from the table, and pass it, it seems to me that it will effectually decide this question in favor of the free bankers. The anti-bankers cannot vote either for free banks or a State Bank, but we can vote to impose restrictions upon their systems. To effect this object, then, I move to lay the section and the pending amendments on the table.

The PRESIDENT. The motion of the gentleman from Allen (Mr. Borden) is not in order, inasmuch as the Convention has refused before the adjournment at noon, to lay the section and pending amendments on the table. It is not in order in the same stage of the proceedings to make a motion the Convention has just rejected. If this were the practice, the time of the Convention might be continually occupied with the consideration of motions of the same character.

Mr. DOBSON asked for a division of the question.

The PRESIDENT. The question will be first taken upon re-committing.

Mr. NILES. Though I have occupied too much time upon this question already, it seems necessary to avoid being misunderstood, that I should submit a few more remarks. I wish it distinctly understood that I am no enemy to the banking system. I have opposed the idea of State banking from no such feeling, but from a wish to see the system founded upon sound principles combining the elements of permanence and uniformity. Public indignation will always be aroused by bank failures, against all banking. To be useful, the system must be able to command the public confidence. And public confidence never can be permanently secured unless it rests upon a surer basis than the mere personal responsibility and good conduct of the bankers themselves.

Some gentlemen have argued in this debate, that the free banking plan which we propose would be little less than a plan for free swindling, and they seem to imagine that we propose to bank upon collateral securities as the basis of the circulation, without providing for the redemption of the bills in specie. Now it is a sufficient answer to such an objection that banking of that kind could not be sustained for an hour, as it could not secure the public confidence. Gentlemen have strangely overlooked the fact that we require the redemption of bills at all times in specie, and that we refuse any power to the Legislature to authorize the suspension of specie payments for a single day. In arranging the details of a general banking law, on the plan which we propose, the Legislature would be bound to adopt all reasonable provisions as to the amount of specie which a bank should have in its vaults, on going into operation, and at all other times. It could not well be less than under the old system of special charters. We also propose the individual liability of stockholders to at least an amount, over and above their stock, equal thereto. And in addition to all this, we require that they shall keep at all times, on deposit with the State Treasurer, collateral securities amply sufficient for the prompt payment of all the bills put in circulation. How gentlemen can imagine that such a system would afford less security to the bill holder than banks organized on the old plan of special charters, with special privileges, is past my comprehension.

I repeat again that I feel no sympathy with that horror of banking which has been expressed by some of the gentlemen with whom I have commonly voted upon this question. But I wish to make the system permanent and I yield to no one in my desire to make it safe. Many persons seem greatly attached to the present State Bank, on the account of the mutual liability of the branches, and their obligations to protect each other. That circumstance does give them strength, but it would aid equally in supporting a rotten, as a sound institution. If however that connection and mutual liability of banks were thought necessary, I see no reason why free banks could not be associated together as well as banks created under special charters. The branches of our State Bank are separate institutions excepting their mutual liability and supervision. Free banks or any others, connected in any such manner, must necessarily have a general board of control, meeting periodically at the seat of government or some other point. They would constitute a great concentrated moneyed power in the State—an evil always to be avoided.

The scheme of the gentleman from Shelby (Mr. Hendricks) is certainly fallacious. In order to avoid the most odious features of the present State Bank, he proposes that branches should be organized wherever the people

would raise the requisite amount of capital. But I apprehend few discreet men would take stock in a bank when they might be compelled at any moment, to receive any number of new partners for whose acts they must be responsible. An institution on the plan of our present State Bank, must be a strict monopoly or it could not exist at all. The bank was right in principle, when it refused to organize new branches, though their organization was desired by the Legislature and the people. But if men associated in banking would be willing to receive new partners indiscriminately and without limit, under the old system, it is passing strange if they would refuse to receive the same partners after they had deposited ample securities for the redemption of their bills, with an officer of the government.

Gentlemen complain that free banks would be shaving shops. That is to say, a bank organized under a special charter, with a capital of an hundred thousand or a million of dollars, without having pledged collateral securities for the redemption of its bills, would be innocent of all shaving, while if similarly organized in other respects, but under a general law, with a deposit of securities, it would degenerate into a shaving machine. But I ask, would a bank be less likely to practice extortions if organized under a special charter and with special privileges, than if all men were authorized to bank on the same terms?

It is also said that free banks would flood the country with irredeemable paper. This objection would lie much more strongly against a bank organized on the plan suggested by the gentleman from Shelby. Men do not very recklessly issue paper which they know that they cannot, in any event, avoid paying. The only essential objection to the free banking system as applicable to the west is, that it will be too restricted, and will not afford sufficient banking facilities. But it will possess an element of elasticity, by which it may be gradually adapted to the necessities of the country.

A great deal has been said about the danger that foreign bond holders will become our bankers. What harm could all the bond holders in the world do us by coming here and subjecting their capital to our laws, or by sending it here to be managed by our citizens? But gentlemen need not be so much alarmed. The capitalists of Europe will not pass by the great commercial cities, in order to engage in banking in the interior of Indiana.

I would gladly reply to all the objections which have been urged against free banking, were it not that from the time I have occupied upon this question, in the early part of the debate, I should feel it to be an inexcusable trespass upon the time of the Convention. I am strongly attached to the system and believe that it combines the principles of free competition and safety to the public interests, to a greater

extent than any other known to the commercial world. But in common with many others, I am free to admit, that there seems to be little prospect that a majority of this body can be induced to agree upon it as the only system. We have reached a point where concession and compromise seems to be indispensable. I am ready, for one, to meet the gentlemen with whom we differ, upon any fair and reasonable grounds. A reference of the whole subject to a select committee, with a view to such a compromise would seem to me entirely proper, and I hope that the reference will be made.

Mr. TAYLOR. Mr. President, I would inquire what is the question before the Convention?

The PRESIDENT. The question is upon re-committing the section under consideration to the committee on currency and banking.

Mr. TAYLOR. I think, sir, the wisest course for this Convention to pursue is, to re-commit this subject. I cannot but think that if we would cease interrupting each other by offering motion after motion, thereby creating confusion, and the presentation of which, as far as I can see, during the last five or six days, has resulted in no benefit, we would get along a great deal faster. I, sir, have no more interest than any other member of the Convention in this question. It is a mere question of policy whether we will direct our attention to some legitimate object of banking for the benefit of our constituents, or not; and I think that so far, we have been quarreling about our peculiar views, rather than attempting to unite upon some system for the benefit of our constituents.

It must be apparent that there are other parties in the Convention on this subject, and that neither of them have a majority; therefore, of necessity, there must be some concession by each of these parties, or they will not come to any reconciliation.

What, sir, has been the usual course pursued among all political bodies, when they have got in to confusion and difficulty in regard to any subject? I have observed that when that has been the case in Congress and in Legislatures, that they refer the contested question either to a select or a standing committee, and that that committee may have an opportunity to deliberate and decide upon some happy plan of compromise on which the opposing parties may unite.

I do not wish to inflict a reprimand upon this Convention, but I would ask gentlemen whether any good has grown out of their action during the last four or five days; and whether the result of that action has not been, that they are now more at variance with each other than when the subject was first broached?

Sir, we have become tired of listening to each others's speeches. No matter what may be the proposition in regard to which arguments

may be presented, we become impatient during the delivery of those arguments; and the only way in which we can arrive at any degree of harmony upon this subject is, to authorize a committee to come together, and endeavor to form such a system of banking as shall meet the views of the members of this Convention generally. I think the State Bank party are well convinced that they cannot carry out their measures in their present form; and I believe that this is the case with the free bank party, that they do not expect to obtain what it was their desire to obtain. There must be concession—something like give and take in our opinions—or else we will never come to any conclusion that will be for the interests of our constituents. Presenting propositions and calling for the yeas and nays upon them, when not more than thirty or fifty members vote either one way or the other, is not the true course to pursue in order to arrive at a speedy settlement of this question.

I have only to say in conclusion, that I have taken no part in this bank fight, because I did not think I could do any good either to my constituents or the citizens of the State generally.

Mr. KELSO. I am not going to make any opposition to this motion to refer, but I am clearly of opinion that the subject should not be referred to the committee that had charge of it before; I therefore move that the section under consideration be re-committed to a committee composed of one member from each Congressional district.

The PRESIDENT. The gentleman's motion is out of order. The motion to refer to a standing committee has precedence over a motion to refer to a select committee.

Mr. HAMILTON. Mr. President, I regret to witness so much excitement on a question so plain—so practical.

Why do gentlemen deal so much in denunciatory remarks against all who ever had anything to do with banks. There are there, as elsewhere, honorable men. Dishonorable men may be found there also. What has that to do with the question? Who are they who make wholesale assertions of dishonesty? Are they any more honest? I say not. Are there not among them men who are most annoying to these very banks they denounce to get loans, and among the slowest to pay them? Would those censorious gentlemen not be as well occupied by practically discussing the subject, as in occupying the time of the Convention by pointless motions and wholesale denunciations? Most assuredly they would, if they understood the subject. Their great object is, popularity; and brief I think it will be if thus acquired. We have witnessed too much recrimination from each of the bank parties to-day, where we ought to practice mutual forbearance. For my part, from the moment banking was referred to, the

committee of which I am a member, I saw a middle ground ought to be taken. I urged it on that committee. When I had the honor of addressing this Convention at the commencement of this debate, I again urged it, as gentlemen well recollect, and that I then favored private banking, or that banking be free to all under the restrictions as reported. I also favored the views of the minority report No. 3. When the gentleman from Posey (Mr. Owen) offered the section this morning, it seemed to me we ought to adopt it, as one that both sides would agree to; that other sections, such as met general approval, ought to follow; and where a difference of opinion existed on which a majority could not unite, let that be referred to a special committee to compromise and harmonize. We have spent more than a week on this subject. What do gentlemen expect? Don't they see, compromise is all that is practicable? Why, then, waste more time in useless motions and fruitless discussions, each arguing in favor of his peculiar plan?

I trust, Mr. President, this subject will be referred, but not to the committee on currency and banking, which is composed of gentlemen differing so widely on this important subject, some of whom very recently seem to have changed sides. I go for closing this matter in the spirit of compromise, in which I trust we will meet all subjects where a great diversity of opinion exists.

Mr. WOLFE. I am opposed, decidedly, to this reference. This subject has already been in the hands of a committee, and one section of their report has been voted down. We have been eight or nine days working on the bank question, and we are just beginning to approximate towards a settlement of it, and I think we should proceed with the consideration of the question until we have come to that settlement. If we refer the subject, when the report of the committee comes back we will only have to travel over the ground we have already passed over. I think this proposed reference entirely unnecessary. We are getting now to close quarters in our discussion, and let us continue it until we have come to a conclusion of the matter.

Mr. COOKERLY. If there is any question that has been or can be presented to this Convention, that requires calm and unbiassed reflection and action in regard to it, more than another, it is the question now pending before us. Upon that decision, in my opinion, depends the adoption or the rejection by the people, of the Constitution we are now engaged in framing. In arguing this question, and in deciding upon it, we ought to be calm—we ought to be cool—and we ought to be conciliatory. There ought to be a spirit of compromise pervading this Convention in regard to this matter. I came here, sir, as a free bank man. I represent a constituency living in Vigo county, who, I believe are

thoroughly free bank men. I am in favor of that system, and I will not go in favor of any other system, if I can help it. But, sir, are we to adjourn without doing anything in regard to the subject? May we not, as the representatives of a free people, meet upon one common platform of compromise, conciliation, and concession? And, sir, I must deprecate the action of certain gentlemen here, in regard to the proposition of a compromise upon this question. What do we hear, for instance, from the gentleman from Hancock, (Mr. Walpole,) who has been one of the most violent in denunciation of the free bank party, upon this question? Why, he affirms he will not listen to any compromise. That, sir, is not the proper spirit that should be manifested by the members of this Convention upon this subject. I have voted against the proposition of the State bank party, as long as I thought it was necessary, and now if they are willing to come up and become parties to an honorable compromise of the matter, I am willing to meet them on one common platform. I am unwilling, sir, to assist in protracting the debates of this Convention on this subject, at an expense of some six hundred dollars to our constituents—acting at the same time almost like a mob; I would rather compromise the question at once.

Now, gentlemen of the State Bank party, I desire to try your faith, and I have only to say to you, introduce a measure of compromise, so that we can see where we stand. The truth of it is, we want a bank predicated upon democratic principles, and I ask gentlemen who belong to the democratic party, whether you are willing to stultify yourselves on this question? [Loud cries of "consent," and "no consent."] Are you willing to have a State Bank monopoly with branches, in the face of the section which was adopted a few days since, wherein you declared that the General Assembly should never grant a privilege to any citizen or class of citizens, which, under the same circumstances, might not be granted to others. And are you willing to vote for a State bank now, whereby you confer privileges upon a certain portion of the community, to the exclusion of the remaining portions? The State Bank men promise very fairly, but will they carry out those promises? Will they put into effect the principles of equal rights and justice to all men, about which they now talk so earnestly? I think not, sir. Sir, the sentiments I have advanced, I fully believe, are the sentiments of all true republicans of the genuine democracy.

Now, my friend from Dearborn, (Mr. Watts,) proposes to have the circulation of banks predicated upon a specie basis. I ask him in whose keeping he proposes to deposit that specie?

Mr. WATTS [laughingly]. In the keeping of the gentleman from Vigo.

Mr. COOKERLY. The gentleman from Vigo does not want to have anything to do with

banks. Sir, I go for the instructions proposed by the gentleman from Cass, (Mr. Biddle,) upon this subject, that whenever a bank desires to predicate her circulation upon a specie basis—the specie shall be locked up and given in charge of some proper State officer, so that when it is called for it may be obtained. I trust, sir, that some plan of compromise may be presented upon this subject, and to effect that object, I shall vote for its reference to a committee.

Mr. RITCHEY. I cannot see any propriety, Mr. President, at this stage of our action upon this question, in referring it to any committee whatever. Is there any propriety in re-committing the subject to the committee on banking, when that committee has already considered the subject, and, after a long and tedious examination, brought in four or five different reports in regard to it? And further, the chairman of that committee does not wish to have the subject referred to it again, and I think he is right.

I am equally opposed to referring to a select committee. How do gentlemen suppose, after the votes that have been taken on this subject, that any committee, I care not how selected, can embody a series of provisions in relation to banking, which the members of this Convention generally will endorse? Sir, it will be but a useless waste of time. Let us go on and vote, and vote, until we have either agreed upon something definite, or come to the conclusion that we can agree upon nothing; and then leave the matter open for the Legislature to deliberate upon and adjust. I trust the subject will not be re-committed.

Mr. KELSO. In relation to the remarks of the gentleman from Vigo, (Mr. Cookerly,) I have only to remind him and the Convention that it is certainly within the last thirty-six hours, that he has been converted to compromise and concession.

When this subject first came up, there was no man on this floor who opposed more decidedly everything in the shape of a compromise, and who declared more emphatically that the free banking system would carry—that its friends had the power to adopt it, and they would exercise the power. But he is now in favor of a compromise, and I am glad of it; the sign is favorable; for, whenever the big stars begin to fall the little ones follow. [Applause.] If he has concluded to concede a little, and to extend the right hand of fellowship to his opponents, I go with him.

I trust, sir, that this subject will be referred to a select committee, composed of one from each Congressional district, and that the Chair will select that committee from among the different parties to this question, so that the different views of members may be fairly represented. For, sir, if it is referred to the standing committee that has already reported upon it, I do not think any good will result. I have no idea that a single member of that committee has

changed the position he took upon it when under its consideration before; and therefore we cannot reasonably expect a satisfactory report from it. For these reasons, I shall vote against the proposed reference to the standing committee, and in favor of referring to a select committee.

Mr. HALL. [The first few remarks of Mr. H. were inaudible at the reporters' desk.] Mr. H. proceeded. This, sir, is one of the most important questions that has yet come up for the consideration of the Convention. And, sir, the action of the committee in bringing in four or five different reports upon the subject, no doubt has tended to distract and divide the minds of members in regard to it. I am satisfied that under present circumstances there is no hope of our agreeing upon the subject in Convention, and therefore I am in favor of re-committing—though I am opposed to re-committing to the standing committee on banks. I believe that a select committee should be raised to have charge of the subject, and that the Chair should select that committee with a view to bring about a scheme of compromise. One party must yield a little, and another party must yield a little, and so on, and then we will be able to unite upon some general plan for banking. If the gentleman who moved to re-commit this subject to the standing committee on banks is not willing to withdraw that motion and substitute a committee of one from each judicial circuit, I hope the proposition will be voted down in order that a motion of that kind may be presented.

Mr. COLFAX. If it will facilitate the action of the Convention I will now withdraw my motion to refer to the standing committee, and move that it be referred to a select committee composed of one member from each judicial circuit.

Mr. MORRISON of Marion. I renew the motion to refer to the standing committee on banks; and the reason I do this is, that by the votes already given in this Hall the preferences of members for this or that system of banking have been sufficiently indicated; and I want to know how the Chair can escape censure if in appointing the members of this committee he selects a majority of State Bank men or a majority of free bank men, and that majority report provisions to their own liking. What would be the benefit of such a committee when we have not as yet had any definite scheme of compromise offered. What concessions are the State Bank men ready to make? Do they propose to give an additional security for the issues of that bank? Do they propose to divest it of the character of a monopoly? Are they ready to locate new branches wherever the business of the country may require them? No intimation of this kind of a satisfactory character has as yet been given. Now unless we know what we are to make by this compromise I can see no advantage in re-committing. We

who favor free banks, on the other hand, are willing to take such restrictions as may be safe and salutary, and such as will secure to the people equal rights. Until, then, we have some such measure of concession broached I do not think it necessary to have this reference; but if it is to be made at the present time I prefer that the reference should be made to the standing bank committee.

Mr. OWEN. I believe, sir, if we will refrain from re-committing this subject to a committee we will be able to pass some four or five sections of it this afternoon with very little difficulty. There are certain sections in regard to which we are all agreed, and if we will go to work and pass those first it will be so much done; and then we can take up the sections about which there is any difficulty and proceed with their consideration.

Mr. WATTS said that the gentleman from Posey (Mr. Owen) proposed to begin at the end of their legislation on this subject and come back to the beginning in saying that they ought to pass those sections which were of minor importance and about which there was not much difference of opinion first, and then proceed to the consideration of the more important sections. Now he thought that the better plan was to lay the broad platform first, fix the basis on which it was proposed to bank, and then take up the isolated sections. He was in favor of settling the great principle about which they were now contending first, and the minor propositions afterwards.

Mr. FOSTER hoped that the reference would not be made. For his part from certain indications which had come to his notice he began to think there was a wavering in the free banking ranks. There was already considerable division among them, there being a diversity of opinion on the subject of free banking between the two celebrated leaders, the gentleman from Posey, (Mr. Owen,) and the gentleman from Laporte (Mr. Niles). He, (Mr. F.,) professed to be a conservative; and he must say to the Convention that unless there was more conservatism in the new Constitution than had been already placed there it would never receive the approbation of the people. He would say then to the friends of the State Bank system—to the friends of a bank existing upon a specie basis in contradistinction to rotten paper—to stand firm and they would carry the day.

Mr. NAVE. It seems to me that every gentleman on this floor must be well satisfied from the present condition of things that neither the free bankers nor the State bankers can carry any of their favorite measures on the subject of banking. And yet, sir, the people of the State generally are in favor of inserting in the new Constitution a provision authorizing a banking system of some kind; and I believe a majority of them are in favor of the present State Bank system.

If it was put to a vote at the public polls I believe the people of the State would sanction the State Bank system, and why? Because it has furnished them with a sound circulating medium, and all that has been charged against the institution amounts to nothing.

The charge against the bank of incurring without cause the suspended debt of two hundred and seventy thousand two hundred and thirteen dollars and seventy-seven cents, is without foundation. That debt was the result of the relief laws passed by the Legislature. In the session of the Legislature held in 1841 they passed a relief law requiring that property should be sold for two-thirds of its appraised value, and in consequence of the passage of that law the bank was debarred from collecting its outstanding debts at that time, and hence the suspended debt of two hundred and seventy odd thousand dollars was created; and there can be no question that the law was passed by that Legislature with the view of breaking down the bank.

In regard to the charge of one million of dollars having been lost through this bank, I would say that that loss was not the result of any unwise action on the part of the bank. They had no connection with that loan. Certain individuals who desired to have new branches of the bank established got the Legislature to pass a law to borrow a million of dollars for that purpose—the profits accruing therefrom to go towards paying for internal improvements. The loss was in no wise attributable to any misconduct on the part of the bank; but was the fault of the Legislature.

I desire, sir, briefly to answer an argument put forth by the gentleman from Tippecanoe, (Mr. Pettit,) that the representatives of the people have the power at the present time, to repeal the charter of the present State Bank. Now, sir, this assertion I deny, and I have taken some pains to procure what I think will be considered by gentlemen, good and weighty authorities in support of my position, that this Convention has no power to authorize the Legislature, nor has the Legislature itself any power to repeal the charter of the present State Bank.

Chief Justice Marshall, in the case of the United States Bank vs. the Planter's Bank—9, Weaton, 907, held that a State Bank might be considered a private corporation, though owned entirely by the State.

Chancellor Kent, in his 2d Vol. of Reports, says that "a Bank whose stock is owned by private persons, is a private corporation, though its object and operations partake of a public nature, and though the government may have become a partner in the association, by sharing with the corporators in the stock. Chancellor Kent, also lays it down as the settled law of the land, that a private corporation is a contract between the government and the corporation, and the

Legislature cannot repeal, impair, or alter the rights and privileges conferred by the charter, against the consent and without the default of the corporations, judicially ascertained and declared." This great principle of the constitutional law, was settled in the case of Dartmouth College vs. Woodward, and the same principle had been settled by the Supreme Court of the United States, previously to that decision, viz.: the cases of Fletcher vs. Peck—6 Cranch Rep. 88; the State of New Jersey vs. Wilson—7 Cranch Rep. 164; Terret vs. Taylor—9 Cranch Rep. 43; the Town Pawlet vs. Clark—9 Cranch Rep. 292. Justice Story held that "grants of property and franchises coupled with an interest to public or political corporations, are beyond legislative control, equally as in the case of the property of private corporations.

Mr. N. was proceeding to comment upon these citations, but owing to the confusion which prevailed, said that the conduct of the Convention was so flattering to him that he would take his seat.

Mr. PEPPER of Crawford called for the previous question.

The call having been seconded by the Convention, the main question was ordered to be put.

The PRESIDENT. The main question is, shall the section with the pending amendment, be re-committed to the standing committee on currency and banking.

Upon this question the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 14, nays 127:

YEAS.—Messrs. Anthony, Barbour, Beach, Berry, Biddle, Bryant, Chandler, Gibson, Harbott, McClelland, Miller of Gibson, Niles, Shoup, and Steele—14.

NAYS.—Messrs. Alexander, Allen, Badger, Ballingall, Bascom, Beard, Beeson, Bicknell, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McFarland, McLean, Miller of Clinton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robison, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley,

Smith of Scots, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—127.

So the section and pending amendment were not re-committed.

The PRESIDENT. The question now is on committing the section and pending amendments to a select committee of one from each Congressional district.

On this question, the yeas and nays were demanded and ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Anthony, Barbour, Beach, Berry, Bicknell, Biddle, Blythe, Bracken, Bright, Bryant, Chandler, Colfax, Davis of Madison, Davis of Parke, Dunn of Jefferson, Garvin, Gibson, Hall, Hamilton, Harbott, Hawkins, Helm, Hendricks, Hitt, Howe, Kendall of Wabash, Kendall of White, Lockhart, Maguire, McClelland, Miller of Gibson, Murray, Newman, Niles, Nofsinger, Rariden, Sims, Steele, Taylor, Thomas, Thornton, and Work—42.

NAYS.—Messrs. Alexander, Badger, Ballingall, Bascom, Beard, Beeson, Borden, Bourne, Bowers, Brookbank, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clements, Coats, Cole, Conduit, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dick, Dobson, Duzan, Edmonston, Elliot, Farrow, Fisher, Foley, Foster, Frisbie, Gootee, Graham of Miami, Gregg, Haddon, Hardin, Helmer, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kent, Kinley, Logan, March, Mather, Mathis, May, McFarland, McLean, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—96.

So the section and pending amendments were not re-committed.

The PRESIDENT. The question now is on the amendment proposed by the gentleman from Dearborn (Mr. Watts).

The yeas and nays being demanded and ordered, they were taken with the following result:

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Bascom, Beard, Beeson, Bicknell, Borden, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Chandler, Chapman, Clark of Hamilton, Clements, Coats, Cole, Davis of Madison, Davis of Parke, Dick, Dobson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Haddon, Hall, Holliday, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Hogin, Holman,

Howe, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Nofsinger, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Smiley, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—98.

YAYS.—Messrs. Allen, Beach, Berry, Biddle, Blythe, Bourne, Bright, Bryant, Chenoweth, Colfax, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dunn of Jefferson, Gibson, Gregg, Harbolt, Helm, Hitt, Kent, Kendall of White, Mather, Miller of Clinton, Milroy, Morrison of Marion, Murray, Niles, Owen, Read of Clark, Ristine, Sherrod, Sims, Smith of Scott, Steele, Taylor, Thornton, Todd, and Trimble—39.

So the amendment was adopted.

THE PRESIDENT. The question now is on adopting the section as proposed by the gentleman from Posey, with the amendment of the gentlemen from Dearborn.

The section was read as follows :

"The General Assembly shall not have power to establish or incorporate in this State, any bank or banking company or moneyed institution for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this Constitution ; and all banking in this State shall be upon a specie basis actually paid in."

MR. PETTIT. I would ask whether the section is capable of further amendment?

THE PRESIDENT. It is not. We are under the operation of the previous question.

The yeas and nays being demanded and ordered on the adoption of the section, they were taken, with the following result:

YAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Beeson, Blythe, Borden, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Coats, Clements, Cole, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, and Mr. President—79.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Bourne, Bright, Bryant, Chandler, Chapman, Chenoweth, Coats, Col-

fax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of J., Duzan, Elliott, Foley, Gibson, Graham of Miami, Gregg, Helm, Howe, Kent, Kendall of White, Mather, May, McFarland, McLean, Miller of Fulton, Milroy, Morrison of Marion, Murray, Niles, Owen, Pettit, Read of Clark, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, and Work—59.

So the section was adopted.

THE PRESIDENT. The question now is, Shall the section be ordered to be engrossed for a third reading?

MR. PETTIT. I move that the Convention adjourn.

[Loud cries of "No, no, no, no," and "Consent, consent."]

The question being taken, it was decided in the negative.

The question then being taken on ordering the section, as amended, to be engrossed for a third reading, and the yeas and nays having been demanded and ordered, they were taken, with the following result:

YAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Borden, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Crawford, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—77.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Biddle, Bourne, Bracken, Bright, Bryant, Chandler, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Elliott, Foley, Gibson, Gregg, Harbolt, Howe, Kent, Kendall of Wabash, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Milroy, Morrison of Marion, Murray, Niles, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley and Work—60.

So the section was ordered to be engrossed for a third reading.

MR. SMITH of Ripley moved the following as an additional section:

"All banks established under the provisions of this article shall be mutually liable for the redemption of the circulation of each other.

The stockholders shall be individually liable in their private estate to the full amount of their stock, whether paid or unpaid, for all liabilities of the bank or banks, in which such stock is held, and from the date of the failure of such bank, the individual liability shall attach and operate as a lien upon the real and personal estate of such stockholder.

A suspension of specie payments shall be a forfeiture of the charter of any bank, and no law shall be made suspending or legalizing a suspension of specie payments.

No bank shall issue, circulate, or pay out any bill or bank note of a less denomination than five dollars.

No bank shall be allowed to take or receive, directly or indirectly, more interest than private individuals are allowed by law.

Every bank dividing six per cent. profit on stock paid in, shall pay over, as may be provided by law, the half of one per cent. for common school purposes, and one per cent. for common school purposes when the bank profits amount to ten per cent. per annum.

In payment of debts, the note holders shall be first paid in case of a bank failure."

Mr. KELSO moved that the Convention adjourn.

The motion was decided in the negative.

Mr. BASCOM offered the following amendment to the amendment:

"The Legislature shall not have power to create, authorize, or incorporate, by any general or special law, any bank or banking power or privilege, or any institutions or corporations, having any banking power or privilege, whatever, except under the following conditions, to-wit:

The legislature may submit to the voters at any general election the question of "bank or no bank?" and if, at any such election, a number of voters equal to a majority of all the votes cast at such election, on that subject, shall be in favor of banks, then the Legislature shall have power to grant bank charters, or to pass a general banking law, with such restrictions, and under such regulations, as they may deem expedient and proper for the security of the bill holders;

Provided, that no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State, at some general election, and been approved by a majority of the votes cast on that subject at such election."

On motion by Mr. PETTIT,

The Convention adjourned.

REMARKS OF MR. LOCKHART,

On Banking; delivered in the Convention, January 7, 1851.

Mr. LOCKHART. There was, perhaps, no period in the history of the Western country

so favorable to the assembling of a Convention to lay down the fundamental laws of a free State, as the period at which the Convention of 1816 assembled. It was immediately after the close of the late war with Great Britain, that the delegates of the Indiana Territory assembled in Convention, at Corydon, to form our present Constitution. It was at a period when universal bankruptcy pervaded the land—when business of every kind was prostrated; at a period when we had but little or no commerce upon which to levy import duties, or to replenish an exhausted, a bankrupt National Treasury. It was at that gloomy period in the financial history of the United States, that our Constitution was formed, and it will not be saying too much for the delegates of the Convention, that they formed a better Constitution for Indiana than any then known in our political history. It was the first Constitution, I believe, of any State, in which the elective franchise was declared open and free to every citizen. It was at that day, a model Constitution; since then many of the older States have assembled in Convention to alter, revise, and amend their organic laws, the bright example set by Indiana in placing all her citizens upon the same broad political platform, by most of them, was deemed worthy of imitation. Indiana was the first State of the Union that declared in her Constitution that there should be no bank or banking institution established in the State unless it should be a State Bank and branches in which, by implication at least, the State was to be a stockholder, and that individual stock to a sufficient amount should be subscribed and paid in, in specie, before the bank could commence operations. The framers of the Constitution had seen the evils incident to independent or free banking. They had seen the entire banking system of Kentucky go by the board. They had seen bank after bank in other States become bankrupt. They had seen the country flooded with the paper of broken banks, not worth a cent on the dollar. They had known the farmer, the mechanic, and the laboring man to receive in exchange for his produce, his wares, or his labor, that which was supposed to be money, and that which passed for money in the evening, which, on the following morning was of as little value as so much blank paper. They had been eye witnesses to the monstrous frauds which had been practiced by these "shin plaster machines," upon the honest, unsuspecting citizens. To remedy these evils they placed the provision in the Constitution to which I have alluded, and but for that wise and wholesome provision, I have no doubt but that Indiana would have been this day overrun with rotten, with worthless banks, the same as many of our sister States have been, and now are. As Indianians, we may feel proud of the Convention of 1816, if our labors shall close with the production of a Consti-

tution as far in advance of other States now, as was the Constitution of 1816 then; we may congratulate ourselves with having discharged the high and important duties assigned us, to the satisfaction of those who sent us here. Under that Constitution Indiana took her place in our glorious sisterhood of States with a population barely sufficient for admission; but how does the account stand to-day? In the brief period of thirty-four years our population has increased from sixty thousand to a million. How rapid the change! How amazing the advancement! Up to 1834 we progressed slowly but steadily. In that year the Legislature incorporated the present State Bank. From that period a brighter day dawned upon Indiana. From that time to the present our growth and improvements have been extremely rapid. Since the organization of the State Bank, as imperfect and monopolizing as it is, and the overthrow of the Bank of the United States, every interest throughout the State has prospered and improved, without a parallel in the progress of States. Since then our population has rapidly increased; nearly doubled, perhaps more than doubled.

It must be admitted by every gentleman upon this floor, that the State Bank has done much towards producing the rapid changes to which I have alluded. It has enabled produce dealers and commercial men to purchase for cash, and at fair prices, the rich productions of the soil. It has furnished means to the farmer, by which to enable him to add to his possessions and the number of his fields, by increasing the value of his produce. No one, I think, will deny this. If he does, let me refer him to the ten years immediately preceding the establishment of the bank, and ask him to contrast that period with the ten years next succeeding its establishment. By so doing, he will find that the products of the farm brought at least fifty per cent. more, on the average, annually, after its incorporation, than before.

I have now briefly alluded to some of the benefits which I think the community at large has derived from the institution of the State Bank. That the bank has been productive of some evil, as well as much good, no one acquainted with its operations, will pretend to deny. But that the benefits which the community at large have derived from it, are infinitely superior to the evils which it has entailed, but few, I apprehend, will dispute. With a knowledge of these facts before us, can we, in the present financial history of the country, as prudent and consistent men, withdraw this institution, and substitute in its place free banks? Shall we destroy an institution which, from its commencement, has furnished us with a safe and sound paper circulation, a circulation in which our entire population have confidence?

I call upon delegates to pause and reflect before they do it—to be well advised before they transplant to our soil the New York or Michi-

gan system of free banking. Banking, I have always regarded as an evil, but an evil which, for the present, we must tolerate. The interests of the people demand it. We are an agricultural people; our farms and plantations are every year being enlarged, and an increased amount of territory brought within the bounds of cultivation. As an evidence of our rapid increase in agricultural productions, it is only necessary to refer to the well-attested fact, that more produce passes through the Wabash and White rivers, in the course of a year, than, twenty-five years ago, passed down the Ohio in the same time. This rapid increase in the productions of the soil, is not limited to Indiana. The entire West is becoming one vast garden. Our lakes and rivers, which but a few years ago were our main thoroughfares to market, are now inadequate to our wants. A canal, passing from the north-eastern corner to the south-western angle of the State, is nearly completed. To this, rail roads and plank roads are being added, in almost every direction. All of which are needed to bear off the rich productions of the soil. To sustain these interests, is the plain duty of every citizen. Can it be done by limiting the circulation to gold and silver? Those best acquainted with the financial affairs of the country, say no. They insist that our currency, with all the aids we receive from banks, is inadequate to our wants. Withdraw from circulation the \$125,000,000 of bank paper now in circulation, and put in circulation the \$51,000,000 of specie in the vaults of the banks, and you will withdraw from circulation \$74,000,000 of currency; a result which no friend to commerce or the interests of the agricultural portion of our people would desire. Yet to annihilate banks, would produce this very result. Hence the cry for banks. The people in the portion of the State from which I come, are generally in favor of a State Bank and branches. In the northern and central portions, the cry is "free banks." For myself, I can say, that if I must choose between the two systems, I am decidedly in favor of the State Bank system. My great anxiety is, that if we tolerate banks at all, that we should have none but sound, solvent, specie-paying banks, and if we cannot have such, let us have none. The State Bank approximates as near to this standard as any banking institution well can. Will free banks do as well? This inquiry can only be answered by comparison, as we have no practical experience in free banking.

In New York, the free banking system is said to be the most perfect, yet they have broken banks there under the free banking laws, as I will endeavor to show from the following extract from the Democratic Review, a periodical favorable to free banks:

"In the working of the free banking law thus far, it would appear that 139 banks have been started under it. Of these, 88 are in operation,

21 have been closed by the proprietors without loss to the bill holders, and thirty have been closed by the Comptroller. Of these, twenty-six have been settled at 76 per cent. average."

From this extract it will be seen that of the thirty free banks that had been closed in New York, twenty-six paid but seventy-six cents on the dollar. What the remaining four paid, we are not informed. And, sir, upon whom does this loss fall? It does not usually fall upon the banker nor does it usually fall upon the merchant. No, it falls upon the unsuspecting farmer and laboring portions of the community—upon the working classes—upon the individual who holds the one, two, or three dollar bill. It falls upon "those who earn their living by the sweat of their brows"—it is this class that suffers most by these failures.

They must have means upon which to live and are compelled from necessity, to dispose of the notes they hold at ruinous discounts. Out of 139 banks brought into existence under the free banking system in New York, only eighty-eight are in existence, the balance have gone by the board. Just contrast that system with our own—in fact there is no comparison to be instituted—the one is so immeasurably superior to the other. Here the bill holder is always safe—there his security is uncertain. This must always be the case when the one is based upon an ample specie basis—the other upon what is termed "ample collateral security deposited with an officer of State." It may not be amiss to inquire what is meant by ample security in New York. It means United States and State stocks, and bonds, and mortgages upon real estate. I have already said that thirty of the free banks in New York, have failed and that twenty-six of them paid but seventy-six cents on the dollar, yet they had all deposited "ample collateral security with the Comptroller." How then, you are ready to ask me, did it happen that but seventy-six cents on the dollar was paid by this batch of broken banks to the bill holder? A ready answer will be found to this enquiry, in the report of the present Chief Magistrate of the nation, made while Comptroller of the State of New York. His report shows that in selling of these "ample securities," great losses were sustained. For example, the Farmers Bank of Orleans, had deposited \$61,000 of Indiana five per cent. bonds—this large amount of bonds were sold for \$12,117 50, or \$48,882 50 less than they were pledged for. The Erie county bank had deposited as part of its "ample security" mortgages on real estate, for \$15,000. The property mortgaged exclusive of buildings, was appraised at \$31,500. These mortgages sold for \$3,000. The St. Lawrence Bank had deposited—

\$15,000	Illinois State 6 per cent.	
	stocks which were sold	
for	- - - -	\$2,587 50

45,000	Arkansas State 6 per ct.	
	stocks which were sold	
	for - - - -	12,545 00
21,277	Bonds and mortgages	
	which were sold for -	12,100 00

\$81,277		\$27,232 50
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From this statement, it will be seen that \$81,277 of "ample securities" pledged by the St. Lawrence Bank, were sold for \$27,232 50, or \$54,024 50 less than they were pledged for.

The New York Banking Company deposited as security to the bill holder—

\$20,000	Illinois State 6 per cent.	
	stocks which were sold	
	for - - - -	\$3,350 00
6,000	Michigan State 6 per ct.	
	stock which sold for -	1,020 00

\$26,000		\$4,370 00
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An absolute loss of 21,630 dollars on twenty-six thousand.

I might give other instances where as great losses have been sustained in the sale of securities pledged as those given, but I will not detain the Convention further with them. I have given enough to show the great depreciation of stock and mortgage securities, and that they are very inadequate to protect the bill-holder. The gentleman from Cass (Mr. Biddle), to whom I always listen with great interest, went so far as to intimate that railroad stocks would be, after a while, introduced into the list of "ample securities" for banking purposes.

Mr. BIDDLE (interposing). What I said was in reference to the statement of the gentleman from Wayne (Mr. Rariden), who said that railroad men would go into free banking. Nothing but State or United States stocks is my doctrine.

Mr. LOCKHART. I understood the gentleman from Cass as expressly stating, that these were not the only stocks that would be taken. It was said on yesterday by one of my colleagues (Mr. Owen), that the friends of free banks did not propose to put in these stocks at their face, but at their market price, not above par. Does that better the thing? Does not every one know that stocks are constantly fluctuating in value. To-day they may be at par, to-morrow they may be worth but eighty cents on the dollar, and the next day but forty. Suppose that an association is formed for banking purposes, with a capital of \$100,000, and they deposit \$300,000 in Indiana State stocks, which they have purchased for thirty-three and one-third cents on the dollar, that being their value at the time; they get \$100,000 of paper to bank upon; in a month these stocks increase in value in the market, and are worth sixty-six and two-third cents on the dollar. Is it not clear that the bankers will ask for and obtain another hundred thousand dollars in paper on

these stocks? Then suppose that the price of stocks fall in the market to thirty-three and one-third cents on the dollar again, what will then be the result? Why, sir, the bank will be closed, the stocks pledged, sold, and the bill-holders paid off at fifty cents, or less, on the dollar.

But it may be said that this state of facts will never happen. I trust they never may; but those who have watched the stock market for the last ten years, will say that, reasoning from the past, just such results may happen.

From the best examination I have been able to give this subject, after a careful reading of such statistical information as was within my reach, I am clearly of opinion that a system of banking based upon stocks, or stock and mortgage securities, instead of gold and silver, ought not to be introduced into Indiana. With my present views upon this subject, I would much prefer that we should say nothing upon the subject of banking in the Constitution, than to incorporate this as an exclusive system, trusting to the Legislature to deliver us from so great a curse.

Some gentlemen who have spoken upon this question, were unable to find terms in the English language bitter enough to express their indignation against the State Bank. It has been denounced as bankrupt and rotten, and its officers fitted only to be associates of robbers and cut-throats. Such declarations, made without evidence to support them, is unworthy of any gentleman who has been honored with a seat upon this floor. In making this declaration I do not wish to be understood as presenting myself before the Convention as the champion or defender of the State Bank or its officers. I have, however, felt it to be due to truth to give a positive denial to any such assertion. I must be permitted to express the opinion, that much of the opposition to the State Bank manifested in this Convention, grows out of the fact that her capital is too small to afford the accommodations required by the wants of the community, and because she has refused to establish branches where she ought to have done.

In regard to this latter objection, I can only say that I think the bank did wrong in not establishing branches where desired. I think a branch ought to have been established at any point where the requisite amount of stock was taken and paid in under the charter. And while upon this subject, I will remark that I am in favor of leaving that clause out of the Constitution which limits the number of branches to one for every three counties. Equality of privileges ought to be guaranteed by the Constitution. But, sir, this free banking system is one of ephemeral growth. It was not until within the last ten or twelve years, that free banks were introduced into the United States. It was not until \$200,000,000 of the stocks of the different States were found

to be in the hands of European capitalists, that this scheme of banking on stocks was concocted. It was a device, sir, gotten up in the offices of the brokers and money-changers in New York, London, Amsterdam, and Paris, to enhance the value of American stocks, many of which were then selling at ruinous discounts. The plan adopted was to make these stocks the basis of banking, instead of gold and silver.

As soon as the scheme was agreed upon, efforts were immediately made to put it into operation. New York, under the control of brokers and stock-jobbers, bit readily at the bait, and so did Michigan; and now the attempt is being made to make Indiana swallow this sugar-coated pill; and all to enable the foreign banker, broker, and stock-jobber to send home our bonds for bank capital, draw his regular interest, and, in addition thereto, make six or eight per cent. through the banking operation, and that, too, without investing a single dollar. Bond-holders and stock-jobbers, I affirm, are at the bottom of this movement. They are now looking with anxious eyes to the decision of this Convention on this question. I state, upon the most reliable information, that a prominent broker and stock-jobber, residing in the city of New York, has been in this city since this Convention commenced its session, urging upon his friends the importance of having this free banking system adopted by this body; and when asked by a friend where the bonds were to come from, he replied by saying that there would be no difficulty; bonds were plenty, and could easily be had.

Mr. President, the bond-holders have a twofold object in view in urging this system upon us. They know that this State cannot consistently, with honor, tax her bonds in the hands of the holder; hence, if they employ them here as bank capital, they not only get the interest upon the bonds, but they get the bank dividend upon them, and, at the same time, avoid taxation. This is a refinement upon financiering that the people of the State never dreamed of, much less thought of; yet, it will prove true to the letter, if free banking is established.

It has been clearly decided by the Supreme Court of the United States that a State has no right to tax United States bonds. That question has been settled in terms so clear, that my honorable friend from Monroe (Mr. Read) has been compelled to yield the argument.

Mr. BIDDLE (interposing) was understood to say that the question of the taxation of bonds was settled, perhaps. He would inquire what was the difference, whether our bonds were in floating circulation or constituted the basis of a banking system, so far as the question of taxation is concerned?

Mr. LOCKHART. If the bonds are not in the State and money which is taxable is sent out to buy them, the process removes that amount of taxable property from the State and

introduces the same amount of that which is not taxable in its place; this is strictly true so far as relates to United States bonds, and for the reason already given applies to State bonds also. It will not be maintained I apprehend by the gentleman from Cass that there are State or United States bonds owned in Indiana to any considerable amount, not any thing like the amount which will be required to establish free banks upon the basis which he proposes, hence in order to purchase them taxable property must be sent out of the State to buy them. This answer must be taken however with this qualification, if the bond holder sends his bonds into the State and invests them as a basis for banking, the amount of taxable property would not be changed, but in this case you would give the non-resident a decided advantage over the resident, by allowing him the privilege of banking upon capital that is not taxable—an advantage which I presume the Legislature would never give. I can view the free banking system as proposed as nothing less than a splendid shaving operation, got up as I have before said, by holders of State stocks for the purpose of increasing their interest. A careful survey of the whole promises I think will satisfy the most sceptical that a deeper laid scheme to make money by the process of shaving was never before attempted on so magnificent a scale. I fully concur with the gentleman from Owen (Mr. Dobson) in saying that free banking is one of the most stupendous schemes ever conceived to lull our people into security, and drive home our bonds under the specious pretexts of furnishing us with a substitute for gold and silver—as a basis for banking. The secret of the whole game is either to sell the bonds to our citizens and take the gold and silver out of the country, or else invest them so that they will yield double interest.

THE PRESIDENT. The Chair would remind the gentleman from Vanderburg that his half hour has expired.

On motion, the rule was suspended in order that Mr. LOCKHART might conclude his remarks.

MR. LOCKHART. I feel very much obliged to the Convention for this kindness in suspending the rule for my convenience. But as the question has been already discussed at length I must decline occupying the attention of the Convention any longer.

QUALIFICATION OF VOTERS.

The following section being under consideration, viz.:

“That in all elections not otherwise provided for by this Constitution, every white male citizen of the United States of the age of twenty-one years and upwards, who has resided in the State six months immediately preceding such election, and every white male of foreign birth

of the age of twenty-one years and upwards, having resided in the United States one year, and having declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, and having resided in this State six months immediately preceding such election, shall be entitled to vote in the township where he resides, except such as shall be enlisted in the army of the United States, or their allies.”

MR. WOLFE addressed the Convention, as follows:

MR. PRESIDENT: From a sense of duty to myself and those whom I represent, I feel compelled to vote against the section as it stands. Some object to the former, but I object to the latter part of this section; which provides that every elector shall vote in his own township or presinct. This is a provision that should never (in my opinion) be incorporated in our organic law. It is true that just after the excitement of 1840, a law was passed to that effect, but it has been repealed in a number of the counties long since; and every year it grew more and more unpopular and odious, by the people; and no wonder; for it is a direct insult to every man of integrity and veracity. And for one, I am unwilling to say by my vote that my constituents are so dishonest and corrupt that they cannot be trusted to go to the polls anywhere in their county, at a general election, and vote like freemen, for the men of their choice. It is an acknowledged doctrine that all power is inherent in the people. And we have said in another section, that all elections shall be free and equal; and by this we presume to say (for it is presumption on our part), to the people, that they shall not even vote in their own county, for county, district, or State officers. This is a kind of reform that cannot receive my sanction. We should be careful with whom we tamper; for the offspring of this Convention will never be able to stand alone, unless the people give it life and strength; that being done, it may rule and regulate men and things. (I mean corporations). This township voting never did prevent illegal votes being cast, as some pretend to say. It was the *penalty*;—but the good honest citizen should not be punished, and his liberties and privileges be abridged, for fear that some loafer will deceive some inspector or judge of an election, who can now, and ought to be punished, by a penalty commensurate with the crime. But this is the question: Shall all the good citizens of a county or the State, be punished, for fear that some one out of a thousand will do wrong. This is contrary to the spirit and notions of our free institutions. Sir, let us stop and inquire who are we—by whom were we created, and for what purpose? It might be well for us to work out the answer to each of these three interrogatories, which may serve to teach us that the creature should never forget, or attempt to rise above the Creator.

SATURDAY, DEC. 28.

ADJOURNMENT.

Mr. BORDEN desired permission to introduce a resolution to fix a day for the final adjournment of the Convention.

The PRESIDENT ruled the resolution out of order, a former resolution for the same purpose having been indefinitely postponed.

Mr. BASCOM thereupon in order to enable the gentleman from Allen to introduce his proposition, moved a re-consideration of the vote by which the resolution on that subject had been indefinitely postponed.

After some remarks by Messrs. BORDEN, KELSO, and NILES.

Mr. BASCOM said: Mr. President—I made the motion to re-consider at the request of my colleague, who desired to introduce a resolution fixing a day for adjournment, and I desire to say a word in reference to the matter. I think if there was less time taken up in talking about adjournment and amending the rules we would be ready to adjourn a great deal sooner than we otherwise will if we proceed in the manner we have heretofore done. I am of the opinion there has been as much time taken up in amending the rules as there has been in the legitimate business of the Convention. I hope, therefore, we may proceed with our legitimate business and finish our labors as soon as possible. I therefore withdraw the motion to re-consider.

SATURDAY, JAN. 11, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRUMBACKER, a delegate from Lake county.

The journal of yesterday was read and approved.

REPORTS FROM STANDING COMMITTEES.

Mr. CHAPMAN, from the committee on accounts, submitted the following report in relation to the account furnished by

THE STENOGRAPHER.

Mr. PRESIDENT: The committee on accounts have had under consideration the claim of the Reporter of the debates of the Convention for twelve hundred pages of the work, from the commencement of the session up to the 17th of December, 1850, inclusive.

The Congressional rates, under which the Reporter makes his charges, appear by various papers before the committee, to be \$2 50 per 1000 words.

The computation of the precise number of words in so large a number of pages is a somewhat difficult task. To count every word in the twelve hundred pages, and those which are to follow, would be impracticable. Your com-

mittee have, therefore, adopted the mode of counting the exact number of words contained in a number of pages taken from the volume indiscriminately; and by averaging the same by dividing the whole number of the words by the number of the pages counted, have obtained a mean of the whole. The result of this computation will be seen by the statement marked "A," and appended as a part of the report.

The Reporter, however, in making out his account, has followed what he stated to be the Congressional rule of computation, the result of which will be seen by the statement marked "B," and also appended hereto. The difference in favor of the Reporter by the latter rule of computation, amounts to the sum of \$205.

A majority of the committee, believing the mode of computation adopted by the committee to be just and fair to all parties, recommend the same to the approval of the Convention, and that the account of the Reporter be ordered to be paid in accordance with the same.

STATEMENT [A.]

In making the calculation of words, I have taken six fair pages, carefully counted them, and taken the mean thereof as a basis, thus simplifying the operation. I have also counted three other pages, which give the same result.

Those noted are as follows:

Page	16 contains	960 words.
" 225	"	904 "
" 320	"	1044 "
" 581	"	952 "
" 1081	"	915 "
" 1192	"	955 "

Leaving the mean, perhaps 955 words, which, multiplied by the number of pages, 1200, gives a total of 1,146,000 words, which, at \$2 50 per 1000, amounts to \$2,865.

STATEMENT [B.]

The Reporter claims the following as the correct computation:

Lines, per column,	64
Words in a line,	8
Words in a column,	512
Columns in a page,	2
Total words in every page,	1024
Number of pages published,	1200

Total number of words,	1,228,800
Which, at \$2 50 per 1000 words, amounts to	\$3,070
Difference in favor of the Reporter by the above rule,	\$205 00
The report was concurred in.	

RESOLUTIONS.

The resolution offered by Mr. Colfax, on the 4th inst., lying over under the rule, relative

to the Convention meeting at half past eight o'clock, A. M. for the future, was taken up.

The resolution was read by the Secretary.

Mr. PETTIT moved that the resolution be laid upon the table.

Upon which motion the yeas and nays were demanded and ordered, and, being taken, the Secretary reported the following result—yeas 38, nays 77:

YEAS.—Messrs. Allen, Barbour, Biddle, Blythe, Brookbank, Chapman, Cookerly, Crumbacker, Dunn of Jefferson, Foster, Frisbie, Graham of Miami, Gregg, Hendricks, Kelso, Kinley, Milroy, Mooney, Mowrer, Newman, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Robinson, Shoup, Taylor, Thornton, Todd, Wallace, Wheeler, Wiley, Work, Wunderlich, Zenor, and Mr. President—38.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Bowers, Bracken, Butler, Carter, Chandler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Conduit, Crawford, Davis of Parke, Dick, Dobson, Edmonston, Elliott, Farrow, Fisher, Foley, Garvin, Gootee, Haddon, Hall, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogg, Holman, Huff, Johnson, Jones, Kendall of Wabash, Kilgore, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, McLean, Miller of Gibson, Milligan, Moore, Morgan, Murray, Nave, Pepper of Crawford, Ristine, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Trimble, Watts, Wolfe, and Yocum—77.

So the resolution was not laid upon the table.

The question being "Shall the resolution pass?"

Mr. DICK moved to amend by adding the words—

"And that hereafter, the Convention shall hold night sessions."

The motion to amend was decided in the affirmative—ayes 62, noes 45.

So the amendment was adopted.

The question then recurred upon the adoption of the resolution, as amended.

Mr. PETTIT. I understand we have not rented this Hall for the night time. I do not know where we shall be able to sit at night, unless we change over to where we formerly sat in the Capitol. In the night we have lectures, theatrical performances, shows, and every other kind of amusement here. I do not know that we can sit here. It is a burlesque upon all reason and common sense to ask men to sit here to try and do business in the night. I move that the resolution, as amended, be laid on the table.

Mr. CRUMBACKER. I will ask the gentleman from Tippecanoe to withdraw his motion for a moment.

Mr. PETTIT. I have no objection; I withdraw the motion.

Mr. CRUMBACKER. I move, sir, to amend by adding, "and shall not adjourn for dinner in future."

[Loud cries of "Consent."]

The question being upon the amendment of the gentleman from Lake,

It was decided in the affirmative.

The PRESIDENT. The question is upon the adoption of the resolution as amended.

Mr. KELSO. I will now move to lay the resolution on the table.

The PRESIDENT. The chair would remark that the gentleman from Switzerland cannot move it again, when it was decided in the negative just now.

Mr. KELSO. A resolution is offered that the Convention meet in future at 8½ o'clock, A. M. A motion is made to lay it on the table, and negatived. The resolution is then amended so that we are to hold night sessions; it is then a new resolution. It is further amended to the effect that we shall not adjourn for dinner; so that it becomes separate and distinct subject matter. It is twice amended; it now contains three parts—when the vote to lay it on the table was taken, it consisted of but one of them. It cannot surely be out of order to move to lay the whole thing upon the table.

The PRESIDENT. The gentleman will find the rule to be, that at the same stage of the proceedings, and on the same day, it is not in order to move to lay upon the table, the Convention having already decided a motion to that effect in the negative. The question then was, "shall the resolution be adopted." An amendment is adopted, and the question is again the same, not having moved to any different stage whatever on the same day, and in the same stage of the proceedings.

Mr. KELSO (in his seat). Every amendment changes the stage.

The PRESIDENT. Not at all. I will put a case to satisfy the gentleman. For instance, a bill is upon its second reading, and an amendment is adopted. Is the question then, "shall the bill be engrossed and read a third time?" The mere adoption of an amendment does not engross it. It does not move the bill from the stage in which it was.

Mr. DOBSON. I voted against laying the resolution on the table, and if a motion to reconsider the vote were in order, I would make that motion. I was in favor of that resolution, and if we had the use of the Hall in the evening, I would as soon come here and listen to speeches from the gentleman from Tippecanoe and other gentlemen, as to be sitting at home in my room.

Mr. PETTIT. I beg to inform the gentleman that I will not entertain him with any night speeches.

Mr. DOBSON. As the Convention has fixed on night sessions and no dinners, I move to reconsider the vote by which the motion to lay on the table was negatived.

The PRESIDENT. The Chair would suggest that there is a much shorter way of getting at it; it is by voting against the adoption of the resolution.

Mr. FOSTER. I have but a word to say. The resolution as amended does not say that there shall be a session every night. Now there might be a difference of opinion in regard to on what nights of the week sessions should be held; some might wish for certain nights, and so with others. [Laughter and confusion.]

Mr. SHOUP moved that the resolution as amended be indefinitely postponed.

The question being upon indefinitely postponing,

It was decided in the affirmative.

Mr. SHOUP offered for adoption the following resolution:

"Resolved, That all further debate upon the subject of banking shall cease upon next Monday, at 4 o'clock, P. M."

Mr. CARR. I am not in the habit of troubling the Convention with speeches, and I do not propose doing so now. I think we ought to discuss this highly important question until we come to a proper conclusion upon it. I do not wish to curtail the rights of gentlemen, for I consider that they have the right to discuss questions within reasonable bounds. I do not think that this question of banking and currency has been over discussed yet, and therefore move to lay the resolution on the table.

The question being upon laying the resolution offered by the gentleman from Franklin on the table, it was decided in the affirmative.

So the resolution was laid on the table.

Mr. HAWKINS offered the following:

"Resolved, That the committee on accounts be instructed to contract for the binding of the debates of this body at a price of not more than fifty cents per volume."

Mr. PETTIT. I ask for the yeas and nays.

Mr. WATTS. I move to amend by inserting the words: "At the expense of the delegates of the Convention."

Mr. DOBSON. I think that perhaps there is no necessity for adopting the resolution, with or without this amendment. The Legislature, in the act calling the Convention, provided for the reporting and publication of the debates of this body. I suppose that hereafter they will provide for the binding of these debates.

Mr. CARR moved that the amendment of the gentleman from Dearborn be laid upon the table.

The motion was decided in the affirmative.

So the amendment was laid upon the table. The question recurred upon the adoption of the resolution.

Mr. EDMONSTON moved to lay the resolution on the table.

The question being upon the motion to lay the resolution offered by Mr. Hawkins on the table,

It was decided in the affirmative—ayes 65, noes not counted.

So the resolution was laid upon the table.

Mr. OWEN. I offer the following resolution: "Resolved, That the Convention now proceed to take up the orders of the day."

The resolution was adopted, and the Convention proceeded to the

ORDERS OF THE DAY.

The section offered by Mr. Owen, as amended by the gentleman from Dearborn, (Mr. Watts,) and ordered to be engrossed on yesterday, was then read a third time.

Mr. OWEN. I move to recommit the section with instructions as follows: "Strike out all after the word 'Constitution,' and insert, 'all Bank bills or notes issued in this State, shall be redeemable, at all times, in specie; and no law shall pass, authorizing, directly or indirectly, the suspension of specie payments by any Bank or Banking institution.'"

I voted against the amendment offered by the gentleman from Dearborn yesterday for one reason, and it was because the word "basis" taken in that connection seemed to imply that there could be no other security—no collateral security—for the redemption of bank bills except gold and silver alone.

I desire most distinctly to state—other gentlemen can state if it be so with them—that I could not vote directly or indirectly for any currency that was not at all times redeemable in gold and silver. In that sense no man can be a stronger advocate of a specie basis than I am. But if we say a specie basis alone, and do not say to what extent it shall go, we leave the whole thing open. It may be a specie basis of one-tenth or one-twentieth for anything that is declared in that amendment to the contrary. Suppose a case more reasonably, and say the basis is one-third, and that is not very uncommon in the old system of banking. Say that they have thirty-three cents paid in silver for every one hundred cents they issue in paper; I ask any gentleman whether that is a security—whether if these bills come back, the bank can with 33 cents pay 100? There is no security. If gentlemen wish dollar for dollar, well and good; that would be a security, provided always that the specie was taken out of the hands of the bankers, and put in other hands where we would be sure it would be kept safe until the time the obligations would have to be redeemed. No man will say that it should be left in the hands of the banker. Now, sir, this

amendment which I propose to make, is in fact a much stronger restriction, so far as regards the basis, though differently worded, than the amendment of the gentleman from Dearborn (Mr. Watts). For, it declares that notes or bank bills, shall at all times, dollar for dollar—no uncertainty about it—be redeemable in specie; and for less than that I am not willing to vote. I voted against that amendment, (Mr. Watts's,) not because it went too far, but because of its not going far enough. There is no system of banking that was ever yet proposed, the basis of which was not to some extent upon specie. The free banking system has a specie basis. The free banks always intended to redeem their notes in gold and silver; and if at any one time there is a refusal to pay in specie, the effect is, that their deposited securities are sold out. It is because I desire to see a good collateral security provided, that I voted against the gentleman's amendment, and now move those instructions.

Mr. BIDDLE moved to amend the instructions, so that no bank bills shall be issued, until an amount of specie equal to the circulation should be deposited with a public officer for their safety and redemption.

Mr. B. said, I want to say a word on that proposition. I wish gentlemen who adopted the clause yesterday, to show their sincerity, and how far they intend to place the currency upon a redeemable basis. It was well remarked by the gentleman from Posey (Mr. Owen) that the amendment of the gentleman from Dearborn does nothing whatever. I venture to say that no Legislature or court can give it a substantial meaning. What is the specie basis? When you tell us in what proportion it is to the issue, then we understand it. When we say it is dollar for dollar we understand it. When we say it should be in the hands of an efficient public functionary, then we understand it. But there is no security so long as that specie is in the hands of the banker. It is just as absurd as to take a security from a man, and then return him the obligation.

I do not design to make a speech, as I have on a former occasion stated my views. I desire gentlemen to say, what they intend, so that we may fight for or against them. I was about to remark, sir, that gentlemen who differ with us, have risen in their seats, and boldly asserted that "we intend to bank upon a paper security, as a means for the redemption of our bills." The assertion is totally unjust and unfair. No gentleman put forward that idea; very far was it from me. That was not the argument. It is not true in a single particular. We desire to bank with a collateral security that will ultimately secure the bill holder. But, that we desire a bill redeemable in anything but specie, is totally wrong. Our basis is specie, to which we desire to add stock, to be deposited in the hands of the State, and under the eye of the

State, so that there will be an ultimate security for the redemption of the bills. We desire a specie basis, and in addition to this, collateral security. The gentlemen do not represent our argument rightly when they say we desire to bank on a paper currency. The moment a bank is not able to redeem its bills, the State will make them good by means of the security placed in her hands. And let me tell gentlemen in conclusion, that stocks are better as security than specie, because they bear interest.

Mr. WATTS. At the time I offered the amendment to which gentlemen have alluded, I thought there was some sense in it. Gentlemen on this floor—[much noise and confusion] It is not my intention, gentlemen, to inflict any lengthy remarks upon you. I expect to be treated as a gentleman if among gentlemen, but not, if not among gentlemen. [Increased noise and stamping of feet.] And I can tell who those are with whom I associate by the manner in which they treat me. At the outset yesterday morning, a platform, as a basis upon which to start, was introduced by the gentleman from Posey (Mr. Owen). I offered this amendment, that all banking in the State should be upon a specie basis. And in all the arguments advanced by gentlemen before that time, there had not been a word said about a specie basis. I venture to say, sir, that this motion to re-commit with instructions would not have been made, had not that little amendment been adopted. In addition to that, as weak, and as feeble, and of as little sense as is that amendment, yet it seems to have created a great deal of sensation in this Convention. And although it comes from one who does not pretend to possess any great stock of information, yet, from my experience, I can say that I have seen gentlemen who, if they were sold at the estimate they put on themselves, and not at their real value, would realize capital enough to bank upon as long as they lived [laughter]. There is no particular bank which possesses my sympathies. I have no particular interest in banks that is not identified with the great mass of the community. My object is, to see a bank established in Indiana—if there be one established at all—that will secure the people against imposition. I believe a bank established on a specie basis, is such a bank. If gentlemen desire to have the amount specified, I am willing to go with them and designate what amount of specie capital there shall be in the vaults of the bank before any paper is issued, so that you do not destroy the system altogether. I am willing to leave the details to the Legislature.

Mr. CONDUIT. Mr. President, I am admonished by the length of time that has been consumed in this debate, that the patience of the Convention must be very nearly exhausted, and if it were possible to express the wishes of my constituents by voting alone, I would not continue the discussion.

But, sir, I am compelled to vote upon one proposition after another, each containing something of good, and other things that I cannot approve, and I feel it to be my duty to make some remarks on the subject, to avoid being misunderstood by those who alone have any right to an explanation of the reasons for my course here.

The language of the section, as ordered to be engrossed, and which it has been moved to re-commit with instructions, is, in my judgment, highly exceptionable. Sir, let our Constitution declare what it may, I desire that its provisions shall be definite. The worst of Constitutional evils known to our form of government, grow out of loose and imperfectly expressed provisions. The language here employed, "that all banking shall be upon a specie basis," to some minds conveys one idea which to others never suggests itself. To say that all banks shall have a specie basis is to declare that a bank may issue fifty dollars of notes for circulation to one of specie, or that it shall issue no more paper than it may have specie on hand. The language itself will bear either construction—one as well as the other. The first construction would permit the establishment of the most dangerous system of banking that its wildest and least practical friends could desire, while the latter construction of the language—that the specie basis should equal the issues of paper—would be fatal to the establishment of any system of banking whatever.

Sir, the people, as far as I can judge, will reject the new Constitution with a hearty good will, if the business of banking shall by it be either prohibited or trammelled further than to secure the safety of the public against the evils that seem necessarily to pertain to it.

The section as it now stands has no practical safety in it. While you leave the entire basis upon which a bank depends—especially if it be specie—in the hands of the bank itself, you cannot feel certain that it will remain there for the protection of its creditors. Except upon occasions of making a display of its condition, or in some way exhibiting its business to the public gaze, a bank may be as bare of the means with which to redeem its notes and other obligations, as some gentlemen say they are of honesty of purpose; and, sir, when these exhibitions of strength are made, it is possible that the means paraded before the public are furnished for the occasion; like jewelry obtained at the pawnbrokers, with which to dazzle the eye of the beholder at one of fashion's resorts, to be returned when the show shall have ended, perhaps to be replaced by the habiliments of unmistakable poverty. Such things have been done, and may be again and again.

Other gentlemen have, during the discussion, illustrated the nature and principles of currency, and the duty of government in relation to it.

I shall direct my remarks to an examination of the practical necessity for, and influence of, a paper currency upon the business of the country.

I am not disappointed to find this subject exciting a deep interest in the Convention. Among the people it is certainly regarded with intense interest—by far outweighing in the public mind any other proposition connected with the amendment of the Constitution.

Sir, our prosperity under the Constitution of 1816 has been the subject of frequent eulogy, and has no parallel in the history of these States. In defiance of the reckless legislation which characterized a part of our history, the enterprise and unconquerable perseverance of our citizens have made our State pre-eminent in all that constitutes the strength and greatness of a commonwealth. But, sir, there has been a serious obstacle across the path of our industry; and it was to provide a remedy for, and a removal of, that obstacle that induced thousands of our people to vote for the call of this Convention. Our natural advantages cannot of themselves, if crippled by unwise systems of currency, enable us to reach that high degree of prosperity to which we have a right to aspire. *Industry must be rewarded.* As well attempt to nourish and develop a healthy and robust physical constitution with a meagre and unwholesome diet, as to attempt to cherish, build up, and maintain a high degree of commercial thrift, without the provision of a sufficient and safe currency.

As sure as that effect depends upon cause, so sure does the reward of labor depend mainly upon the maintenance of a circulation of money that shall be competent to represent the productions of that labor.

A safe and liberal currency is the sun, whose warmth and light stimulates the germ of commerce, and causes it to quicken and grow into a substantial condition of health and strength, giving free scope to the industry of the people, and placing within their reach the appliances of comfort so readily yielded in our country to industrious hands.

It seems almost unnecessary to argue about the propriety—nay, the necessity for paper money. We are not permitted to choose. The circumstances by which we are surrounded—the fact that nearly every other State has authorized the making and circulation of paper money, precludes us from refusing to employ it. We might determine not to establish banks, nor to allow the issuing of paper credits by individuals; but we had as well attempt to wall out a flood, as to assume the task of preventing its introduction among and employment by our people. Its superior convenience, the habits and customs, and, I may add, the absolute necessities of the business and trade of the country, will always be inducement enough to continue the use of it. To refuse to authorize

banking in this State, is but to declare that our citizens shall be exposed to the uncertainties and dangers of employing paper money from abroad, of the character of which they cannot judge, and over which they can have no control, and to make them pay a heavy tribute in the shape of bank profits, to bankers of other States. Heavy losses have fallen upon our people, who, in the course of business, have been compelled to receive the notes of foreign banks; and we are not at liberty to pursue abstract notions on this subject, which can only result in additional injury and inconvenience to the country. By refusing to provide for a paper currency of our own, we invite from abroad that kind of currency having the least credit at home. Where the supply will admit of choice, the best of any commodity will be preferred, and the worst rejected; and while dependent upon other States, we could only expect to be permitted to employ what they reject or do not prefer. That class of banks least deserving of credit, is necessarily obliged to give precedence to others of better reputation, and to circulate their notes in remote districts where their character is not familiar, or where the sparseness of money drives the people to the use of *everything* in the shape of money not known to be absolutely worthless.

Sir, in my opinion, it is our duty to decide this question of banking, so as best to meet the circumstances by which we are surrounded. It is not expected that any system can be devised that will be free from faults; but we are forbidden, by every consideration of prudence and of interest, from banishing banks from the State. To do so, were to tie the hands of enterprise—to clog and cripple the industry of our citizens, and to drive out and keep out of the State that kind of commercial spirit that is the best auxiliary to the success of an agricultural people.

We are peculiarly fortunate in having for our guide and instruction the experience of the country in the different systems of banking. While Indiana has been unfortunate in her domestic policy in relation to many subjects, she has been comparatively fortunate in respect to banking. While the constitutional provisions on the subject were singularly loose, leaving to the Legislature all the details as connected with the institution of a State Bank, it is no more than truth to say that we mainly owe our good fortune to the high capacity and integrity of the men who have conducted its affairs.

But, sir, we are now prepared to avoid the principal evils that have attended former efforts to furnish a safe paper currency. We need not grope in the dark. The path of safety is well defined and lighted by the experience of our own and other States, so that we need not go astray.

Mr. President, I would have three main objects in view in defining the business of banking under our Constitution—the investment of capital sufficient to meet the demands of business—to so arrange that capital under separate control as to create a wholesome competition—and lastly, to provide the amplest security to the public against losses by insolvency of banks from any cause.

It needs no argument to prove that the capital and other facilities of the State Bank are altogether inadequate to accommodate, as it should be done, the business wants of our people. The practical impolicy of the system exhibits itself clearly in the comparative dearth of money accommodations, and, I may add, the extravagant profits of the single banking institution in the State, as shown by her own reports.

With respectable management, it could not be otherwise than that the State Bank should make enormous profits, as is shown in her large dividends, the unparalleled value of her stock in the market, and the rapid increase of the shares of stock arising from her surplus earnings. Money accommodations are too rare to go wanting long for a customer, upon the hardest terms. But, while some gentlemen see in these large earnings of the Bank only cause for gratulation, I think that I perceive much to deplore. It is only giving the subject a superficial examination to say that these extravagant earnings prove the correctness of the system. The same process of reasoning would prove that to be the most honorable and legitimate wealth which is accumulated by the heartless bartering of a Jewish pawn-broker, who lives only on the misfortunes of mankind, doling out the pittance that serves only to keep poverty from starving. Sir, it is not the speculator who pays these heavy profits. They ultimately fall upon the producing classes; and when you tell me that the State Bank has earned for the State a million of dollars, and has beside enriched her individual stockholders, you but say that she has coined the sweat and toil of the industry of our people, who have had no way to escape from the hard conditions of the money-lenders.

With a monopoly of the business of banking, and her inadequate capital so distributed as to create no competition among the several branches; a continual increase in the tide of trade in our State, with a doubling and trebling of the products of the soil, and the multiplication of the pursuits of industry ten times over, since the establishment of the Bank, how could it be otherwise than that the prosperity of the Bank should be very great; but in the system itself, exclusive as it is, there is no intrinsic security. Sir, I desire to see that condition of things brought about, that will permit the supply of capital to be equal to the demand for it. The true doctrine is that money should be found

seeking employment, rather than that our people should be compelled to creep and cringe to the lender, to have it doled out, even for the most legitimate business purposes, as corn might be doled out in a time of famine, when the only hope is to scare away grim starvation, and at last to submit, because they cannot avoid it, to the hard exactions of the monopolist.

That is a false doctrine which would deny commercial facilities, on the ground that competition is dangerous to the pecuniary safety of individuals or communities. Sharp competition is the best security for a different result. It is that which compels, above every thing else in business matters, the strictest regard to prudence and general economy. With the knowledge that a given business occupation is full, and that all its avenues are filled by watchful tenants, we have the best assurance that other branches of employment will be sought out and occupied. But at any rate, sir, it is no part of the duty of government to assume the guardianship of its citizens, by limiting the right to engage in any honest business pursuit. When competition is open and unrestrained, we have the best assurance that real merit will be appreciated and rewarded, and that the relations of business with the wants of the country are of the healthiest character.

But, sir, upon whom principally falls the losses of an unsafe or inadequate currency? Undoubtedly, I answer, upon the agricultural and mechanical classes. Our country may and does abound in that kind of resolute and thorough-going enterprise, so characteristic of the American people. But a want of means—of money, has, and will continue, under the present system, to cramp and confine the efforts that may be made to develop the resources of our State, and extend her commerce. The granaries of our farmers may be full—their fields may groan under their weight of cereal wealth—their pastures may abound in animal productions; but, sir, they are often obliged to wait until "hope deferred maketh the heart sick," for the appearance of the foreign carrier of these surplus articles. This is eminently true of the interior portions of the State. Your next neighbor may have enterprise, and wealth too, in property; but a medium of exchange cannot be created by industry—and thus, sir, the produce is at the mercy of the buyer, who in the absence of competition claims his own terms. The dubious alternative is, to sell on credit—but too frequently resulting in serious loss and injury to the seller.

I make no war upon credit, Mr. President, but it is vastly preferable that such a condition of things shall be secured, as will answer the real business wants of the people. Why should a country, so rich in all the elements of substantial wealth, continue so utterly poor in the means of readily transferring property from hand to hand?

In view of the rapid improvement of our State, her vast means of production, and already great but growing facilities for transportation, it would be a kind of commercial suicide to tie ourselves down to a mere bartering in commodities.

Sir, it is expected that in any plan of banking to be devised by this body, the principle of providing security, on the part of banks, for the discharge of their obligations to the public, shall be fully recognized. It sounds strangely in my ear, that at this day, when experience has taught the country such bitter lessons, that any institution of the kind should be permitted to become a debtor to the public, with its obligations in the hands of the rich and poor, influencing, to the extent of thousands and millions, the pecuniary prosperity of the country, without having first provided the amplest security to its creditors.

The objection at first made to this proposition elsewhere, has been proved by actual trial to have no foundation. It was said by the friends of banks, that money would not be invested under such conditions; but this objection has given way. Capital has been freely invested under this restriction, elsewhere. None but they who deliberately plan a violation of faith in business transactions, will refuse to guarantee the performance of their obligations, when of an important character. How much more important that a corporation, amenable only to law, and not to public sentiment, (which is so imperative with individuals,) should guarantee its contracts, when millions may be the temptation to fail in compliance.

The object to be attained by the establishment of banks is not to create money, but it is to induce a concentration of capital, with a view to its employment in the accommodation of those who may from time to time need its aid in business transactions—to supply, for temporary periods, the means of purchase and transfer. Money, to be profitable to its owner, must be employed; and a favorite business with capitalists, is the loaning of money for an equivalent for the use of it. The borrower generally desires only a temporary accommodation, with the privilege of making an early re-payment. All experience proves that the opportunity to readily obtain these accommodations, is a valuable promoter of internal and external trade, and as a consequence, promotive of the thrift of a people who produce more than they consume, or who desire to convert their labor into articles which they cannot produce.

It is unsafe to leave unrestrained and unrestricted the business of supplying these inevitable wants of the country. It is right that government should permit these wants to be supplied, but also proper that protection shall be given to the unwary and unsuspecting, who might otherwise become the dupes of dishonesty and fraud.

Sir, the proposition to open the business of banking to competition, under careful restrictions, is greatly misunderstood and misrepresented. The subject is treated as though it was intended to inundate the country with an irredeemable trash; and gentlemen who denounce all banks because they are liable to mismanagement, are resisting efforts here making to prune away the dangerous features of the business as experience suggests. Sir, they in effect say that they prefer to have an exclusive system, depending for its safety mainly upon the integrity of the bankers, rather than to resort to one under which our paper circulation shall be represented, dollar for dollar, by securities of the most tangible character, to be placed in the hands of the State, as a trustee, and to be applied for the protection of the note-holder after the failure of the bank—when its capital shall be lost by misfortune or mismanagement. It is not intended to neglect any check or guard hitherto practiced in the establishment of banks. When an individual purchases property at the sale of a decedent's estate, on credit, it is customary to require approved security for the payment of the purchase money, without regard to the wealth or standing of the buyer; and this is done to guard against any possible misfortune that might happen, to disable the debtor. The interests of the estate are thus protected from injury. So, sir, should it be in the case of banks. Their obligations are in the hands of all classes. The failure of an institution of the kind falls with crushing weight upon the industry of the country, and we cannot too well guard our fellow citizens against injury, that only years of privation and industry can retrieve. It is no argument to say that the securities to be deposited in trust, may fluctuate in value. This may of course be true; but at last they remain a guarantee to the full extent of their value; and it will be the duty and province of the Legislature to provide that they shall, from time to time, be made fully equal to, or exceeding, the entire amount of notes in circulation.

Sir, I ask the friends of the present system to point out its intrinsic securities? Is it at all impossible that such a system may fail. I refer you to the instance of the State Bank of Illinois, which suddenly and unexpectedly made one of the most disastrous failures that has occurred in the western States. The only safety in such a system depends upon the integrity and capacity of the men who control it, and a fortunate state of circumstances that we have no right to build upon in our calculations for the future—hey may or they may not occur. The mutual liability of the branches is a desirable protection in a time of prosperity, and not objectionable where there is an identity of interest, at any time; but, sir, when a period of general embarrassment comes upon the country—when a commercial panic invades our business circles, when mutual confidence in pe-

uniary affairs takes its flight from the people, the storm will beat with perhaps equal violence upon all the branches, and then, instead of sustaining each other the country will have cause to rejoice if the entire institution be not prostrated.

We have evidence abounding in the country every where, that the means of the State Bank are unequal to the demands of business. One half our circulation is made up of the paper of foreign banks. No gentleman denies this. In some instances, perhaps in many, the branches are agents for the putting in circulation, the notes of banks situated far distant from us; that may be safe, but they are beyond our knowledge or control; that may not fail, but will certainly drain from us thousands and thousands of dollars yearly, in the shape of bank profits.

While we are providing for an increase of banking capital, let us secure a separation of interests, so that competition in supplying the demand for such accommodations may, by possibility, grow up. Give not, or rather do not continue in the hands of a single directory, such a fearful power as is that, to control the financial prosperity of this great State. I trust that this Convention will not provide for a monied league—a cordon of banks, to be placed at all the prominent business points, having no diversity of interest, but bound together by the indissoluble ties of mutual gain and profit, to rule with more than Russian despotism the commercial interests of our people.

That non-resident persons might, to some extent, become our bankers under a secured system, may be true; but this is rather an objection against our poverty than to the system itself. If we possess the means to meet the demand for banking capital we shall be entitled to its profits; but if we look to others for this capital we ought not so object, while we enjoy the advantage of a liberal and safe currency, that the dividends should go to those who furnish the capital. The same objection could as well be made to the prosecution of our works of public improvement. The money with which they are making comes largely from abroad, and of course the dividends should go to those whose money pays for the work, let them reside where they may. But, sir, the lion's share of the profits of Railroads and other improvements, fall to our people. They can count their profits in the shape of increase prices for their property—a home market, and innumerable advantages that go to fill up the measure of their wealth and comfort.

Sir, the advantages of valuable institutions to the general prosperity of a people, are not all in the shape of paltry declarations of profit upon money invested. They are rather to be found in a general condition of convenience and comfort, and adaptation of means to the various wants of society. Mr. President, gentlemen have dwelt with great earnestness upon

the evils of free banking in New York. They have paraded before us the long list of failures that occurred under the general banking law of 1838, and declare that they are the necessary result of the system. But, sir, these gentlemen do themselves and the subject injustice. The fatal error of the law of 1838 was, in permitting the stocks of all the States to be deposited as securities, not doubting but that the honor and faith of all the States would be kept by a regular compliance with every obligation, and the consequent maintenance of the value of their stocks. But the events of the next few years proved otherwise. In the general wreck of State credit, the securities of many of the banks were reduced to a mere nominal value, and this, together with the fact that the banks were not required to keep a particular proportion of specie on hand for the redemption of their circulation, involved their creditors in much loss.

But, sir, in her new Constitution, New York has applied the remedy for this danger, and her present banking law, permitting the deposit of no other stocks than those of New York and the United States, and making the stock-holders individually liable, and securing to the note holder preference in payment, over all other creditors, serves to give her present system a degree of solidity and safety, unknown to the banks of any other States. But there is still an objectionable feature in the New York plan of banking. It is not, however, attributable to her Constitution, but is the fault of the law. I refer to the omission to require a certain proportion of specie capital to be retained by the banks, which would impart additional confidence, and effectually guard against the dangers of fluctuating securities. The system of independent banking in Ohio is, in this respect, superior to that of New York. There, while the best of securities—Ohio and United States stocks—are deposited to the entire amount of the circulation, the banks are required to keep up their specie basis to the proportion of $33\frac{1}{3}$ per cent. of the circulation. This feature I desire to see in any independent system of banking that we may adopt.

It is suggested that in case of a failure of a bank whose circulation is secured as we propose, the note holders would be shaved to death before the securities could be converted into cash with which to redeem. This must be a groundless fear. With a full knowledge that the notes of a failing bank are fully secured, it is not likely that they would suffer depreciation, but would continue to command confidence, and go on fulfilling their office, as safe representatives of property, to be finally redeemed, without delay, too, under the trusteeship of the State, without involving any who may receive them in loss. How different, sir, with the bank which offers no other means of payment to its creditors than what may be found in the capital

stock, depleted as it may be, by a succession of disasters that menace every institution of the kind. From the first breathing of a suspicion

approaching trouble to it, a scene of fluctuation and uncertainty commences. Its note holders become the prey of the brokers, who fatten upon the fears and suspense of the creditors of the bank, and after hanging thus, by the eye-lids as it were, sometimes for months, sometimes for years, the scene finally closes in the utter failure of the bank, and the ruin of those who hold its obligations. Sir, we want a system that shall secure the confidence of the country in all seasons and in all changes. None other should receive the sanction of this body.

It is objected that after the indebtedness of the State and General Government shall have been reduced so as not to afford securities in that shape, the independent system of banking must become impracticable from the want of a basis. If these were the only securities that could with safety, be adopted, the objection would be good, but fortunately, we may safely depend upon other securities, after the lapse of fifteen or twenty years. When our State shall have become populous and wealthy, and the opportunities for the investment of money shall be curtailed by the completion of all necessary internal improvements and the appropriation of the public lands by private purchase or otherwise, then the bonds of individuals bearing interest and amply secured by mortgages upon productive real estate, would as certainly command the confidence of capitalists, and be as readily convertible into specie for the redemption of the notes of a failing bank, as any other securities whatever.

The State Bank is an institution belonging to the people, it is said. What do we learn from the report of the bank itself? Why, sir, that in twelve branches there are but six hundred and sixty-six individual stockholders! and we are by no means to suppose that they are all citizens of Indiana. This small number of stockholders are distributed as follows: In the branch at Indianapolis forty-four, Richmond seventy, Lawrenceburg forty-seven, Madison nineteen, New Albany eighty, Vincennes sixty-three, Bedford fifty-nine, Terre Haute forty-seven, Lafayette fifty, Fort Wayne fifty-one, South Bend twenty-three, and Michigan City thirteen. And, sir, of the debts due the institution we find that over a million and a quarter is due from her officers and stockholders either as principals or sureties. Thus, sir, we see that the favors and immediate advantages of the bank are not as universally diffused as gentlemen would have us believe.

It has been claimed as a distinguishing and meritorious feature of the present system that the circulation of the State Bank is found to be remarkably equal at the various periods of making reports of her condition; but when we come to examine the cause of these slight fluctu-

tuations it reflects no merit whatever. The cause is readily found to depend upon her meager capital when compared to the wants of business. The charter fixes the proportion that the issues shall bear to the specie on hand, and, sir, the bank has but to choose among the multitude of applicants for loans—upon terms dictated by herself, and can have no difficulty in circulating at any and all seasons the last note that she is permitted by the charter to issue. Sir, there is regularity in her circulation, but it results from necessity—the necessity imposed by the incapacity of the bank itself and the business wants of the country which can have no choice but that of submission to this condition of things, except through the interposition of the Constitution itself.

I do not think it safe however to confine ourselves exclusively to any one system of banking. If all the bonds of Indiana could be obtained to use as securities they would not alone be sufficient, and even now I consider it doubtful whether the bonds of the United States could be procured to any great extent. They are the most valuable securities known in the money markets, and those having sixteen or seventeen years to run are now selling at 16 to 18 per cent. above par. Their extraordinary value is not likely to permit them to pass into the hands of our people for banking purposes; and besides, sir, the whole amount of outstanding bonds of the United States government is reported at less than ninety millions, affording even with the bonds of debt paying States an amount altogether insufficient to secure the banking issues of the several States that are likely to adopt the secured system of banking.

We need not fear the employment of too great a capital in banking where there can be no fiction in the systems adopted. Capitalists are remarkable for their wariness and timidity. They will not embark their money when the prospect of profit is not flattering. Like water, if left at liberty, capital will find its level, and the demand and supply will adjust themselves to each other.

I desire to see such an arrangement of our Constitution as will permit the establishment of a State Bank and branches differently constituted from the present one in many respects, and a system of independent banks; but let these grand features of competition and ample security for the protection of the creditors of banks be fully provided in each system.

Our sister State, Ohio, after having been scourged thoroughly with the evils necessarily belonging to banking where no other security than mere stock contributions as capital are provided, has found safety in the combination of State and independent banking, both of which are well secured. The success of their operations for several years, and the report recently made of the condition of the Ohio banks, is sufficient evidence of the practicability of their

plan. We are fortunate in having so safe a system in a neighboring State to whom we are so much indebted for a circulation of money.

Mr. President, I will say in conclusion that we have but too many drains upon the industry of our people already. Now, at a time of comparative ease and prosperity, we have a universal complaint of the sparseness of the currency. Taxes are high, and are to be necessarily increased. The drains upon our resources for the purpose of interest on the public debt will constantly deplete the current of our money circulation, and it is no violent supposition to say that we may yet be seriously embarrassed by this cause at a time of failure in crops or other misfortunes. A wise system of State currency is a main auxiliary to individual and public prosperity, and such a one we should seek anxiously to establish. Give us a system that shall have guards at every point. Exact securities of the most available character to the full amount of the circulation, so that ultimately there can be no loss to the note holders—provide for the registry by an officer of State of every note issued, so as to guard against fraudulent and over issues—make stockholders liable in their private fortunes for the debts of their bank, and in that way secure the utmost caution in their management—give the bill holder preference in payment over all other creditors, because he is an involuntary creditor—one from necessity in the pursuit of his ordinary business, the country is most interested in his protection—forbid over issues in proportion to the specie capital paid in and remaining undiminished—fix the minimum capital of banks, so that they may be established only where business really calls for them, and subject the business to taxation so that the burthens of government shall be equal.

This may be free banking, but its *freedom* consists in its equality of privileges, and its freedom from the dangers that have often afflicted the country in the shape of a currency of fluctuating value and uncertain credit.

Mr. PETTIT. I hope this section will be re-committed; and why, sir? I will briefly say that if we are to have banking at all, free or partial—for that is the struggle here—I trust that there will be not only an amount of specie equal to one-fourth of the amount of issues, but an equally reliable and sufficient basis for the whole amount of issues. That, sir, is what I want. I am not very partial to any species of banking, but I utterly protest against any rotten system that may be forced upon the State, whether it be general or partial. I prefer the general system to the partial, only when it is upon a right basis—for I desire that all citizens shall stand upon the same equality in all business.

It was said here yesterday, by a member, that the free bankers were trembling in their shoes

—that their knees were shaking, and their legs giving way under them; and that they would soon tumble, with their favorite system, to the ground. I regretted much to hear such a remark. To say that the friends of equality and of equal rights were trembling in their shoes—that the power of self-interest and concentrated wealth was so strong here as to make the lovers of freedom and equal rights waver in the defense of their principles, was an assertion as uncalled for as it was untrue. I regret that there should be a man in Indiana who would proclaim such a sentiment. How dares a man rise up at this age of the world, and demand at our hands exclusive privileges—how dares he come with his deformed heart, if not head, into a body of this kind, and ask a privilege for himself and his neighbors, which may not be granted to others? Sir, let me say as an expression of my deliberate judgment—and it is the cool and unbiased opinion I have long entertained; that any man, I care not who he may be—beggar, priest, angel, or devil—who shall ask more for himself than he will concede to his neighbors, and to all his fellow-citizens in a State, is a thief and a robber. He can be nothing else, and the man who will yield, unless forced to yield—the man who will tamely submit to allow another to enjoy an advantage or privilege, which, as an citizen, he may not enjoy, is a coward and a craven, and deserves the lash of the slave-driver on his back. He is a coward and a craven, who will willingly reside in a State which does not mete out to its citizens equal justice. He is a thief and a robber, who will ask it, and a coward and a craven who will submit to it. All that the free bankers have asked, was, to have the people in their connection with banks, to be placed upon an equal footing. Let this section be re-committed, with the instructions proposed by the gentleman from —, and you will have all safe and all secure.

Mr. MURRAY said—

Mr. PRESIDENT: I know the Convention is weary of debate, and that scarcely anything can be said without traveling over ground that has been pre-occupied.

I will, therefore, confine myself to a few practical remarks, and as it is my custom always to be brief, I shall occupy the floor but a few minutes. We have had enough of theory, though ingeniously presented and ably supported. It is time that we find some ground on which we can unite to lay a sound foundation for the currency of the State.

That we must have something to represent the value of our vast productions beyond what the precious metals are capable of representing, is apparent to all who have any commerce with the world. The most eminent orator on Political Economy, show that there is less than 400,000,000, of specie in circulation. This does not include bullion, to be sure.

Ingots of gold and silver do not enter into the common business of life. The only question then is, whether we shall use bank paper or private credit, to supply the deficiency of metallic currency. For one, I protest most solemnly, on relying upon credit to purchase the stock and agricultural products of the farmer. Men who purchase on credit, are seldom so prudent in their operations, as when they have actually paid their money for the property on which they operate. I do not speak at random. It is an admitted fact. There is a daring adventure exhibited by more who handle public funds, or the money of the many entrusted to them in small sums, that does not prevail so generally with men who operate on their own capital, actually paid for the articles in which they deal.

This leads to frequent failures, and who then suffers? Why, sir, the whole farming interest suffers, and often suffers most painfully. It is known as a general rule that small farmers do not, under favorable circumstances, lay up more than one hundred dollars a year, beyond current expenses. The farmer moves forward through the season, with a prudence and uniformity unknown to the merchant and speculator. His industry is unceasing; late and early, through heat and cold, he pursues the even tenor of his way, literally earning his bread by the sweat of his brow; and when the season closes—before the year dies away—he is careful to settle his account with the merchant, the mechanic, the doctor, and, above all, with the printer and the school master.

He is happy in his family and his home. The day school, the singing school, and innocent conviviality, pass away the cold winter with its long bright evenings of merry hours. It is a picture the rich and the proud, may well envy. But, Mr. President, let a system of credit be introduced, (and you must introduce it if we have no Banks,) and how changed is the scene of this rural comfort. The purchaser of their produce is unlucky—he fails to pay, and the farmer is disappointed. He disappoints the merchant, the mechanic, and all the trades and professions he has dealt with. His family are coarser clad—the school is neglected—conviviality must be restrained. The chords of sweet music are unstrung—every comfort is contracted—the strictest economy introduced, and the most vigilant labor resorted to, to repair the loss. And, Mr. President, we must not look upon this as an isolated case. What one suffers, all suffer. The calamity and the desolation spreads over all the land.

This, Mr. President, is no fancy sketch. It is a misfortune that has often occurred, and will often occur, where the practice obtains of selling the stock and produce of the country upon credit. I therefore enter my solemn protest against placing the country in a situation where we shall be compelled to resort to credit. Nothing is more common than the failure of the most

competent and prudent speculators. The farmer claims *not* their profits—he should bear their loss. We must then have a paper currency, and it must have a locality. Its name, its charter, and restrictions are, I apprehend, all that we have to reconcile. A large majority, I think, see clearly the absolute necessity of a paper currency, but upon their details, I know we are unhappily divided, and in order to heal our divisions, we must surrender for the public good, a portion of individual opinion. I hope we ever do this. I feel unwilling to leave it an open question, because I think we can save much to the State by settling it now. The same differences of opinion will probably exist in the Legislature, that exists here. We have devoted much time to the subject, and we have it in our power to prevent the discord and waste of time, which will follow its discussion in the Legislature. It is very important that the currency of the State should be settled as early and as permanently as possible, and I am desirous now to mark its bounds and make it a part of the Constitution. For myself, I cannot see the monstrous objections to the present State Bank, which others do, although I can see defects in it, which I would remedy hereafter, by more careful guards and restrictions. It is said to be a *monstrous* and *odious* monopoly. What is its office, and what has it done to make it so monstrous and odious? Its office is to provide a sound currency for the State—to loan money to its citizens, and deal in bills of exchange. Has it not fulfilled its office! It may be charged with partiality in its loans and some extortion in bills of exchange. To some extent, I fear this is so, and these are some of the defects that should as far as possible, be remedied. But the Bank, in addition to a sound circulation, and furnishing facilities for purchasing the produce and stock of the country, has saved near \$100,000 for the school fund. I should think this ought to atone for some sins, if it has committed any.

But, Mr. President, any association of capital becomes, to some extent, a monopoly. All manufactories driven by machinery, monopolize the business they are engaged in. The spinning-wheel, the hand-loom, the making of nails, threshing of grain, even sowing, reaping, and mowing, all these, and ten thousand other things have been monopolized by machinery. But who complains that they are not beneficial to society? Who would strike machinery out of existence, because it monopolizes business? Private individuals sometimes become monopolists, in the most odious sense of the word. I remember once the Kanawha salt was monopolized. At another time the flour in the city of New York. And so odious were both these cases held, that in the first instance, the life of one of the principle actors was taken, and in the other, the mob collected and threw the flour out of a fourth story into the street, until it was virtually kneed deep, and the poor took it without money

or price. The public journals teemed with the event, far and near. Monopolies can be created with money, any where, and for any purpose. Our business is to improve upon the past, not annihilate enterprise and machinery.

I would not, therefore, restrain the Legislature from re-chartering the State Bank under proper restrictions, if they shall think best. I have not full confidence in free banking. I have seen so many plausible systems fail, that I am unwilling to give up a sound currency until we have proved free banking. I am very willing to vote for a judicious system of free banking, partly because I am willing to try the experiment, but more especially because I am sensible my constituents call for it.

I hope, Mr. President, that we shall soon compromise this matter, and close this exciting subject upon which such singular variety of opinions prevail.

We cannot expect any system to be made perfect. Objections may be found to any system. Perfection belongs not to man. Let us then adopt a system which the experience of the past and the best light we have before us may suggest, as the safest and best for the citizens of Indiana. If we neglect to do this, the paper of other States will circulate among us, and the people of other States will monopolize our trade, or we must resort, as I have said, to private credit, which seldom fails to carry ruin in its train.

Mr. BIDDLE. I would inquire of the Chair whether I can withdraw the additional instructions I offered?

The PRESIDENT. Certainly.

Mr. BIDDLE. I withdraw them then.

Mr. OWEN. I withdraw the instructions I offered, also; and move the following instead: add after the words "specie basis," in the section as amended by the gentleman from Dearborn, the words "for the redemption of all notes issued."

Mr. COLFAX moved to amend Mr. Owen's instructions, by adding "such specie basis shall be to the full amount of their circulation, or the difference between the two shall be made up by ample security for the redemption of the bills in specie, to be deposited with some officer of State."

Mr. DOBSON. I think it would be as well not to re-commit this section. I would say to the friends of the section, to stand just where you are, and let the battle wage on until we find we are overcome by superior numbers. It does seem to me that the gentleman from Posey (Mr. Owen) has not given to this section his usual calm and deliberate consideration. The word "basis," he thinks, means anything or nothing; at any rate, its meaning does not seem to be clearly understood. Let him go to the people and ask them what *basis* means, and they will begin to think about the "basis" of their log cabins, and that it must be as wide and as long

as the top, in order to support the superstructure. And just that wide, in my opinion, should be this bank basis. The people are not so ignorant about this matter as gentlemen may suppose, and they will want a basis sufficiently wide to support the superstructure, or they will reject it; they want a solid foundation for their cabins, and nothing short of that will satisfy them for banks. The gentleman from Jefferson, (Mr. Dunn,) threw out a *threat*, that, by the free bankers combining with the no bank men, they could put anything into the Constitution they wanted; but I thought the gentleman let his zeal run beyond his discretion, if he thinks that such a combination could fix free banking upon the State.

SEVERAL MEMBERS. We will do it.

Mr. DOBSON. If you can, I know you will; but will the hard money men vote with you? If they are consistent, they will not. In regard to the triumph the gentleman alludes to, does the gentleman remember another triumph! they supposed the State Bank men to be defeated when the section was adopted which provided that the State hereafter should not borrow money for any purpose whatever. I then stated that we would reach another fork in the path, and then we would see who would carry the torch, and who would be in the dark. Now, as to this matter of triumph, I apprehend there is no true cause for any particularly triumphant manifestation. We are all attempting to discharge our duty to our constituents, and when one party of us have been beaten, the other should not rejoice, and when we are charged with being bought up, we might as well turn round and say that foreign bond holders had bought up a few of these distinguished free bankers. But no man would say that men were bought up. If any one here would act so, I would not own him as a *slave*, if he were given to me.

Why not, sir, pass this section? This is not the last day of the Convention; neither is it the last thing that will be urged upon the Convention. We can pass this section, and then proceed with the other sections. There are several other sections before us on their second reading pertaining to this subject, which may be passed with but little difficulty. Let the Convention say that all banking shall be done upon a specie basis. I have, from the first, been in favor of it. I think the people are in favor of it. This free bank system is something like an Irish potato crop—never worth anything until the tops are dead and they are dug up, and you come to the roots; and then, too, like the potato crop for the last few years, may be subject to the rot. [Laughter.] If they depart from a specie basis, the moment their notes are presented, they break; and what is such a system, but one of credit, based upon credit. Sir, the system is wrong—rapidly wrong, and the people will never tolerate it. I am opposed to it, because it is not good until after it is dead; and I desire some

good to result from it while it has life. The idea that, the specie used as a basis must be deposited at the seat of government, is a great incongruity. If I should want to get a five dollar note redeemed in specie, I should dislike the idea of having to travel from a remote part of the State, to come here merely for that purpose; it would be rather too expensive a bill of exchange. [Laughter.] The people all over the State want pocket change occasionally, and that too, without having to come here to get it. I hope this section will be passed, and that then we will proceed with the consideration of the remaining sections of the article on banking.

Mr. SMITH of Ripley. I move to lay the amendment, and the amendment to the amendment, on the table.

Mr. COLFAX. That will carry the section also to the table.

Mr. SMITH of Ripley. I will withdraw that motion, then, and move to lay the amendment to the instructions on the table.

Mr. COLFAX. I would inquire of the Chair, whether that motion carried the section with it? The PRESIDENT. It will not.

Mr. SMITH of Ripley. I withdraw my motion to lay upon the table for the present.

Mr. DUNN of Jefferson. We read that Jonah was in the whale's belly three days and three nights—that the floods compassed him about, the billows and the waves passed over him, and the weeds were wrapped about his head. As pitiable as was the condition of poor Jonah, it was not more so than is that of the subject of banking, which this Convention has now had under consideration for more than twice three days and three nights. Truly may we say of this important subject, that the billows and the waves have been passing over it, that the depths are closing round about it, and that the weeds are rapidly accumulating about its head.

I regret, sir, that a subject of so much importance to the people could not have been discussed in a calmer and kinder spirit. We should remember that we have now to settle one of the most delicate as well as one of the most difficult questions that has or will come before us—one that affects the value of property, the operations of trade, and the business of the country in all its varied and complicated relations. I am deeply sensible of my inability to do justice to this question, and I do not now arise so much for the purpose of discussing it, as to call the attention of the Convention to the position the different parties here occupy towards each other, and to say that unless a spirit of concession should prevail, and some terms of compromise can be agreed upon, we may contend here forever without arriving at any useful result. Neither the free bank nor the State Bank party have a majority of this House, while either of them united with the no-bank party, have a majority. Yesterday, the

friends of the State Bank system appeared to be greatly elated with their success in carrying a provision which they deemed peculiarly obnoxious to the friends of free banking. This victory was won by the aid of the hard money men. The State Bank men are delighted with their new allies, but they should remember that these allies can be drawn from them at any moment the free bankers may choose to hold out to them an inducement to desert. These hard money men, like the old Swiss Guards, will fight on whichever side they see the specie dollar, and are ready to-day to turn their swords against their friends of yesterday, if thereby they can prevent all banking in this State. The plain truth, then, is, that unless the friends of the two systems of banking can agree upon some terms of compromise, we shall have no banks of any kind, because there is an evident determination on the part of the friends of each system that the other shall not be adopted as an exclusive system, and that rather than the system they oppose should be adopted to the exclusion of the one they advocate, they will unite with the no-bank party, and insert in the Constitution a positive prohibition of all banking. Now, sir, I should regret such a result as this extremely. Well regulated banking institutions, in my opinion, contribute greatly to the business and general prosperity of a State. Moreover, we are surrounded by the banks of other States, which will furnish our people with a currency, if we fail to do so ourselves. The convenience of business requires that the people should have paper money, and paper money they will have, in despite of all the laws and Constitutional provisions that may be adopted to prevent it. The only question, then, is, whether it is better for us to provide for the supply of such a currency through banking institutions of our own, or leave that supply to be furnished by the banks of other States. It appears to me to be obvious, that it is better to have a currency issued by banks over which we can exert a control, and the value of whose issues we can at all times have the means of ascertaining, than a currency issued by institutions not amenable to us in any respect.

I advocate the permission of banking not for the benefits that may accrue to the banker, but for the facilities banking affords to trade. The great mass of the people of our State are engaged in agriculture, and I rejoice in the prospect that Indiana will shortly become one of the most productive agricultural States in the Union. Every facility that can be given to those engaged in purchasing and carrying to market the productions of the soil, is a direct benefit to the farmer. Before the establishment of the State Bank, the farmers were compelled to a great extent, to sell their surplus products on credit. If the trader was unfortunate in his speculations, the farmers who had sold him on

credit had either to sustain the loss, or suffer a great delay of payment. Now the case is very different. Those who deal largely in hogs, grain, and other staple articles, if they need credit, do not ordinarily ask or expect to receive it from the farmers, but they procure accommodations from the banks—from the men whose business it is to give credit. If the produce dealer is unfortunate in his operations, the loss or delay of payment now falls upon the banks, or the endorsers of the debtor, and the farmers are happily relieved from all embarrassments on that account. By means of bank loans, a very useful class of persons are enabled to engage in business, who otherwise would be unable to do so. Men of honesty, energy, prudence, and capacity for business, though without capital of their own, can procure money from banks for the purpose of engaging in trade. This they take on short loans, invest in the products of the country, and out of the proceeds of the sale of these products, discharge the loans. Such facilities of course increase the number of purchasers, increase the competition in trade, and thereby secures to the farmer a better price for his surplus products. If you confine the business of the country to those operating solely upon their own capital, we will experience a sudden and great depreciation in the price of property of every kind. Sir, in my opinion, no class of our people are so much interested in the establishment of a good, safe, and sound system of banking, as the farmers; and as they constitute the great mass of our population, we should be especially careful not to deprive them of the benefits of a good system, nor force upon them the evils of a bad one.

Of the two systems of banking under discussion my impressions are decidedly in favor of the free bank system, and if I have to vote for one system to the exclusion of the other, I shall vote for free banks. It appears to me to be as safe a system as has ever been in operation, and that it can be made as entirely safe as it is possible to make any system that is dependent upon human agency for carrying on its operations. Under such a system, any person or association of persons would be permitted to issue their bills to circulate as money upon depositing with some officer of State ample security for the redemption in specie of all their bills on presentation at the counter of the banker. It would be required that all the bills previous to their issue, should be registered by the officer holding the security, and that they should not exceed in amount, the market value, nor the par value of the security deposited. Now if ample security for the redemption of the notes is deposited beyond the control of the banker, with an officer of State who is to hold the same in trust for the benefit of the bill holders, I cannot see very well how the bill holders are to sustain any loss. But what is "ample security?" I should regard the stocks of the

United States and of the State of Indiana as ample security. The stocks of the United States are now above par. They must continue to be good while our Union exists, and I see no occasion for regarding the dissolution of the Union as an event at all probable or scarcely possible. But should the union of these States be dissolved, in the general ruin that would follow the injury to our banking institutions would be considered a matter of very trifling importance. The stocks of Indiana taken at their market price, or with such a margin for depreciation as the Legislature might deem prudent, would be good security, because the money issued on that security would circulate among our own people. Every citizen, that held a bank bill, would be directly interested in sustaining the credit of the State, because he would feel that any great depreciation in the value of our stocks might affect the value of his money. Those stocks will not depreciate so long as the interest on them is punctually paid, and therefore so long as we are faithful in the performance of our just obligations, the money issued upon the security of our stocks would be good. Those stocks are now, and so long as the interest is punctually paid, will continue to be, readily convertible into specie at a fair price in the city of New York and the other principal cities of the United States. I trust we are to hear no more of repudiation in Indiana, and that our stocks will take and maintain that position in the market which the bonds of a State so rapidly increasing in wealth and population are entitled to hold. But gentlemen say, that if we bank upon the security of the bonds of Indiana we are banking upon our own indebtedness. This would be true if the State should undertake to bank upon her own bonds, but it is a very different case when citizens of the State undertake so to use her bonds. If I owned one hundred thousand dollars of the bonds of Indiana I do not think I should regard myself as a very poor man, or grumble about paying my portion of taxes for the discharge of the State debt. If I desired to raise money for any purpose, I think I would be able to do so without much difficulty either by the hypothecation or sale of my bonds, and if I desired to issue bank bills I should think my bonds ought to be regarded by the State of Indiana as very good security for their redemption. I would say to the State, with great confidence, "if you will keep up the credit of your bonds, I will keep up the credit of my bills." The bonds of the United States and this State are the only securities I would be willing to receive if I were now, as a member of the Legislature, called to vote on the passage of a law providing for free banking. But these bonds will, after a while, be paid off, and therefore, it is improper for us in this Constitution to designate them as the ample, and only ample securities. It is sufficient for the Constitution to say that ample security

shall be required, and leave it to the wisdom of future legislators to say what securities shall be deemed sufficient. The Legislature, undoubtedly, would provide in any general banking law, that the banker should deposit additional security whenever that was considered necessary, or cease banking operations.

The adoption of a system of free banking secured in whole or in part on the bonds of our State, would have a tendency to bring our bonds home and gradually work them into the hands of our own citizens. If this result could be accomplished, it would certainly prove a very beneficial one. We are now paying an interest of two hundred thousand dollars per annum on these bonds, and after the first of January 1853 that interest will amount to three hundred and twenty-six thousand dollars per annum. Nearly all our bondholders reside out of this State, and many of them are residents of Europe. This interest is a very heavy drain upon us, and it certainly would be a great relief to our currency and business, if any considerable part of it should become payable to our own citizens. And here permit me to say, that a currency secured by a deposit of the bonds of the State, might with propriety be made receivable in the payment of taxes and all debts due the State. This would give additional credit to the currency and would make the Legislature and officers of State particularly careful that the security deposited should be amply sufficient for the redemption of the circulation.

The friends of an exclusive State Bank system charge us with being in favor of issuing paper money upon a paper basis, and in their zeal to prevent the adoption of so monstrous a system, they yesterday, with the aid of their strange allies, passed an amendment to the section under consideration, which, if it has any substantial meaning, would embarrass their system quite as much as it would the free bank system. That amendment requires that "All banking in this State shall be on a specie basis, actually paid in." Now, I would be obliged to any of the gentlemen who voted for that amendment, if they would inform me precisely what it means. Does it mean that the banks shall issue no greater amount in bills than they have specie in their vaults? If it does, it effectually prevents banking on any system, and I cannot understand why the friends of the State Bank have any occasion to congratulate themselves particularly on its adoption. But if it means that the specie basis may be less than the amount of the circulation, then I would like to know how much less, or who is to decide the question? Shall one dollar in specie be a basis for the circulation of two and a half, or two hundred and fifty dollars in bills? This amendment either means too much, or it means nothing at all. I voted against it because it is one of those indefinite expressions that are always dangerous, and should be espe-

cially avoided is so important an instrument as the Constitution of a State. We do not know what construction might be given to it by the courts, and for that reason, if for no other, the amendment should not have been adopted. The language of a Constitution ought to be so plain as to prevent all controversy about its meaning. That amendment is a "weed", a pernicious weed. I am sorry it is wrapped about poor Jonah's head, and hope that it will yet be removed. No one here has advocated, and certainly I shall not advocate, any system of banking that does not require the banker to redeem his bills in gold and silver, whenever they are presented at his counter for redemption. If he always does that his specie basis is sufficient, and if he does not his basis is insufficient, no matter what your Constitution or laws may say on the subject. As to what per cent. of the circulation should be kept on hand in specie for its redemption, that is a question depending upon too many circumstances to admit of any fixed rule. If the bills have the confidence of the community and enter into general circulation, a small per cent. of specie will be sufficient; but if the contrary is the case, the basis will have to be increased to the amount of the circulation. If the banker is required to give ample security for the redemption of his circulation, and if on failure to redeem he forfeits valuable privileges, self interest will make him very careful about the sufficiency of the specie basis. There is nothing in the charter of our State Bank that requires one dollar in specie to be kept on hand for the redemption of her notes. The charter required a certain amount of specie to be paid in, in the organization of the several branches, but it did not require that it should be kept in.

The State Board of Directors of the Bank have an order that forbids the branches from keeping out a circulation averaging over twice and half the amount of specie on hands. I think the free banks could live up to an order of that kind, and if that is what you mean by a specie basis, say so in direct terms, and let us have no further controversy about it. The free bankers will not only pay in, and what is of more importance, keep in a specie basis of two-fifths of their circulation, but they will give what the State Bank has never been required to do, ample security for the redemption, in specie, of their entire circulation. It appears to me that it would be difficult to get up a panic that would occasion a heavy run upon banks so constituted. If an alarm should be excited about the safety of any of our branch banks, such a run would take place because the rule is, first come first served, and the bill holders would know that when the specie was exhausted they would have to wait for the redemption of their bills until the assets of the bank could be made available. But under the free banking system the bill holders would know that whenever the specie

on hand was exhausted, an officer of State who held a security for the redemption of the bills, beyond the control of the banker, would convert that security into cash, and cause the bills to be promptly redeemed at the counter of the banker.

But the gentleman from Hancock (Mr. Walpole) has discovered that the free banking system is a monopoly, because none but the rich can engage in it. It is true, sir, that men who have no money had better not experiment in banking, for if they do no harm to themselves, they are very sure to do harm to others. Every man is not able to own a valuable farm, or erect valuable mills. Are those who do own valuable farms or mills monopolists? According to the gentleman's mode of reasoning he is himself a monopolist, because he occupies a seat in this Convention which another man earnestly sought for but could not obtain. The shares of stock in free banks may be fixed at fifty dollars, or even as low as ten dollars, if that is thought desirable. In this respect the free banking system can be made as liberal as any other system.

The free bank system has, in my opinion, been very unfairly discussed by its opponents, and in many respects has been grossly misrepresented. They refer us to the general banking law of New York, adopted in 1838, and show that a great number of banks organized under that law, failed to redeem their issues, and say that it is the system the friends of free banks wish to establish in this State. Under that law the stocks of any of the States, and mortgages of real estate were receivable as security for the redemption of the issues. The bonds of Indiana, Arkansas, and Mississippi were taken as security for the circulation. It was not then supposed that a sovereign State would fail to sustain her credit. New York has learned better since, and profiting by her experience, now receives no securities but the bonds of the United States, her own bonds, and mortgages, to a very limited extent, on real estate at two-fifths of its valuation. Since this amendment of her laws the system works admirably, as is shown by the reports of her comptrollers. Extracts have been read here from the reports of Mr. Fillmore and Mr. Hunt that ought to silence all cavil on this subject. We may profit by the experience of New York, and may adopt the latest improvements in her system. No one here has advocated the adoption of a general banking law like that of 1838.

But, sir, I find I am extending my remarks on this subject much further than I had intended. I would not desire, even if it were possible, that our Constitution should establish the free banking system, as an exclusive system. I shall be satisfied, if the way is left open for the adoption of such a system, when the people desire its adoption. The subject has not been generally discussed among the people, and the

system is not generally understood by them. I feel great confidence that it will bear investigation, and that it will grow in popular favor, as its provisions become generally known and understood. The people are naturally jealous of all propositions affecting the currency of the country. They have good reason to be so. They have suffered enough from experiments in banking, to make them cautious about the adoption of new systems. I would not try to cram down their unwilling throats any system, no matter how good I might consider it. If you do not close the door against free banking, I for one am willing to wait until the people are prepared for its adoption.

Nor, sir, do I desire to incorporate in the Constitution a provision prohibitory of the establishment of a State Bank and Branches. I do not know what may be the condition of the monetary affairs of the country at the expiration of the present charter of the State Bank. We are now on the flood tide of prosperity. But the tide will ebb, and that, perhaps, before long. Sagacious men now predict it, and prudent men are preparing for it. It might add greatly to our difficulties, if the State Bank should be compelled to close up its business at a time of general pecuniary embarrassment. I wish, therefore, to leave the question of the re-charter of the State Bank, with certain modifications and restrictions, or the establishment of some banking institution with branches, also an open question, to be decided by future Legislators as they may deem best for the interests of the country. In my opinion, a very unjust and unfounded clamor has been raised here against the State Bank. The gentleman from Tippecanoe, (Mr. Pettit,) with a strength of lungs and an energy of manner peculiarly his own, has denounced it as rotten to the core, and those engaged in its management as but little better than thieves and robbers. Now, sir, I believe that if I were to seek, even without the aid of a lighted candle, I could find among the conductors of the State Bank, as many honest, respectable, worthy, and useful men, as can be found among those who so loudly denounce them. Difficult questions of finance cannot be settled by the language of denunciation. Such language may irritate, but it cannot convince. The charter of the State Bank is a good one. It is one of the best banking systems ever established—affording reasonable profits to the banker, and a good currency to the people. With some exceptions, its affairs have been prudently, fairly, and honestly managed. It is true, the State Bank suspended specie payments, and it did right. Public opinion justified her in that suspension, and it would justify her for suspending, under the same circumstances, again. There was a general suspension of specie payments amongst the banks in the country, and if our bank had not refused to pay out her specie, it would all have been drawn from

her by the banks and brokers of other States, and our people would have been left almost without a currency. There were others, about that time, besides the banks, that suspended payments, not only of specie, but of any sort. Where the people lost hundreds of dollars by the depreciation of the bills of our bank, they lost thousands of dollars on the bills of the banks of other States in circulation amongst us. If gentlemen are anxious to learn the cause of the universal derangement of the currency and embarrassment of the business of the country that prevailed at that time, they can find a sufficient one in the experiments on the currency that had been indulged in by the National Government.

The State Bank is also charged with the loss of the million of dollars negotiated on credit to the Morris Canal and Banking Company by Mr. Merrill. She can be charged with that loss with no more justice than she could be with the money uselessly spent on the Central Canal. Both losses are chargeable to the internal improvement system. The stockholders in the bank asked no increase of her capital by the State. They were disinclined to have the capital increased at that time; but the State, availing herself of a right retained in the charter, to increase her capital in the bank, determined to do so, for the purpose of enabling her, out of the dividends, to pay the interest on her internal improvement debt. It is true, the then President of the bank negotiated this unfortunate loan, but he did so as the agent of the State, and not of the Bank. The true account of the State Bank with the State, stands thus:

State Bank. Dr.

To the bonds issued for the bank loans and money received by bank,	\$1,390,000 00
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Cr.

By the State's stock in the bank, - -	\$1,006,604 27
" Sinking fund loans to individuals on mortgages, - - -	609,114 30
" Cash means in sinking fund, - - -	15,863 18
" Loans to the State for 5 per cent. scrip redeemed, - - -	665,580 21
" Bonds of original loan paid for, - - -	84,000 00
Making a total of	2,381,161 96
Being an excess over the amount received from the State, of - -	991,161 96
Of this excess there is to be paid to the State, for her balance of surplus revenue, - - -	114,532 87

For the bank tax and
saline fund accounts, 5,716 27

For overbids on lands
sold, - - - - - 689 33— 120,338 47

Leaving the amount clear, after pay-
ing the bonds for the \$1,390 00, \$870,223 49

The above is the account the State Bank could render to you to-day, if called upon to close up her business. She has punctually paid the interest on the bank bonds, has the means to pay the principal of all that are outstanding, and has made a profit for the State, on her investment, of \$870,223 49. But gentlemen have said, and will say again, these are mere bank reports, and are therefore unworthy of credit. Well, sir, whatever you may think of these reports, I say that men of business and capital believe them, and stand ready to give the State a premium of at least one hundred thousand dollars for her stock in the State Bank, if the State desires to sell her stock in that institution. Ah, sir, if the finances of the State of Indiana had been conducted with but half the ability and integrity with which the State Bank has conducted her business, we would not this day be involved so deeply in debt as we are. Suppose the affairs of the bank had been managed by your bank-hating politicians, how much do you think the State's stock in it would be worth?

But I may be asked, why I prefer the free bank system, if the State Bank has done so well? I reply, in the first place, because the State Bank is a monopoly, and in a free government no monopoly ought to be allowed, unless it is necessary, in order to procure a great public good. Such a necessity existed at the time of the establishment of the State Bank. We needed banking facilities in the State, and under our Constitution, no other system of banking could be established, than that of a State Bank and Branches.

In the next place, I object to the State Bank as an exclusive system because it does not grow with the growth of the country. The capital of the State Bank is but little more now than it was when the bank first went into full operation, while in the mean time the trade in the State has increased perhaps tenfold. It has been said that this evil can be remedied by an increase of the capital stock of the bank. But how can you do that if the new Constitution is adopted, for it forbids the State from borrowing money for any such purpose. The individual stock holders may not be disposed to increase the capital, because the general scarcity of money enables them to make greater profits. Again: under the State Bank system the number and location of branches is made to depend upon the will of the corporators, instead of upon the demands of trade. This difficulty, it is said, can be avoided by compelling the State Bank to establish branches whenever and wherever persons are willing to organize themselves

according to the requisitions of the charter. Whenever you do that it will be necessary to do one thing more—make a law requiring capitalists to take stock in the bank, for surely they will not be disposed to invest their money in a business where new partners may be forced upon them any day of the week. The most beneficial feature in the charter of the State Bank is the one that makes the branches responsible for each other's debts. Will capitalists be willing to take stock in an institution that will involve them in liabilities, the amount of which they can neither know or control? It seems to me that a State Bank and branches must of necessity be a monopoly, and if so, the system can only be justified on the score of public policy. A State has no right to grant such privileges solely for the benefit of the corporators.

Another objection to any exclusive system of banking is, that it prevents a wholesome competition in that business. For instance, the bank in this city is now selling exchange on the East at one per cent. premium, while at Cincinnati exchange can be had at par, or even at a discount. Would exchange bear this price here if there was a free bank or any other independent banking institution located in this city? Establish independent banking institutions, along side of each other, and then their customers will be able to procure accommodations on the fairest terms. Preserve the State Bank system, if you please, but leave the way open for competition. Give us a free system also, so that in this business, like all others, capitalists may engage in it when and where they please.

But, sir, I desire that the question of re-chartering the State Bank, or of establishing some similar institution, may be left with the people, to be settled by them through their representatives when the question comes properly before them. The bank charter will expire in 1857, and her business must be closed up within two years thereafter. The bonds of the State for the bank loan fall due as follows: \$500,000 in September, 1864; \$450,000 in August, 1865; and \$440,000 in July, 1866. These bonds draw but 5 per cent. interest, and the money can be made to yield at least 10 per cent., thereby making for the State the sum of \$69,500 per annum so long as the money can be used as banking capital. I am not prepared to say that under all the circumstances of the case, sound policy will justify us in refusing the bank charter to be extended until nearer the maturity of these bonds, under such amendments of the charter as experience has shown to be necessary. Let that also remain an open question.

My greatest fear, sir, is, that our new Constitution will contain too many restrictions upon the will of the people. Too much law making has proved a great evil in this State, but we may have yet to deplore a greater evil, too much Con-

stitution making. I, for one, indulge a comfortable hope, that after this body—for whose wisdom I entertain a high respect—shall have dissolved into its original elements, the people will be able to select from their midst other agents entirely competent for the prudent management of our State policy. I deeply regret, therefore, the disposition manifested here, to limit and restrict on all sides the legislative power of the State. It is far better to err in the exercise of a too generous confidence in the wisdom of future legislatures, than to assume that the safety of the people is wholly dependent upon the superior wisdom and forecast of this honorable body. Let, then, the friends of the free banks and of the State Bank endeavor to come to some terms of fair compromise on this difficult question of banking and currency. Let us insert in our Constitution no restrictions of the subject, except such as experience has clearly shown to be necessary, and such as judicious men of all parties will cheerfully assent to. Then it will be for the people, through their representatives, to decide whether they will establish the State Bank system, the free bank system, or both, or neither of the systems.

Mr. RITCHEY called for the previous question.

The call was seconded by the Convention on a division, by ayes 67, noes 46; and the main question was ordered to be put.

The PRESIDENT. The question will be first taken on the adoption of the amendment offered by the gentleman from St. Joseph (Mr. Colfax) to the pending instructions.

On this question the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 74, nays 64:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bourne, Bracken, Bryant, Chandler, Chapman, Chenowith, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Ver., Dick, Dunn of Jefferson, Duzan, Elliott, Foley, Garvin, Gibson, Graham of Miami, Gregg, Hamilton, Harbolt, Hardin, Holman, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Morrison of Marion, Murray, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, Wunderlich, and Yocum—74.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Haddon, Hall, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Huff, Jones, Kelso, Kilgore, Kinley, Lockhart, Logan, Maguire,

Mathis, Miller of Gibson, Mooney, Moore, Morgan, [Morrison of Washington, Mowrer, Nave, Newman, Niles, Pettit, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Walpole, Watts, Wolfe, Zenor, and Mr. President—64.

So the amendment to the instructions was adopted.

The PRESIDENT. The question now recurs upon re-committing the section with the instructions as amended.

Upon this question the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 73, nays 65:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bourne, Bracken, Bryant, Chandler, Chapman, Chenowith, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Elliott, Foley, Garvin, Gibson, Graham of Miami, Gregg, Harbolt, Hardin, Helm, Holman, Howe, Kent, Kendall of Wabash, Kendall of White, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, Wunderlich, and Yocum—73.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Haddon, Hall, Hamilton, Hawkins, Helmer, Hendricks, Hitt, Hogin, Huff, Johnson, Jones, Kelso, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Walpole, Watts, Wolfe, Zenor, and Mr. President—65.

So the instructions as amended were adopted, and the section committed.

On motion of Mr. SHOUP,
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

Mr. HOLMAN. I rise, Mr. President, for the purpose of moving a re-consideration of the vote taken prior to the adjournment this morning, by which the section and pending amendments were ordered to be re-committed to the committee on currency and banking; and I wish

to state the motive which induces me to make this motion. It must be very apparent to every member of this Convention, from the course we have been pursuing, and the disposition which we have made of this first section of the article now under consideration, that it is not probable that this Convention will, in any reasonable time, come to any definite conclusion on any question connected with the subject of banking; and it is also very apparent, that whatever conclusion we shall come to—whatever shall be the final action of this Convention on this subject—that action will not be in consonance with the opinions of a majority of this Convention. It has been truly remarked that there are three parties here—a State Bank party, a free bank party, and a no bank party—and, according to the statement made by the gentleman from Posey, (Mr. Owen,) it seems that no one of these parties constitutes a majority in this body. If this be the case, and no concession be made by any of them, then it is manifest, that whatever policy we may adopt, it will not be consistent with the views of a majority of this body.

My motive in moving to re-consider the vote taken previous to the adjournment this morning is this: I propose, if the motion be re-considered, to make the following motion:

"That the whole question of currency and banking be referred to a select committee of one from each Congressional district, and that such committee report a series of sections restrictive of banking, and limiting the powers of any corporation or association hereafter authorized by legislation to issue bills or notes to circulate as money; and that such restrictions and limitations be such as will be equally applicable to special or general banking powers."

Mr. President, if we attempt to go further than this—if this Convention, by a vote, sanctions the State Bank policy—I verily believe that there is a large body of the people of the State of Indiana who will vote against the Constitution for that reason, if for no other. The like will undoubtedly happen if we adopt the free bank system; and even if we refuse all banks, the same result will follow. Then, from the action we have had on the subject, it is manifest to my mind, that our true policy is this: to create restrictions to limit banking in every shape and form, and then to let the character of the institutions, hereafter to be created, depend upon legislative enactment.

I would like to inquire of members of this Convention, if they conceive that the result of the voting this morning is truly indicative of the sentiments of this Convention! if they believe that the section and instructions, as adopted, are really in consonance with the views of the Convention! Suppose the committee report back the sections just as they are instructed to report them; I will venture to say that, in such case, there is not a majority of the

Convention prepared to endorse such a report. And so it would be with the next section. If we re-consider the vote taken this morning, and refer this whole matter to a select committee, with instructions not to report a general or special banking law, but to report restrictions on banking, we shall then attain a desirable end; we shall simply submit to the people of Indiana a Constitution in which no particular banking project is specified, but in which limitations of banking alone are specified. I would inquire how many gentlemen are prepared to say that any proposition of this kind will not be adopted! If, for instance, a restriction were reported that no association of men engaged in banking shall receive a greater amount of interest for their money than individuals are entitled to receive, why, nobody would object to that. And so it would probably be with every other reasonable restriction on banking. But, when we talk of adopting one system or the other, the difficulty then presents itself. In consideration of presenting such a Constitution as the people will approve, I think we ought not to vote specifying any given plan of banking, but merely to create restrictions.

Then, Mr. President, if the Convention will re-consider the vote taken this morning, I propose to offer the resolution which I have in my hand. I would again say to the Convention that the subject of banking is one that I know nothing about. I have not occupied the attention of the Convention on the subject, nor do I wish to be a member of any committee to which this question may be referred. I simply offer the resolution with a view of having the matter settled in some satisfactory manner, which will result, not in the rejection, but in the adoption of the new Constitution.

Mr. SMITH of Ripley. I would merely say that I am not going to vote for the purpose of re-committing. I think we can settle the matter as well here as in any other place. But I rise to make a point of order, and that is, if this motion to re-consider should prevail, what will be the operation of the previous question? The section was re-committed under the operation of the previous question. A motion is made to re-consider. Is that question open to discussion?

The PRESIDENT. I suppose not. If the Convention move to re-consider the vote, the question will go back under the same circumstances as when it was re-committed.

The question being on re-considering the vote by which the section was re-committed,

The yeas and nays were demanded and ordered.

Mr. BORDEN moved a call of the Convention.

The motion was decided in the negative—ayes 44, noes 59.

The question then recurring on the motion to re-consider,

The yeas and nays were taken, and resulted as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Haddon, Hall, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kinley, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Prather, Rariden, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Spann, Stevenson, Tague, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—68.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bourne, Bracken, Chandler, Chapman, Chenowith, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Garvin, Gibson, Graham of Miami, Gregg, Harbolt, Helm, Howe, Kent, Kendall of Wabash, Mather, May, McFarland, McLean, Miller of Fulton, Milroy, Morrison of Marion, Murray, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, and Wunderlich—65.

So the Convention agreed to re-consider the vote.

The PRESIDENT. The question now is, Shall the section be re-committed with the instructions?

Mr. HOLMAN. I offer the following instructions—

The PRESIDENT. It is not in order.

Mr. COOKERLY. I move a call of the Convention.

The PRESIDENT. The motion of the gentleman from Vigo is not in order. We are now under the previous question. The question is, Shall the section be re-committed with the instructions?

Mr. PEPPER of Ohio, Will it not be in order to move to amend the instructions?

The PRESIDENT. Not under the operation of the previous question.

The yeas and nays being demanded and ordered, they were taken, and resulted as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Bicknell, Biddle, Borden, Bourne, Bracken, Chandler, Chapman, Chenowith, Coats, Colfax, Conduit, Crawford, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Garvin, Gibson, Graham of Miami, Gregg, Harbolt, Helm, Howe, Kent, Kendall of Wabash, Math-

er, May, McFarland, McLean, Miller of Fulton, Milroy, Morrison of Marion, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Shoup, Sims, Smiley, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, and Wunderlich—64.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Beeson, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Cookerly, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Haddon, Hall, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kinley, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Newman, Prather, Rariden, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Spann, Stevenson, Tague, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—70.

So the section was not re-committed with instructions.

The PRESIDENT. The question now is, Shall the section pass?

Mr. MAGUIRE. I wish to ask whether it would be in order to move a re-consideration of the vote sustaining the previous question?

The PRESIDENT. No, sir, not under the operation of the previous question.

Mr. OWEN. I ask whether it be in order to move to re-commit with instructions differing from these?

The PRESIDENT. Not at all.

Mr. MORRISON of Marion. Has the Chair decided that the previous question cannot be re-considered?

The PRESIDENT. Not at all. The Chair made no such decision.

Mr. HOLMAN. I move to re-consider the vote ordering the previous question. I understand the decision of the Chair to be this: that the motion to re-commit the section to a select committee with instructions is out of order.

The PRESIDENT. The Chair understands that any motion is out of order, the previous question being in operation.

Mr. HOLMAN. And is a motion to re-consider the vote ordering the previous question under the operation of the previous question?

The PRESIDENT. Yes; there is nothing now to discuss. It is all under the operation of the previous question. If the gentleman from Dearborn wishes to appeal from the decision of the Chair, he can do so.

Mr. BORDEN. I voted with the majority. I think it is in order to move to re-consider the vote ordering the previous question.

The PRESIDENT. Such a motion is not in order, under the previous question.

Mr. BORDEN. Then I most respectfully appeal from the decision of the Chair.

The **PRESIDENT.** The gentleman will please to send up his appeal in writing.

Mr. BORDEN. I will state to the Convention what I conceive to be the position of things. I see no reason why we should desire to insult each other here, or do anything out of order, and—

The **PRESIDENT.** Debate cannot be allowed under the previous question. If the gentleman persists in his appeal, he will please to send it to the Chair in writing.

Mr. BORDEN. I wish to state the manner in which I understand the question, in order that I may be corrected, if I am wrong. The previous question was—

The **PRESIDENT.** The previous question was called on the motion to recommit with instructions—

Mr. BORDEN. Well, sir, that having been done—

The **PRESIDENT.** If the gentleman from Allen will have a little patience, the Chair will explain the "position of things."

Mr. BORDEN. O certainly, certainly.

The **PRESIDENT.** The history of the matter is simply this. In the early part of the day there was a motion to re-commit the section with instructions. A motion was then made to amend the instructions. Pending that motion, the previous question was called and sustained. The question was taken on the instructions, and decided in the affirmative, and then on re-committing, which was also decided in the affirmative. Since the meeting of the Convention after the adjournment, a motion has been made to re-consider the vote on re-committing, and it was re-considered. That brought the matter back to where it was before, under the operation of the previous question. The vote was then taken on re-committing with instructions, that being the pending question, after the motion to re-consider was decided in the affirmative; and the motion to re-commit was decided in the negative. The main question now is, Shall the section pass?

Mr. BORDEN. Then it appears we are still under the operation of the previous question. Now suppose that I voted in the majority on the call for the previous question, the question is whether I would not have a right to move to re-consider the vote by which the previous question was ordered.

The **PRESIDENT.** The Chair has already decided that a motion to re-consider the vote ordering the previous question, while the previous question is in operation, is out of order.

Mr. BORDEN. Then with all due respect I must appeal from the decision of the Chair.

The **PRESIDENT.** To that the Chair can have no objection, and he will only remark to the gentleman from Allen that if he will send

up his appeal in writing, the Chair will entertain it.

Mr. BORDEN. I will withdraw the appeal for the present.

Mr. COLFAX. I would like to inquire of the Chair whether the previous question is not exhausted in the motion to re-commit.

The **PRESIDENT.** No, sir, the previous question is not exhausted, until the main question is put.

Mr. COLFAX. I would like to inquire further, whether a motion ordering the previous question can ever be re-considered, and if so, under what circumstances?

The **PRESIDENT.** Yes, sir, the previous question can be re-considered. The Chair has already explained the matter. Had the motion made by the gentleman from Dearborn (Mr. Holman) been to re-consider the vote ordering the previous question, then that vote might have been re-considered. But the motion was to re-consider the vote ordering the re-commitment of the section, and that being decided affirmatively, the previous question was still in force, and could not be exhausted until the main question was put, which was on the passage of the section.

The question was then taken on the passage of the section, and the yeas and nays being ordered and taken, they resulted as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Beard, Beeson, Bicknell, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mower, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Wallace, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—78.

NAYS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Berry, Biddle, Borden, Bourne, Bracken, Chandler, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Garvin, Graham of Miami, Gregg, Hardin, Helm, Howe, Kent, Mathew, May, McFarland, McLean, Miller of Fulton, Milroy, Morrison of Marion, Murray, Nofsinger, Owen, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, and Wunderlich—59.

So the section was passed.

The **PRESIDENT**. The next business, in the orders of the day, is the following additional section, proposed by the gentleman from Ripley (Mr. Smith).

Mr. **WALPOLE**. In order that this question may be finally settled, I move to re-consider the vote by which the section was passed.

Mr. **GIBSON**. I move that the Convention adjourn.

The yeas and nays were demanded and ordered, on the motion to adjourn, and were taken, with the following result :

YEAS.—Messrs. Allen, Anthony, Barbour, Berry, Biddle, Borden, Bourne, Bracken, Chandler, Chapman, Clark of Hamilton, Cookerly, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Gibson, Gibson, Gregg, Hardin, Howe, Mather, McFarland, McLean, Milroy, Owen, Pepper of Ohio, Read of Clark, Read of Monroe, Ristine, Thornton, Wheeler, and Wiley—33.

NAYS.—Messrs. Alexander, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Chenowith, Clements, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Harbott, Hawkins, Helms, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Taylor, Thomas, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—101.

So the Convention did not adjourn.

Mr. **COOKERLY**. I move that the Convention adjourn.

Mr. **WALPOLE**. The yeas and nays.

The yeas and nays were ordered.

Mr. **BORDEN**. I would inquire whether, if the motion to adjourn is withdrawn, the subject would be open for discussion?

The **PRESIDENT**. The Chair will decide that point of order when it comes up. At present it is not before the Convention.

Mr. **BORDEN**. Then the Chair might as well not decide it at all.

Mr. **KILGORE**. I rise to inquire whether immediately upon the Convention having refused to adjourn, another motion to adjourn is in order without the intervention of any other business?

The **PRESIDENT**. It is in order, as the gentleman from Delaware may learn by a ref-

erence to the 33d rule. The Chair will read it for his information:

“A motion to adjourn shall always be in order and be decided without debate.”

The yeas and nays were then taken on the motion to adjourn, and there were—yeas 29, nays 92—as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Berry, Biddle, Bourne, Chandler, Chapman, Chenowith, Cookerly, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Gibson, Howe, Mather, McFarland, Milroy, Mowrer, Pepper of Ohio, Pepper of Crawford, Pettit, Ristine, Thornton, Wheeler, Wiley, and Work—29.

NAYS.—Messrs. Alexander, Badger, Ballingall, Bascom, Beach, Beard, Bicknell, Blythe, Brookbank, Butler, Carr, Carter, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Gregg, Haddon, Hall, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, Maguire, Mathis, May, McClelland, McLean, Miller of Fulton, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Nave, Newman, Owen, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Taylor, Thomas, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—92.

So the Convention refused to adjourn.

Mr. **MILROY**. I move that the Convention adjourn.

Mr. **WATTS**. Let us have the yeas and nays.

The yeas and nays were ordered.

Mr. **KILGORE**. I again put the question to the Chair, whether it is in order to move to adjourn immediately upon the Convention having refused to do so, and without any other business intervening?

The **PRESIDENT**. The Chair has already informed the gentleman from Delaware that it is in order. He has read to him the rule and given him the reference, that he may read it for himself, if he doubts the Chair did not read it correctly.

Mr. **KILGORE**. Then I respectfully appeal from the decision of the Chair.

The **PRESIDENT**. The gentleman will please to send up his appeal in writing.

Mr. **KILGORE**. After consultation with some of my friends around me, I withdraw the appeal.

Mr. **McFARLAND**. Then I renew the appeal.

The **PRESIDENT**. The gentleman from Tippecanoe will send up his appeal in writing.

Mr. DOBSON. I wish to read a section of the old Constitution. I think it is very applicable to this case.

[Loud cries of "read, read, read;" "order, order, order;" "consent, consent;" and "no, no, no;" and "yeas and nays on the reading."]

Mr. BORDEN. I object to the reading.

Mr. DOBSON. I move for leave to read it.

Mr. BORDEN. The yeas and nays on the motion for leave.

Mr. DOBSON. The section is about cruel and unusual punishments [laughter]. Now I think this is too much punishment—

[Cries of "order, order, order," and "read, read, read," and "no consent."]

A MEMBER. I move that the gentleman from Owen have leave to read the section.

ANOTHER MEMBER. I ask the yeas and nays on the motion.

The PRESIDENT. The Chair would remark to the gentleman there is a motion to adjourn pending which must be decided before any other motion is entertained.

Mr. COOKERLY. Will it be in order to move a call of the Convention?

Mr. PRESIDENT. Yes, sir.

Mr. CRUMBACKER. I move a call of the Convention.

Mr. ROBINSON. I ask for the yeas and nays on the motion for a call of the Convention.

The yeas and nays were ordered.

Mr. WALPOLE. Would not the previous question cut off that motion?

The PRESIDENT. Not now. This is a call of the Convention.

Mr. GIBSON. The yeas and nays were ordered upon the motion for a call of the Convention. Let us take them and see whether we decide there shall be a call.

Mr. PRATHER. I would call the attention of the Convention to the 27th rule. I hope the Chair will read it.

Mr. BORDEN. Let the gentleman from Jennings read the rule himself.

Mr. PRATHER, amid much confusion, read the rule as follows:

"In case of any disturbance or disorderly conduct in the gallery or lobby, the President or Chairman of the committee of the whole shall have power to order the same cleared."

The PRESIDENT. The Chair would remark to the gentleman from Jennings that the Chair has perhaps scolded until members have complained, and has begged and urged them to keep order, that we might get along with the business; and if gentlemen are determined not to heed any of its admonitions, they must take their own course.

SEVERAL MEMBERS. The disturbance is in the lobby.

The PRESIDENT. The Chair cannot keep a hundred and fifty gentlemen in order if they are determined not to preserve order. It may

be very good fun for gentlemen to create all this disturbance, but so far as our constituents are concerned, as the frogs said to the boys, it is "death" to them.

The question was then taken on the motion for a call of the Convention, and there were—yeas 48, nays 85, as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Berry, Biddle, Borden, Bourne, Bracken, Chandler, Chapman, Chenowith, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Foley, Gibson, Hamilton, Harbott, Howe, Kent, Mather, McClelland, McFarland, Miller of Fulton, Milroy, Morrison of Marion, Mowrer, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Shoup, Smiley, Taylor, Thomas, Thornton, Wheeler, Wiley, and Work—48.

NAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Bicknell, Blythe, Bowers, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Coats, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Edmonston, Elliott, Fisher, Foley, Frisbie, Garvin, Graham of Miami, Gregg, Haddon, Hall, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hugin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McLean, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Todd, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—85.

So the motion for a call of the Convention was not agreed to.

The PRESIDENT. The question now is on the motion to adjourn.

Mr. COOKERLY. The yeas and nays on the motion to adjourn.

The yeas and nays were ordered.

Mr. ALLEN. I desire, Mr. President, that I may be excused from voting.

The question being taken, the gentleman from Carroll was excused from voting.

Mr. KENT. I desire, also, Mr. President, to be excused from voting.

SEVERAL MEMBERS. The yeas and nays on the motion to excuse him.

Mr. KENT. I will withdraw the request.

The yeas and nays were then taken on the motion to adjourn, and they resulted as follows:

YEAS.—Messrs. Allen, Ballingall, Berry, Biddle, Bourne, Bright, Chandler, Chapman, Chenowith, Cookerly, Crumbacker, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Graham of Miami, Gregg, Hendricks, Jones, Kinley, Maguire, Mather, McFarland, Milroy, Niles, Owen, Pepper of Ohio, Pettit, Read of Clark,

Ristine, Shoup, Wheeler, Wiley, and Work—35.

NAVS.—**MESSRS.** Badger, Barbour, Bascom, Beach, Beard, Beeson, Blythe, Bowers, Bracken, Brookbank, Butler, Carter, Clark of Hamilton, Coats, Cole, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gootee, Haddon, Hall, Harbolt, Hardin, Hawkins, Hitt, Hogin, Holman, Huff, Johnson, Kelso, Kendall of Wabash, Logan, March, Mathis, May, McLean, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morgan, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Todd, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, and Mr. President—74.

So the motion to adjourn was not agreed to.

MR. PETTIT. I ask leave of the Convention to be allowed to introduce a resolution.

Loud cries of "read, read, read."

THE PRESIDENT. Will the Convention suspend the rules, in order to allow the gentleman to read the resolution?

Loud cries of "consent, consent," and "no, no, no," and "read, read."

MR. PETTIT. I ask for the yeas and nays on the question of suspension of the rules. If gentlemen are determined to have everything their own way, let them show themselves upon the record.

THE PRESIDENT. The Chair would remark to the Convention, that it must be apparent to any one, that a portion of the delegates present are determined that no business shall be done, even if we sit here till dark; and as it appears to the Chair that it would be much more in consonance with the interests of our constituents, and more creditable and honorable to ourselves, I pronounce the Convention adjourned until Monday morning, at nine o'clock.

The Convention accordingly adjourned.

MONDAY, JAN. 13, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. NEW.

The journal of yesterday was read and approved.

REPORTS FROM SELECT COMMITTEES.

MR. KENT, chairman of the select committee, to whom the different subjects in relation to negroes and mulattoes were referred, reported a series of sections, providing that no negro or mulatto shall come into or settle in this State after the adoption of this Constitution; contracts with negroes coming into the State to be void, and persons employing them, or otherwise encouraging their remaining in the State, shall

be fined not less than ten nor more than five hundred dollars; there shall be an annual appropriation for the gradual colonization of negroes and mulattoes and their descendants, who are here at the adoption of the Constitution; after 1860, no negro or mulatto shall acquire real estate, except by descent; the General Assembly to pass laws to carry out the provisions of the foregoing sections, if adopted by the people. This article shall be submitted to a separate vote of the people, in this form: *Exclusion and colonization of negroes and mulattoes, "aye or no."*

The sections were read a first time, and,

On motion of **MR. GIBSON**, the report was laid on the table, and five hundred copies ordered to be printed.

MR. WALPOLE obtained leave to withdraw his motion, made on a previous day, to reconsider the vote by which the section, providing for banking on a specie basis, was passed.

The Convention then proceeded to the consideration of the

ORDERS OF THE DAY.

THE PRESIDENT announced the question as being on the amendment of the gentleman from Wells (**MR. BASCOM**) to the section offered by the gentleman from Ripley (**MR. SMITH**). The amendment proposed to refer the subject of banking to a vote of the people,

MR. LOCKHART moved to refer the section, &c., &c., to a select committee of one to each judicial circuit with instructions to report an article providing "that the General Assembly shall, at its first session after the adoption of the Constitution, enact a general system of banking, and extend the charter of the present State Bank, until two years previous to the last bonds of the Bank are due; the profits to the State, during such extension, to be applied as the Legislature may provide, after which period, a State Bank and Branches may be provided for by law, and shall conform so far to the general law for banking, as the General Assembly may require."

The question being upon the motion to recommit with instructions.

MR. BASCOM. I hope the section will not be re-committed. I desire to have, if possible, a direct vote taken upon the subject. It is as well that the Convention consider this matter coolly this morning. We have endeavored to lay down some rule to govern the banking of this State. In that we have failed; for there was a section adopted which is not satisfactory, perhaps, to a fair majority of this body. It is for us to calculate the results that may follow the adoption of any one system of banking. Gentlemen tell us that, if you adopt a State Bank system, the free bank party, as they are termed, will, when the Constitution is submitted to the people, with all the influence and power they can bring to bear, throw it against

the adoption of the instrument. They say that a Constitution, with a provision merely for a State Bank, can never be adopted. You find, on the other hand, a perhaps equally large number of men who are pledged to kill the work of your hands.

I want the Convention to take some ground, and not to smother the section that we have been talking about so long. For my part, I desire that the whole subject should be submitted to the people; we have found that we cannot agree. Though personally, with a small number here, I am opposed to all banking systems, yet I am ever willing that the majority of the people of the State should decide what they want. I was sorry last week to see, when there was a temporary triumph of one party, that they should rejoice over the downfall of their opponents. It is not proper.

Sir, if we should submit this subject to the people, would any man here say that they are not as capable of correctly deciding it as we are? For in truth, we, by a week's labor, have shown to the world our inability to decide it. Like another gentleman, who has previously made the observation, I do not suppose, for a moment, that when this Convention adjourns, all the wisdom and intelligence of the State shall have been exhausted. I believe that other bodies will hereafter assemble, with as much foresight and understanding of the wants of the people, as this Convention. Then why not submit the question directly to the people, whether they want a bank or not? If they want a bank, let them instruct their representatives in the Legislature whether it should be a State Bank, or a free bank, or both. If we have the vote taken in that way, the minority will be satisfied. I think this is the most reasonable and practicable mode of settling the question.

I hope the subject will not be re-committed with the instructions proposed by the gentleman from Vanderburg (Mr. Lockhart). I do not suppose that a very large number in this Convention would consent to re-charter the present State Bank. They all know that there are many evils connected with it. All these banks tend to the one end—that is, to make money off the people. I care not whether you call them State Banks or free banks, it is all the same to me. The only difference that I perceive is, will you have a shaving-shop in every county in the State, or will you confine those shaving operations to a few, as in the State Bank.

I am not in favor of any one system; I am pledged to none. But I have no desire to embarrass the will of a majority of the Convention. I am willing to meet gentlemen and discuss the question; and when the matter is fairly investigated, and the wishes of the majority are expressed, I sit down contented. It is not my purpose to oppose the will of the majority. If

we expect to establish any system, we must agree among ourselves; and when you have decided upon what system it shall be, the members on this floor who are opposed to all banks, will go with you, and help to fix the restrictions. But I do hope the Convention will allow us to have a direct vote upon the question of submitting to the people.

It has been remarked that "a large majority of the people are in favor of banking." We have no assurance of that. I believe that in the county I represent, and many of the contiguous counties, a large majority of the people, if the question were put to them, would say: "No banks." I am willing to hear the views of all; but when we have proven, by a week's experience, that we cannot settle this matter upon any basis that will be acceptable to the majority of the body, let us, in the name of reason, refer it to the people who sent us here, for their decision. This morning there was a report made from a select committee, referring the negro question to the people. Is not this question of much greater importance to the people than all the negroes in the State. The monetary interests of the State are more important than mere political interests of the State. I hope, then, that the section will not be re-committed, and that a direct vote may be taken upon the question of submitting the subject to the people.

Mr. OWEN. There is a difference of opinion in this Convention in regard to banking; but there is one thing in regard to which every man agrees, and that is, we want something done. We want to go on, and pass some section or another. Now it is quite plain that we cannot, by itself, pass a provision that there shall be a general banking system, because the State bank men and the no bank men would unite and vote it down. It is equally clear that we cannot pass a recognition of the State bank system, for it will also be voted down. But we can leave these matters, and pass some general restrictions that will not apply to one system more than to the other. I see no other way of getting on. Then I hope this motion to re-commit will be voted down.

I think the matter of submitting the question to the people in this form is impracticable. You cannot submit to the people all the regulations and restrictions thrown around those institutions. It is not sufficient to say to them, "will you have a State bank?" You must explain the whole matter to them; and so with the free bank. It is in my opinion that should be put through the Legislature to the people. I want to see this matter voted down. We are now on a middle ground, so let us go on, and put in such restrictions as the no bank, the State bank, and the free bank men, will agree upon. [Cries of "consent."]

Mr. SMITH of Ripley. I agree with the gentleman last up that now is the time to fix

upon our restrictions. I think we have now met upon what I consider a half way ground. I understand a gentleman to propose a proposition based upon the State bank system, and I understand that this side of the House desire to stand upon the compromise ground. I go, sir, for voting down the proposition of the gentleman. I say it is now too late to bring up the old State bank plan, because it has been decided by the Convention that they will not recognize it. The gentleman from Posey is correct when he says "we now stand on a middle ground." I think that the restrictions we are ready to vote can be adopted, and we thus be able to get rid of this bank question to-day. How long will this Convention sit here! Will we never get through with our business? I say that if we dispose of this question to-day, we can adjourn in three weeks. I think the people will be pleased with the Constitution we have so far adopted, if we only go home within a reasonable time.

Mr. PETTIT. The question, as I understand it, is on the motion to re-commit with instructions?

The PRESIDENT. Yes, sir.

Mr. PETTIT. I will say, before I sit down, that I will offer an amendment to these instructions; and I hope the proposition to re-commit will then be voted down. I agree with gentlemen that we ought not to re-commit, nor would I offer an amendment were I not afraid that the motion to re-commit might prevail. I propose then to amend the instructions as follows—

The PRESIDENT. The Chair would suggest to the gentleman from Tippecanoe a shorter way of arriving at the same thing, and that is by calling for a division of the question.

Mr. PETTIT. Then, sir, I call for a division.

The question being first upon re-committing,

Mr. LOCKHART. The leading motive for making this proposition, grows out of the fact that a large amount of time has been already consumed in the discussion of this subject. As soon as we dispose of one proposition, another one is introduced; and I do not know how long this system of offering propositions will continue. I think that by re-committing in the manner proposed, we may arrive at an early conclusion—a conclusion satisfactory to a majority of the Convention.

The proposition, or rather the instructions, which I have offered, proposes that we shall have a general banking law ingrafted on the Constitution, the details of which shall be determined by the Legislature. It also proposes that the State bank shall be re-chartered.

It is well known to every member of the Convention that a large portion of the capital of the State bank is owned by the State, and that it was borrowed at five per cent. interest; the last of the bonds issued for this loan will fall due in 1866. I propose to extend the charter until within two years of that period, thus

affording ample opportunity to wind up the affairs of the institution by the time the bonds are payable.

Power is also proposed to be given to the Legislature, to establish after that period a State bank, with branches, which shall conform to the provisions of the general banking law, so far as the Legislature may require. I know that there are some provisions in the charter of the present State bank that are objectionable, which I propose that the Legislature should remedy, in the act extending the charter.

If we close up the bank at the expiration of its present charter, we must, from necessity, have a large amount of surplus fund on hand, for which we will be paying interest. Sound policy would require that these funds should be kept active and productive. Can this be safely done without a continuation of the bank charter. This is emphatically a compromise proposition—one which ought to meet with the approbation of the friends of both systems.

Mr. TAYLOR. I am anxious to see the Convention take some course that would in my judgment seem a little more like coming to a conclusion. I am surprised to see gentlemen who have been long in public life, opposing matters predicated upon or growing out of parliamentary laws or usages. Now, sir, it was the gentleman from Tippecanoe who has been endeavoring to do so much, and carrying nothing—that opposes every principle of common sense in relation to parliamentary usages. What has been the course of legislative bodies, in a case like this, since parliamentary rules were first adopted? Whenever a question has become so entangled that the body cannot get at it, they divide it and send it to committees, in order that they may be enabled to come to a satisfactory conclusion upon it. All that we want with committees is merely to deliberate for the good of the body of which they compose a part. Why, sir, if gentlemen will ever be convinced, it seems to me a whole week thrown away ought to convince them that we should adopt a rule of parliamentary action, which has been long established. If this Convention be more competent to bring in their own propositions, and do their own business, than committees, I do not see the necessity of our having appointed a number of committees in the first instance. I think it of great importance that this subject should be re-committed. What is the course adopted, when we see two legislative bodies, as the Senate and the House of Representatives, disagreeing upon a bill passed in either House? The one House will not recede a step from its position, nor will the other advance. What do they do? They always appoint a committee of conference who meet together, and strike upon some plan by which they may come to an agreement. They compromise the matter—one recedes a little, and the other comes a little further, and so they are en-

abled to pass the bill. I will say, too, that so far as my experience goes, I never saw an attempt on the part of one House to browbeat the other from its position. The committee invariably endeavors to arrive at a conclusion that will be agreeable to the two Houses; and when the report of the committee is made, I never knew the body to reject it. It is a principle of common sense. I do not see how we can come to a conclusion, if the course suggested in relation to this matter be not adopted.

It seems to me that this question should not excite the Convention into a perfect perspiration, but rather should elicit the most cool and calm consideration of every man upon the floor. The interests of our constituents are so bound up in this question, that, if we dispose of it in such a manner as to operate injuriously to the public, they never can forget the action of the hundred and fifty men here assembled. We were not sent here to get up the most severe and stringent banking system we could devise. We were sent here, sir, to establish a system the best adapted to the interests and wants of this people. In this large body we cannot settle down upon any one system, pursuing the course that we have heretofore pursued—opinion is too much divided. We may, to be sure, settle some few isolated restrictions, but we cannot come to a definite conclusion upon the main question, as to what sort of banks we shall have. For one, I am in favor of a free bank; but I am not willing to strike out of existence, that old institution that has so long and so well subserved the interests of the people of Indiana. I do not see why the Convention will not agree to re-commit.

Mr. DOBSON. I think, myself, that the section we have passed is a tolerable good one. All we want, is, to have the restrictions settled here, and not re-commit the matter.

Mr. COOKERLY. I hope the proposition will not be referred—[much noise and confusion]. I tell you what it is, gentlemen, I am going to talk. [Stamping of feet.] Mr. President:—[more stamping], I do hope, sir, that the matter will not be referred. We have [increased noise] had this question before a committee.—[The Speaker here grasped a sand-box and looked intently toward the left side of the Hall. The action created much laughter]. I have frequently asserted, [shuffling of feet], and I want the Reporter to take it down now, that this Convention was a *mob*, and I believe—[the disorder increasing]—I believe it. I want the Reporter to take it down. [Loud hammering, and stamping on the floor.] I see gentlemen here, hammering, who have spoken for hours upon the subject—[noise increasing]—I say I have perceived gentlemen hammering and making a noise, who have spoken at length upon this question. [Disorder unabated.] I think, sir, that the motion to refer comes with bad grace from the gentleman who made that propo-

sition. Why did he not vote to refer this question on Saturday? [Cries of "hear him—order."] He comes in to-day, when he begins to tremble for the old State Bank. That is the reason why he wants the matter referred. I hope a majority of the Convention will not vote to refer. We can as well settle the matter here, as any thirteen men in a committee room. If we wish to refer it, why not, then, without instructions? [Mr. C. here paused for several moments].

Mr. LOCKHART. Mr. President—

Mr. COOKERLY. I have got the floor, I believe: I wish to inform the gentleman that I am not going to yield it until I am ready. Why does he come here to propose a re-committal? [general noise and confusion prevailing]. I wonder, is there any more confusion now than on Saturday, when the President adjourned the Convention?

Mr. PETTIT (in his seat). It is only a few of the old bankers.

Mr. COOKERLY. Yes, sir, they will tremble before we get through—[lifting up a glass]—and whenever the question is submitted to the people, they will tremble—[the glass here fell from the speaker's hand, and was broken upon the floor—this caused much laughter and thumping on the desks]. Gentlemen might thump me until they thump me to death, and they would not get me to sit down before I wished. I know who they are—they are the old State Bank men—[increased thumping—general noise]. I will admit, however, that there are some decent men in that party, and some that are monstrous indecent—a perfect set of blackguards—men, whom I would swear, without knowing it positively, were in favor of the State Bank; an institution that has monopolized—[unable to be heard from the noise prevailing]—and eaten out the very vitals of the state [laughter]. Some of them, sir, I am sorry to say—[more confusion]—profess to belong to the democratic party; to that party which has always stood upon the broad platform of "no exclusive privileges"—[the noise and disorder still continued; the efforts of the Chair to repress it having been ineffectual]. Let this noise go on; I like it—it sounds very well in my ear. [Cries of "order, order."] Let them thump away, I do not care for it any more than for the winds that play. I am going to stay here on this floor as long as the rule allows me. [A voice—they are ashamed of themselves now.] I ask the people present to look at their conduct. This Convention has been in session three months; and I want the Reporter to take it down, that these are the men who have kept the Convention so long in session. They are the men who, by every act in their power, have thwarted the will of the people, and have squandered the money of the freemen of Indiana—they have basely squandered it. I wish that to go down, too, for the country. I wash my hands of it.

I never have done an act calculated to thwart the will of the majority of the Convention.

MR. PRATHER. I tried to get the floor yesterday for the purpose of moving a suspension of the rules so that I might introduce a resolution, but I was not successful in my endeavor. I am convinced, Mr. President, from having been an attentive listener to the discussions of this body, that no good will grow out of our remaining here. We have been here four months or nearly so already. When I left home I expected the deliberations of the Convention would be closed in six weeks. I have been in my seat almost every day since we assembled. I believe the yeas and nays have not been called, with but one or two exceptions, without my having answered to my name. But the time has arrived at which I have become convinced that we can do no good by remaining here. I have prepared a preamble and resolution to the effect that on to-morrow morning we adjourn *sine die*. [Loud cries of "consent."]

I am a State Bank man, but not a State Bank man of the kind you, sir, (to Mr. Pettit,) represent me to be. [Noise prevailing.] I wish gentlemen to know that when they attack State Bank men, they attack me. I am not one of the kind which the gentleman from Tippecanoe termed "swindlers."

MR. PETTIT (in his seat). I did not say you were any bank man.

MR. PRATHER. I say that—

MR. PETTIT. Give me the floor and I will state what I said.

MR. PRATHER. I appeal to the Convention if the gentleman did not say we were "thieves and robbers."

MR. PETTIT (Mr. Prather giving way). I said it, and repeat it, "that the man who in a political community asks for rights and immunities greater than all the other parties in the community have is a robber." I said further, "that the man in a political community who will calmly submit to be shorn of his political rights, is a craven, a coward, and a slave." I made the remark generally, and if the shoe fit, or pinch, let the gentleman have it. [A laugh.]

MR. PRATHER. The gentleman has made his explanation. The Convention heard what he said. If I have misrepresented the gentleman, I can say that I did not desire to do so. Now in reply to the gentleman from Vigo, (Mr. Cookerly,) I will ask who caused the confusion on Saturday?

MR. COOKERLY. I will answer the gentleman. For one—

MR. PRATHER. You called the yeas and nays?—

MR. COOKERLY. I did, certainly. I ask the gentleman who voted down the proposition to re-commit, when our friends were absent? Under such circumstances I would always call the yeas and nays.

MR. PRATHER. I will now, sir, move to suspend the rules for the purpose of introducing the preamble and resolution to which I have made allusion.

THE PRESIDENT. The Chair would remark that a motion to suspend the rules would not be in order—there being a pending motion to re-commit.

MR. EDMONSTON thought there would be a great difficulty in arriving at a conclusion if these fire-brand speeches were thrown into the Convention. He had been in hopes that no motion to re-commit would have been made this morning, and the Convention would have gone on and determined the restrictions. His opinion was that the question of banks or no banks, or what description of banks we were to have, should be left open to the Legislature. The people would decide the question in the election of the members of the Legislature at the proper time. He was satisfied, and he supposed every gentleman was satisfied, too, that if the Convention adopted any one system of banking to the exclusion of the others, their entire labors would be in danger of being defeated. It would be so in his section of the State. The free bank section of the country would go against the Constitution if the Constitution adopted the State Bank system, and *vice versa*. Was it not better then to leave this question (well guarded) to the people? He hoped the gentleman from Vanderburgh (Mr. Lockhart) would withdraw his motion to re-commit; the restrictions could then come up one after another and be voted upon. The Convention should try to act with some degree of calmness, and so endeavor to arrive at a conclusion.

MR. KELSO. Before this question is disposed of I desire to say a word or two in reply to the remarks of the gentleman from Vigo, (Mr. Cookerly,) because the remarks he made here this morning are to go upon paper, and be transmitted to the people of Indiana, and it becomes necessary that a statement of the facts as they exist should go out with those remarks, otherwise I would not have condescended to notice them. What I say about this matter, I want to go out with his remarks.

He charges the State Bank men with having wantonly and unnecessarily squandered the time and money of the freemen of Indiana—and that charge I assert unequivocally is not true. The State Bank men are no more chargeable than any other portion of the Convention, with occupying its time; and I believe that no one of them has had any other wish than to progress as speedily as possible with the business of the Convention, believing that in so doing they were discharging their duty to their constituents.

I confess, that on Saturday we acted in Convention, very much like a mob; but were not the free bankers as prominent in getting our business into confusion as the State Bank

men? Was not the gentleman from Vigo prominent and foremost in that skirmish of words and the scene of confusion?

Mr. COOKERLY rising, exclaimed, "not so!"

Mr. KELSO. Unless there was truth in the charge, I hardly think the gentleman would have jumped up so quick. A short history of the transaction of that scene, will perhaps not be inappropriate. We met and went to work on the bank question. How it happened I do not know, but a majority of the Convention passed a provision providing that all banks hereafter should be organized on a specie basis all paid in. Well sir, the gentleman from Vigo did not seem to rest well under this vote. That was his privilege. I find no fault with him for it. He had a right to get hopping mad if he chose about it. What followed? After this restriction had passed, a motion was made by the gentleman from Hancock (Mr. Walpole) to re-consider the vote; and that gentleman had of course a perfect right to make it. As a member of the committee on elections, I examined his credentials. I found him to be a member of this Convention regularly elected. He has exercised his privileges since he has been here, and to his propositions and speeches I have listened with attention. He is not only a regular member of this Convention, but a business member, and a gentleman who is fully able to defend himself, and therefore I shall not attempt to defend his conduct. He certainly had a right to make the motion; it was not out of order; it was not unparliamentary; and I am sure he made it in a cool and collected manner; there was nothing boisterous or menacing in his style, whatever. What follows? Who led on then? I want to know if motion after motion was not made by the free bankers to adjourn, without the single intermission of any other question except once, a call of the Convention, until finally, the Chair was forced—owing to the general confusion which prevailed—to take the responsibility upon himself of adjourning the Convention. Now, if the gentleman from Vigo denies that he was a prominent actor on this occasion, he denies that which is the truth, and he knows it.

Mr. COOKERLY. I do not deny that I opposed motions which were adverse to the doctrine for which I contended. I referred mainly to the uncalculated for action of the gentleman from Hancock (Mr. Walpole).

Mr. KELSO. I assert, sir, that no man could have been more free from an excited boisterous, turbulent, or mob-like manner than was the gentleman from Hancock, when he made his motion to re-consider.

The making of a bare motion parliamentary in its character, certainly was not criminal; and yet the gentleman from Vigo, charges upon the State Bank men, the origin of all the disorder that prevailed on Saturday last. The gentleman

himself, voted in the majority, evidently with the intention of moving a re-consideration himself. But finding the majority against him stronger than he had anticipated; he changed his vote. It was his right and privilege so to vote. But can he complain? Has he any just reason to complain of the State Bank men voting against any adjournment, when they desired to have a question settled definitely, which had already obtained the votes of a majority of the Convention in its favor? I think not, sir. I deny emphatically then, sir, that the State Bank men produced the noise and confusion on Saturday; they only exercised the privilege which they had the right to exercise in voting against an adjournment, and, sir, they done so in a peaceable manner. The gentleman cannot deny that we had that privilege, and that we exercised it in a proper manner. Therefore, I say the charge he has made against us, was an incorrect charge. I wish to add here that I desire to do justice to the gentleman, for certainly I have no ill feeling towards him. This morning when he got up to speak, I must say that I do not think he was very fairly treated. It is hardly sufficient to justify the treatment he received, when I say that it was paying him off in his money. He led off the free bank men on Saturday, and converted the Convention into a mob, or something very much like it; and I suppose some of the State Bank men thought they would pay him off this morning, in his own coin.

I believe we are commanded to return good for evil; though it is a tolerable fair rule to treat other men as they treat you. I do not blame the gentleman for getting excited and suffering his angry feelings to overflow somewhat, on the present occasion; but I do blame him for charging upon the State Bank men, that they were the instigators and perpetrators of all the noise and difficulty that prevailed on Saturday, when he knows in his own heart, that that charge ought not to have been made. I thin , sir, that the gentleman and those who go with him in favor of free banks, will ere long, find they have mistaken or acted contrary to the wishes of the people. I repeat, sir, that the people I represent, are in favor of a State Bank, with proper restrictions, in preference to any other system of banks, and most decidedly in preference to the free bank system. And this, sir, I believe is the desire of the majority of the people of the State. I have only to say, sir, that if I can defeat the free bankers, I shall use every effort honestly, to accomplish that object; if they defeat us, why, I must acquiesce in the will of the majority. This is the second time I have attempted to speak upon this subject, since it first came up; in my first speech I gave my views at length, in regard to it, and since then, I have been contented to let the matter go on. I hope to learn something from the arguments presented on both sides of the ques-

tion, and I desire that the discussion should go on until all parties are satisfied. With these remarks, Mr. President, I will take my seat.

Mr. LOCKHART remarked that he was not aware when he submitted his proposition that it would lead to the discussion which had taken place. He had submitted it as a measure of compromise and with no other intention as a proposition upon which State Bankers, free bankers, and no bankers might probably unite. He had thought that the reference he had proposed would meet the views of a majority of the Convention, and that then the question at issue would be settled without any further difficulty.

This morning he had been indirectly alluded to by the gentleman from Vigo, as a disturber of the peace of the Convention. Now, he thought that members would bear him out in saying that his conduct since he entered the Convention, had been uniformly courteous and respectful; that he had not, upon any occasion, united with those who felt disposed to make noise and confusion in the hall, nor had he occupied altogether more than an hour and twenty minutes of the time of the Convention since it met. He had not been absent either, more than two hours of the time since the Convention first assembled. He said this because he did not consider himself obnoxious to the charge brought against the advocates of the State Bank by the gentleman from Vigo. All he would say in reply was, that if the gentleman from Vigo alluded to him, he was ignorant about what he spoke, or he knew not what he said.

Mr. COOKERLY. I did not allude to the gentleman from Vanderburgh; he is too much of a gentleman to have acted in the manner I have described.

Mr. LOCKHART. As my motion is evidently leading to too extended and unnecessary discussion, I will withdraw it.

Mr. COOKERLY. I did not apply my remarks to all of the State Bank men at all. I applied them to a portion of that party only, and I will not take them back.

The PRESIDENT. The question is on the amendment of the gentleman from Wells (Mr. Bascom) to the proposition of the gentleman from Ripley (Mr. Smith).

Mr. CARR. I move to lay the amendment on the table.

Mr. BASCOM. Oh, withdraw your motion and let us have a direct vote upon the question.

Mr. CARR. I will withdraw it.

Mr. WOLFE. I do trust the gentleman from Wells will withdraw his amendment, for there is no use to vote upon it at present. We do not know that we are going to have a bank, and if we conclude, finally, to have one, we can make a suitable reference. I have not occupied much of the time of the Convention hitherto, and I have said nothing as yet on this subject; all I desire to do is to advise the members of the Convention to go on with their

business as statesmen should go on. Let us take proposition after proposition, and proceed with its consideration until we have passed or rejected it. I admonish my friends of all parties that the people are looking with anxiety for a speedy and satisfactory termination of our labors. Let us act like sensible and prudent men, such as the people thought we were when they sent us here. (Applause.)

Mr. HALL. I have had some little experience in legislation, and it does appear to me that we are not much in that state of mind in which we are prepared to act upon this subject. If any proposition, either in favor of the State Bank or the free bank is brought up now, we are not now prepared to act calmly in regard to it. I am willing, sir, to leave the subject to the people—to submit the question to them, in a distinct form, whether they will have a free bank or a State bank. I prefer, sir, that this subject should go to a select committee, and then, when the report is presented, we will be able to act calmly and deliberately in regard to it. In the mean time we will have an opportunity to counsel together and reflect upon the matter. I therefore renew the motion to refer the subject to a select committee of one from each judicial circuit.

Mr. MATHER said that he was satisfied that the Convention was not prepared to act upon the subject to-day, and that it would be much better to postpone definite action in regard to it until to-morrow. Men's animal feelings were up and their judgments were down, and they were not prepared to act, at the present time, in a deliberative and cautious manner. They had come to a crisis now, which they could not pass readily, and he wished gentlemen would allow themselves a little time for reflection and sober thought, before they proceeded to action.

Mr. HALL would only say, in reply to the advice of the gentleman, that he thought the same object which the gentleman had in view would be attained by referring the subject, without instructions, to the select committee he (Mr. H.) had proposed. While the committee were out, the Convention would have time for deliberation.

Mr. SHOUP. Mr. President, what is the main question?

The PRESIDENT. The main question is upon the engrossment of the additional section proposed by the gentleman from Ripley (Mr. Smith.)

Mr. SHOUP. Would it be in order to lay the motion to refer upon the table?

The PRESIDENT. No, sir.

Mr. RITCHEY. I expected, sir, a very beautiful fight between the free bank men and the State bank men. I had been looking for it some three or four months, but I really did not expect a struggle so fierce and protracted as this has been. The conflict, so far, has demonstrated clearly, that neither of these two parties will

have the power of doing anything they wish to do, and all that we can do, and all we ought to do, is to put some good and wholesome restrictions in the new Constitution, to prevent either the State bank or free bank system doing any mischief to the people. That is what we want, and that is all we can accomplish.

In regard to the suggestion of the gentleman from Gibson, (Mr. Hall,) that we had better postpone the consideration of this subject at the present time, and let a select committee act upon it, I have only to say, that if the consideration of the subject is postponed at all, it will only be bottling up our wrath, to be uncorked and flow out in an increased volume when the report of the committee is returned. I am in favor, as argument has nearly been exhausted upon this subject of proceeding with its consideration, and of voting upon the propositions presented, until we have come to some definite settlement of the question, either one way or the other.

Mr. CRUMBACKER. I have not as yet, sir occupied much of the time of this Convention upon this subject, and I desire now merely to throw out one or two suggestions. Gentlemen talk a great deal about the excitement now prevailing here on this subject and assert that in consequence of it we are unable to proceed with our business. Now, sir, so far as I, myself, am concerned, I am as calm as a summer's evening. I feel perfectly cool and collected, and just as well prepared to vote upon the question now as I should be if it was postponed for six months. I am in perfect good humor with everybody, and I am well satisfied that this Convention is as capable of adjusting this matter how as it will be in two weeks from this time.

Some few persons have been excited in regard to this matter ever since it came up for consideration, and that excitement has been manifested at times—was manifested this morning. And, sir, these persons, I care not when the subject comes up—will give us an exhibition of their temper. The discussion of the subject will be to them as a torch applied to a train of powder—it will blow it up. I think sir, we have had the explosion this morning, and that the smoke is now clearing off so that we can see to proceed with our business.

I hope, sir, the subject will not be referred, but that we will proceed to act upon it in as quiet and harmonious a manner as we can under the circumstances by which we are surrounded. I acknowledge, sir, that at times I have been a little too excited and perhaps too mirthful, and to my own shame I confess that on various occasions, I have joined in the clapping of hands but I shall do so no more. Let us have free and untrammelled discussion and act with moderation and circumspection, and it will be much more to our credit, and to the credit of our constituents.

'The PRESIDENT. The question is upon the motion of the gentleman from Gibson (Mr. Hall) to refer the pending section to a select committee composed of one from each judicial district.

Upon this motion the yeas and nays were demanded, and having been ordered, the Secretary reported the following result—yeas 34, nays 107:

YEAS.—Messrs. Barbour, Borden, Bright, Carr, Clark of Hamilton, Davis of Madison, Dunn of Jefferson, Frisbie, Gibson, Graham of Miami, Hall, Hamilton, Hawkins, Hendricks, Holman, Kendall of Wabash, Lockhart, Maguire, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Morrison of Washington, Newman, Prather, Rariden, Read of Clark, Schoonover, Smith of Scott, Spann, Taylor, Wallace, Watts, and Mr. President—34.

NAYS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carter, Chapman, Chenowith, Clements, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Garvin, Gootee, Gordon, Graham of Warrick, Gregg, Haddon, Harbolt, Hardin, Helm, Helmer, Hitt, Hogin, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of White, Kilgore, Kinley, Logan, March, Mather, Mathis, May, McClelland, McLean, Miller of Clinton, Milroy, Moore, Morgan, Morrison of Marion, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Trimble, Walpole, Wheeler, Wiley Wolfe, Work, Wunderlich, Yocum, and Zenor—107.

So the section was not re-committed.

Mr. READ of Clark. I move to re-consider the vote on the passage of the section passed on Saturday, providing that all banking shall be on a specie basis actually paid in.

The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 63, nays 80—as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Berry, Bicknell, Biddle, Borden, Bourne, Bright, Bryant, Chapman, Chenowith, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Garvin, Gibson, Graham of Miami, Gregg, Helm, Howe, Kent, Kendall of White, Mather, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Morrison of Marion, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod,

Shoup, Sims, Smiley, Smith of Scott, Steele, Thomas, Thornton, Trimble, Wheeler, Wiley, and Work—63.

YAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Beeson, Blythe, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Davis of Parke, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Gordon, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Murray, Nave, Newman, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Taylor, Todd, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—80.

So the vote was not recorded.

THE PRESIDENT. The question is now upon the adoption of the amendment offered by the gentleman from Wells (Mr. Bascom).

The amendment was not concurred in.

THE PRESIDENT. The question now recurs upon the section proposed by the gentleman from Ripley (Mr. Smith).

MR. KILGORE. I move to strike out the first part of the section, and insert the following:

“The General Assembly shall have power to establish a State Bank and branches, with such powers and under such restrictions, as may be prescribed by law.”

MR. KENT. I move to lay the amendment of the gentleman from Delaware upon the table.

Upon this motion the yeas and nays were demanded and ordered, and being taken, the Secretary reported the following result—yeas 93, nays 48:

YEAS.—Messrs. Allen, Anthony, Badger, Bascom, Beach, Beeson, Berry, Bicknell, Bidle, Borden, Bourne, Bracken, Bright, Bryant, Butler, Carter, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Holman, Howe, Johnson, Kent, Kendall of White, Kinley, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Morgan, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Stevenson, Taylor, Thomas,

Thornton, Todd, Trimble, Watts, Wheeler, Wiley, Work, Wunderlich, and Yocum—93.

NAYS.—Messrs. Alexander, Ballingall, Barbours, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Davis of Madison, Edmonston, Foster, Frisbie, Gootee, Graham of Warrick, Hall, Hawkins, Hitt, Hogin, Huff, Kelso, Kendall of Wabash, Kilgore, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Milligan, Moore, Morrison of Washington, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Smith of Ripley, Spann, Tague, Wallace, Walpole, Wolfe, Zenor, and Mr. President—43.

So the amendment was laid upon the table.

MR. OWEN. I move to strike out the provision providing for a mutual liability of banks, and insert in lieu thereof the following:

“No law shall pass sanctioning, directly or indirectly, the suspension by any bank or banking institution, of specie payments.”

I trust, Mr. President, that we will now go to work and take up those restrictions which we can pass without much difficulty. This is one which I think will pass; and after we have passed this, let us go to work upon the others to which there is no particular objection.

MR. SMITH of Ripley. The gentleman from Posey (Mr. Owen) proposes an amendment to my amendment. My amendment reads as follows:

“That all the banks which may be organized under the present Constitution shall be mutually liable for the redemption of the circulation of each other.”

I would inquire, now, if the members of this Convention generally, are not in favor of this proposition? Now I desire to call the attention of gentlemen to the covert proposition now made by the gentleman from Posey. My amendment is as strong against the suspension of specie payments by the banks as is the amendment of the gentleman from Posey—for the banks are to be mutually liable for the paper of each other; and yet the gentleman proposes to strike out my amendment and insert his, which we are all in favor of. I think gentlemen are in favor of my amendment, and that it should be retained; the amendment of the gentleman from Posey will come in at the proper time. Why, it was only the other day that the gentleman declared that this proposition of mine was the only thing that would save the State Bank from ruin, and now he wants to strike it out.

MR. FOSTER. For my part I consider the amendment offered by the gentleman from Ripley, and the amendment offered by the gentleman from Posey, incongruous with each other. The amendment offered by the gentleman from Posey, was not german to the proposition under consideration. I am in favor of both propositions, but I think there is a more appropriate

plan for the proposition of the gentleman from Posey.

The PRESIDENT. The gentleman from Posey will perceive that there is no necessity for his amendment, inasmuch as the last section of Art. 24 provides that "no authority shall be given, sanctioning in any manner the suspension of specie payments."

Mr. FOSTER. If the gentleman from Posey persists in his amendment, will not the Chair rule it out of order.

The PRESIDENT. It is not within the province of the Chair to decide that it is out of order, merely on account of its incongruity with the subject before the Convention; it is for the Convention to decide that matter.

Mr. FOSTER (in his seat). It appears to me any one with half an eye, can see that it is out of order. [A laugh].

Mr. OWEN. Now, Mr. President, this proposition of mine has been denounced as a covert proposition; and I would reply that there is nothing covert about it. I will state to the gentleman from Ripley, and the Convention generally, that I did say, some few days since, in regard to the State Bank system, that I considered the doctrine of mutual liability, the best feature in it; and when the gentleman asks me to go for it, I will do so. Let them restrict their own system, and let us restrict ours. [Applause.] Let them pass their restrictions, and we will ours; and then let us take up other propositions afterwards.

Mr. HAMILTON. The question appears to my mind, to be assuming a very different aspect. There are three parties to this question—the State Bank party; the free bank party, and a party who desire to promote concession between the other two parties, and unite upon some general plan of compromise; and of the third party I am a member. But what does the gentleman from Ripley ask of us by his proposition? Why, that stockholders in the southern portion of the State, should be responsible for the debts of stockholders in the northern part of the State. If connected with a banking system, embracing that provision, he would make me liable for the debts of every other stockholder under that system, in Indiana. I ask gentlemen to look at this matter calmly, and take a common sense view of the subject. I trust the proposition of the gentleman from Ripley will be voted down.

Mr. DOBSON. It seems to me that we ought to settle this matter one way or the other. The gentleman from Posey (Mr. Owen) cannot object to the proposition of the gentleman from Ripley? In the first place, it is admitted on all hands that the mutual liability clause was the salvation of the old bank. If we have another State Bank in Indiana, I would like to see that feature preserved in its organization; I say it is right and fair. The gentleman, (Mr. Owen,) in his argument, the other day, said the mutual

liability clause could be applied to free banks as well as to a State Bank. But to-day the gentleman having slept upon it, does seem to wish it.

Mr. OWEN (interposing). I said the Legislature could enact it for free banks, if they choose.

Mr. DOBSON. I understand the gentleman, and I suppose we all understand him; that it would not keep free banks out of existence. If the plan proposed in reference to free banks be carried out where, then, is there cause for fearing the mutual liability principle? They tell us that the free banks cannot go into operation until there is a sufficient amount of bonds deposited to redeem the circulation, in case of failure. If this be the best security in the world, as the gentleman from Cass says it is, what is the harm of saying that, in addition, "you shall be mutually bound?" If you are good, there is no danger—if you are bad, it will make your circulation good. Then, I hope the proposition of the gentleman from Ripley will be adopted first, and the proposition of the gentleman from Posey afterwards; and not strike out one to insert the other. My idea is to get all the security we can obtain. If these banks have enough of assets to redeem all their paper, there is no fear of their being obliged to pay one another's debts.

Mr. NILES. Mr. PRESIDENT: I am gratified to see that there is more of a disposition, than there has been, among the members of this body, to meet on some fair ground of compromise. It is evident that we can do nothing upon this subject, except by mutual concessions.

The gentleman from Owen must be aware that there is no such restriction in the present Constitution, as that proposed by the amendment of the gentleman from Ripley—the mutual liability of branches; and yet, under the old Constitution, there has grown up a system of banking, which seems to be the *best ideal* of the State Bank party. Why, then, is such a restriction necessary in the new Constitution? Cannot something be trusted to the wisdom of coming legislatures, with the same propriety that the details of legislation have been committed to their predecessors? Surely, all legislative wisdom has not been exhausted, and it will hardly all die out with this Convention. Experience may hereafter show that free banks can, with propriety, be somehow connected together and made, in some way, liable for each others debts; but it is a sufficient argument against the amendment, that such a scheme would be an untried experiment, which might operate badly in practice. Should the future history of the free banking system establish the propriety of such a restriction, it can, at any time, be adopted. Why, then, in addition to all the necessary checks and safe-guards which have been tried elsewhere, should we adopt restrictions which may prove fatal, to the entire scheme of free

banks! But I see a serious objection of another kind to the amendment—that, if the banks are to be mutually liable, they must have a common Board of Control, meeting periodically at the capital, or some other point in the State, constituting a great central monied power—an evil which all would wish to avoid.

We propose, in the most stringent form, to require the punctual and uninterrupted redemption of the bills in specie. The details securing that object would be fixed by the Legislature, and in addition, we propose to require ample and readily convertible collateral securities for the redemption of all bills put in circulation, to be deposited with an officer of the State. The offensive and defensive league proposed by the gentleman from Ripley might enable the banks to sustain themselves, even in a state of insolvency; but the derangement to the currency and commerce of the country, from a general crash, would be far greater than from the occasional suspension of a single bank. I will not permit myself to suppose that this amendment was offered with the purpose to embarrass the free bank party. It is time that we should endeavor, in a liberal spirit, to compromise this question, and I hope that the amendment will be rejected.

Mr. STEVENSON considered the proposition of the gentleman from Ripley one that would be fatal to free banks. Those who entered into free banking deposited stocks as a security to the public. Was it fair, then, that one man should be liable for the obligations of all others engaged in the business? It was certainly not. The State Bank was not required to deposit stocks; and it was proper, therefore, that all the branches of the institution should be liable, one for the other. He thought this principle should apply exclusively to a State Bank, and at the proper time, would move to add at the end of the section these words: "This provision should not be constructed to apply to free banks."

Mr. BARBOUR. I am in hopes, sir, that the gentleman from Posey will withdraw his proposition. I would not be in favor of it, under any circumstances. I desire to state my reasons why, although a large majority of the Convention will be in favor of absolutely withdrawing from the Legislature the power to suspend specie payments in any instance. The only instance in which it was done, and that, too, sanctioned by the Legislature, would not be objected to by ten members on this floor. It saved the State from ruin and destruction. It was undoubtedly the wisest thing of the times; if it had not been done your banks would, without doubt, have gone by the board, and the prices of every description of property necessarily depreciated very low. So we see that in the only instance where the suspension of specie payments occurred, it operated most advantageously for the community. Why, then,

should we impose such a restriction as this? Can we foresee what calamities may fall upon the country? did any of us anticipate the calamities which we have had heretofore? Is it wise to withdraw the fostering influence of the Legislature over the interests of the country? Can we suppose that the Legislature is an enemy of the State, and that it would not adopt the course which prudence would dictate when such calamitous circumstances should fall upon us?

One word in regard to the proposition of the gentleman from Ripley. I regard that proposition, if sustained, as breaking down free banks. If the gentleman from Posey (Mr. Owen) withdraws his motion, and allows us to take a direct vote upon the proposition of the gentleman from Ripley, it will be a test vote. I say that if this principle (mutual liability) be adopted in regard to free banks, it will strike the death blow of the system, because, under such circumstances, no man would invest his money in them.

Mr. OWEN. I withdraw the amendment, and offer instead of it the following:

"The branches of any bank that may be established with branches, shall be mutually responsible for any bills issued as money."

I will say this was not drawn up by me, but by my friend from Shelby (Mr. Hendricks) and submitted to me. I think that both the free and State Bank men will approve of it.

The PRESIDENT. The question is upon the amendment of the gentleman from Posey.

Mr. SMITH of Ripley. It is not the intention, I suppose, of any portion of this Convention to establish banks with branches. We do not contemplate having two or three systems of banking in the State, but that we shall have a system established upon a specie basis. My proposition only extends to the mutual liability of the banks in regard to the redemption of the circulation; it goes to nothing else.

It is right that our banking should be under some system which will regulate the circulation in the State. We have adopted no such principle as that contained in the gentleman's proposition (indistinctly heard). We have adopted the principle that the Legislature may establish banking in the State, and that on a specie basis. I apprehend it is not the intention of the Convention that we are to bank in various ways, and on various kinds of capital.

Mr. DUNN of Jefferson. I am glad to see the spirit which now appears to prevail in this Convention. The excitement seems to have calmed down, and I hope we will now go to work like business men whose great anxiety is to give the people a safe currency, always redeemable in specie. The proposition first submitted appears to be one which the friends of the State Bank and of the free banks may all agree upon. I hope, by this time, the discovery has been made that we can do nothing without

some concession. We ought to furnish the people with a currency of our own State. If we do not make provision for such a currency, our business will be transacted with the currency of other States; for in such a case it will be as impossible to exclude the currency of other States, as to prevent the wild pigeons from lighting on the trees in our woods. If a State Bank and branches are established, the branches must be responsible for each other. That is right. But the amendment proposed by the gentleman from Ripley would extend this mutual liability to both State and free banks. That, I think, is not right; for if we have free banks, it is understood that they are to deposit good security with an officer of the State for the redemption of their issues. This is not required of the State Bank. Then you would make banks that give security for the redemption of their issues, responsible for the obligations of those that give no such security. Therefore, I hope the amendment of the gentleman from Posey will be adopted, for that confines the mutual liability to the branches of any bank that may be established with branches. I know that free banks, if organized, must make arrangements to receive each other's bills in payment of debts, and on deposit. If they discredit the paper issued under the provisions of their own system, the free banks can get but a very limited circulation. But it is not right that they should be made responsible for each other's debts, because they will be independent of each other in the management of their business.

Mr. SHOUP. This Convention have but two objects in view—one to furnish to the country a sound currency—the other to establish banks on a specie capital alone. The free bank men are anxious to introduce capital in the shape of stocks; and I apprehend that stocks of the United States are equal to gold or silver. No gentleman, I suppose, will object to introducing into our State capital that might be brought from other sections of the country. Gentlemen, then, should unite to permit the free bank men, as we are called—I would rather say, the independent bank men—to employ United States stocks in the banking business of the State. It is evident to every man, that the specie capital in the State is not commensurate with her commercial requirements. The State Bank men, on the other hand, wish to create capital by authorizing a bank to issue two or three dollars of paper for every dollar it has of specie.

The free bank men desire to augment the capital in the State by issuing a circulating medium upon a stock basis. I think we should unite upon these two plans, and let the Legislature hereafter adopt one or the other, as they may see fit. I am of opinion, too, that this mutual liability principle could be placed on the independent banks; but it is not necessary.

Where the basis is in the the shape of a credit alone, I think the mutual liability clause should be imposed, because there are extraordinary privileges granted in the charter, as in the State Bank for instance. [Cries of "Question!"]

Mr. NAVE. I ask gentlemen if one of the first objects of every member of the Convention should not be to furnish the people with a sound and safe circulating medium? I take it for granted that it is. If, therefore, it be necessary we should furnish such a circulating medium, I ask the reason why we should place a restriction upon one system of banking, and not place it upon the other? Can any gentleman give me a satisfactory reason why it should be done? Sir, there is no man on this floor who can do it. A proposition was adopted requiring banking to be on a specie foundation actually paid in; and, unless we change this feature in the Constitution, we restrict the one and not the other.

Mr. OWEN (interposing and Mr. N. giving way). With the pleasure of the gentleman, I will say that we propose this restriction shall apply just as much to free banks as to any other, if we make any banks with branches. But if they be separate, individual banks, that have no connection with one another, or, as a gentleman said, "some in the northern and some in the southern part of the State," it is not to apply. It is not fair, as regards individual banks.

Mr. NAVE. The explanation is not satisfactory. I ask how you can rely upon the security and solvency of the free banks, unless you make them mutually responsible? I say it is the only way by which you can obtain a sound currency for the State, if we should bank upon the free banking system. I look upon banking as an evil to the country; but being instructed to go for a State Bank, I stand up here to do so. I do not, therefore, want to have the State Bank restricted, if we do not restrict the free banks also. I say the proposition of the gentleman from Ripley contains principles that will secure to the people a sound currency. I would ask, then, why gentlemen will vote against it. They cannot do so with any show of consistency.

Mr. KENT. In order to meet the views of the gentleman last up, I will move to add the following—

The PRESIDENT. It would not be in order now.

Mr. KENT. Then I will read it:

"That any State Bank which may be established in this State shall give the same security as the free banks, and be mutually responsible for the bills they issue as money."

Mr. HAMILTON. The free banks ought to deposit stocks, because they are not mutually liable. Then, on the other hand, the State

Bank ought not to deposit stocks, because they are mutually liable.

Mr. KENT. This is the position taken by the gentleman who spoke just before I rose; it is not my proposition.

The question being upon the amendment proposed by the gentleman from Posey,

The yeas and nays being demanded and ordered, were taken, and resulted—yeas 115, nays 24—as follows:

YEAS.—Messrs. Allen, Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Berry, Biddle, Borden, Bourne, Bowers, Bright, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hamilton, Harbott, Hardin, Helm, Helmer, Hendricks, Hitt, Hugin, Holman, Howe, Huff, Johnson, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Murray, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Stevenson, Taylor, Thomas, Thornton, Todd, Trimby, Wallace, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—115.

NAYS.—Messrs. Alexander, Beard, Beeson, Blythe, Brookbank, Clark of Hamilton, Clements, Cole, Foster, Frisbie, Hall, Hawkins, Jones, Kelso, Kilgore, March, Moore, Nave, Prather, Smith of Ripley, Spann, Tague, Walpole, and Mr. President—24.

So the amendment was adopted.

Mr. DOBSON. I offer the following amendment—

Mr. READ of Clark. I move that the Convention adjourn.

SEVERAL VOICES. Let us hear it read.

The amendment was then read. It is as follows:

“The Legislature shall have power to contract loans for the purpose of establishing a State Bank.”

A VOICE. No sir-ee. [Laughter.]

The question being upon the motion to adjourn,

It was decided in the affirmative, and then The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

Mr. MARCH moved to amend the section by striking out all after the word “responsible,” and inserting:

“The branches of any bank that may be established with branches shall be mutually liable for all the notes, debts, or engagements created in the business of banking by each other.”

The PRESIDENT. The Chair would remark to the gentleman from Delaware, that it is not in order to move to strike out what the Convention has adopted. The motion of the gentleman is to strike out what was adopted by the Convention, before they adjourned this morning.

Mr. MARCH. The section, as it now stands, simply relates to the establishment of a State Bank with branches. Now I want all the branches to be responsible for all the engagements of each other. That is a feature of the State Bank which has saved it thus far, and I think it would be better for the community that we should have all the restrictions that we can have, thrown around any system of banking that may be adopted, without so far cramping the banks in their legitimate operations, as to prevent them from doing business. If the amendment I have offered be out of order on the ground that it proposes to strike out what has already been adopted by the Convention, I will withdraw it and propose to amend the section by adding, after the word “responsible,” the words “for all the debts, notes, and engagements of each other.”

Mr. HAMILTON. If you establish a new State Bank with branches, you must hold out some inducements for the investment of capital in that bank. The great object in granting bank charters, is to enable the people of the country to do the business of the country, by giving them a circulating medium. Now we have already decided that the State shall not be a partner in any bank. and I am opposed to throwing such restrictions around any banking system as will be likely to prevent men of capital from taking stock in it. If that should be done you will have no banks whatever, and those who have capital to invest, will seek for more safe and more profitable modes of investment. By the amendment proposed by the gentleman from Delaware, you would make each bank responsible for all the deposits which might be made in any other of the branches. This I hold to be wrong. When the depositor takes his money to a bank, he takes it there for safety, or perhaps with the view of obtaining a little interest. It is a mere matter of contract between him and the banker. The public are in no way concerned in it. The banker has to run the risk of the redemption of the currency deposited with him, and the depositor takes the risk of the banker refunding the deposit when called for. There is no general principle in-

volved here. It is just the same as if I leave my umbrella in a neighbor's shop, not wishing the trouble of carrying it, I taking the risk of his returning it to me when called for. It is, as I have already said, a mere matter of contract.

Now, I do hope that gentlemen will come to this question in a spirit of compromise—that those taking the extremes on this question will be disposed to meet each other half way. I think we ought to leave it with the Legislature to establish a State Bank, if they think proper, when the charter of the present bank expires. On the other hand, let me say that I trust gentlemen who are so much in favor of a State Bank will make some concessions, and meet the gentlemen who are favorable to a system of free banking. If you adopt this amendment, I say unequivocally and beyond the fear of contradiction, that you will not be able to have any bank with branches that shall be mutually liable to the depositor. I do trust the amendment will not be adopted.

Mr. BORDEN. I had designed, before the question was finally disposed of, to have given my views in regard to the subject of banking; but under the present feelings of the Convention, I am not willing to trespass upon their time. I will merely say, that in voting for the amendment of the gentleman from Posey, (Mr. Owen,) in opposition to that of the gentleman from Ripley, (Mr. Smith,) I did so for the purpose of effecting a compromise. I was disposed in the first instance to the vote with each party to defeat the plan of the other, but finding that some banking system must be adopted. I am now disposed to vote with each in good faith to endeavor to make as good a system as possible. Although I voted in favor of the amendment of the gentleman from Posey, I shall be compelled to vote against it, when the question is taken on its final passage.

I would observe here, that both the advocates of a State Bank and the free banking system have, in debating the respective merits of their plans, occupied much of the time of this Convention, while those who are opposed to all banks of issue have not been heard at all. Not a single speech on that side of the question has been made on this floor—the gentlemen taking other views of the question have been heard with much patience and attention. I shall, however, embrace the earliest opportunity of giving my views in opposition to all banks whatever, if the occasion be presented.

One other remark, while I am up. This morning I took occasion to ask the gentleman from Putnam, why State Banks, as well as free banks, should not be required to deposit securities for the redemption of their paper. Sir, I see no reason why a State Bank should not be under as much obligation to deposit securities for the redemption of its issues, as a free bank. Sir, the Bank of England, which is, perhaps,

the safest bank in the world, has one provision in its charter to prevent its issuing notes beyond its specie or other securities to redeem them; and I see no reason why a State Bank, established in Indiana, should not be restricted in its issues, to the amount of specie or State Bonds which it may have on hand to redeem them. I believe that the security required by those who advocate the free bank system would be better than that offered by those who advocate the State bank system. Here you have a State bank, with a circulation of near four millions of dollars and only one million of specie at the back of it; and if that bank, like the Bank of England, were required to give security for her issues, you would then pretty near approach to the free banking system. This is all I have to say at present, except that I shall endeavor, in good faith, to assist each party to perfect their systems, reserving to myself the right to vote against them all.

Mr. STEVENSON. The gentleman from Allen asks me why a State Bank should not be compelled to give the same kind of security for its issues, as is proposed by the advocates of free banking? I gave one reason this morning. I stated that the branches of a State Bank were made mutually liable for the issues of each other, while the free banks were released from this kind of liability. This is one reason. For the purpose of making State Banks safe, they were required to deposit dollar for dollar, in State or United States stocks; and to make up for this, they were released from the mutual liability principle. If you make all the branches of a State Bank mutually liable for the issues of each other, and compel them to deposit securities besides, you place it in an unfair position in comparison with other banks, thus making them give a double security.

Mr. MARCH. The gentleman from Allen (Mr. Hamilton) misunderstands the force of this amendment. It is to apply to a State Bank with branches. I have not, myself, any great degree of confidence in any system of banking, established for the purpose of furnishing a circulating medium, on the principles by which banks are at present regulated; but the constituency which I represent, are in favor of a well-regulated and well-guarded State Bank with branches, as the safest and best system, all things considered; and I expect, in good faith, to vote to carry out that measure. The old State Bank and its branches were made mutually responsible. Here is the section. [Mr. M. read the section.]

"That no new branch could be established or located without the consent of every one of the branches now in existence—and not that the stockholders are not individually liable for all the debts of each branch.

Mr. MARCH [continuing]. The most dangerous of all banks would be a mother bank which was not responsible for the engagements

of its branches. If they are partners they should be mutually responsible for every engagement—every debt of every kind created in the business of banking.

A MEMBER called for the reading of the section, as proposed to be amended.

The section was accordingly read by the Secretary.

THE PRESIDENT. The question is on the amendment of the gentleman from Delaware.

MR. MARCH. I ask for the yeas and nays. The yeas and nays were ordered.

MR. HENDRICKS. I desire to give one or two reasons why I think this amendment ought not to be adopted. So far as the circulation of the branches is concerned, a board of directors composed of representatives from all the branches can regulate the business of each, except so far as discounts are concerned. Beyond the issue therefore, I think they should not be made responsible. I have an amendment which I shall offer when it is in order, to the effect that each stockholder in each branch shall be responsible for the issues of each branch in the same proportion as his stock bears to the whole stock of the bank.

MR. OWEN. I desire to say in regard to this matter that I should like to vote as the friends of the State Bank desire we should vote. I do not wish to vote for anything which would have a tendency to destroy the State Bank, because by and by when we come to offer our restrictions I hope gentlemen will vote for them.

MR. FOSTER. I move to amend by striking out "the branches of any bank that may be established with branches." It appears to me that this is wholly unnecessary—mere surplusage. I wonder how it would read in our Constitution even after it had gone through the hands of the smoothing-iron committee.

THE PRESIDENT. The Chair would remark to the gentleman from Monroe, that his motion would not be in order.

MR. FOSTER. I presume it will be in order for me to make some remarks before I offer my motion whatever it may be.

THE PRESIDENT. Certainly.

MR. FOSTER. The gentleman from Delaware wants to make branches of banks responsible for all the liability of each other. Now this it appears to me, is entirely out of the question. That they should be liable for the issues of each other I have no objection to, because this is a matter a board composed of representatives from each branch can control; but to say that each branch shall be liable for all the engagements of the other, appears to me preposterous. Why, sir, any one branch might go into speculation of the most ruinous character, and that too entirely without the knowledge or consent of any or of all the other branches. Over matters of this kind no system of control can be had, and it is entirely

out of the question in such case to think of making the branches responsible. I am opposed to the whole of these amendments and cannot but regard them as an insidious attempt to undo what has already been done. If the amendment of the gentleman from Delaware were adopted, the result would be that it would strike out the amendment of the gentleman from Ripley, which is fair and correct, and I cannot but repeat that this is an insidious attempt, and not the first one either that has been made, to destroy the vantage ground which we have got, and the gentleman from Posey (Mr. Owen) knows it. [Applause.] If the gentleman will, let him withdraw his amendment, and we will establish it as we please. He tells you that we may do what we please, and yet he attempts to thrust this amendment down our throats. [Laughter and applause.] I trust that the friends of the State Bank will stand firm. [Applause.] We have got the vantage ground now, and we ought to keep it. [Renewed applause.] We have already passed a section, and I am perfectly willing that not a single thing in regard to banks should be inserted in the Constitution beyond what has passed this day. There are very evidently gentlemen who would throw sand in the eyes of others to prevent them from seeing the truth. But I hope the friends of the State Bank will not allow sand to be thrown in their eyes, but hold fast to what they have got. I hope that the Convention will adopt this amendment, and that they will then vote down both it, and that of the gentleman from Posey.

MR. DUNN of Jefferson. The amendment proposed by the gentleman from Delaware, (Mr. March,) it appears to me places a very unnecessary restriction upon a State Bank. I think it is quite sufficient to make the branches responsible for the issues of each other without adding to that a responsibility for transactions over which there can be no mutual control. If a man chooses to deposit his money in any particular branch of a bank, that branch must be responsible, and, not all the branches, because it is impossible for them to know what deposits are made. To save the time of the Convention, therefore, I will move to lay the amendment of the gentleman from Delaware on the table.

MR. MARCH. I ask the yeas and nays on the motion.

The yeas and nays were ordered, and being taken resulted as follows—yeas 71, nays 41:

YEAS.—Messrs. Allen, Anthony, Badger, Barbour, Beeson, Blythe, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chenoweth, Clark of Hamilton, Clements, Coats, Cola, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Foley, Garvin, Gibson, Gootee, Gregg, Hall, Hamilton, Harbolt, Helm, Helmer, Hendricks,

Hitt, Hogin, Hovey, Howe, Huff, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, Miller of Fulton, Miller of Gibson, Mooney, Morrison of Marion, Morrison of Washington, Murray, Newman, Niles, Owen, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Sherrod, Shoup, Sims, Smith of Scott, Spann, Stevenson, Tannehill, Taylor, Thomas, Todd, Trimble, Wallace, Watts, Wheeler, Wunderlich, Zenor, and Mr. President—71.

YAYS.—Messrs. Alexander, Ballingall, Bascom, Beach, Beard, Berry, Biddle, Borden, Carter, Chapman, Dick, Dunn of Perry, Duzan, Foster, Frisbie, Gordon, Graham of Miami, Haddon, Hawkins, Holman, Johnson, Jones, Kendall of White, Kinley, March, May, McClelland, McFarland, McLean, Miller of Clinton, Milligan, Milroy, Moore, Mowrer, Nave, Pettit, Prather, Shannon, Smiley, Snook, Smith of Ripley, Steele, Tague, Thornton, Walpole, Wiley, Wolf, Work, and Yocum—47.

So the amendment was laid upon the table.

Mr. BERRY. I propose to amend the section by adding the following:

“And such banks shall be compelled to accept of as many partners or branches as shall offer to comply with the provisions of this Constitution.”

The question being taken upon the proposed amendment it was rejected.

The PRESIDENT. The question now is upon the adoption of the section as amended.

A MEMBER. What is the amendment Mr. President?

The amendment was read by the Secretary as follows:

“Branches of any bank that may be established with branches, shall be mutually responsible for each other's liabilities, upon bills or notes issued as money.”

The question was then taken on adopting the section as amended, and it was adopted.

The PRESIDENT. The question now is, Shall the section be engrossed for a third reading?

Mr. WALPOLE. Before the question is taken on the engrossment, Mr. President, I have an amendment which I wish to offer. It is as follows:

“The General Assembly may provide by law for the renewal of the present loan invested in State bank stock, or may provide for or negotiate separate loans of money, to be applied to stock, on behalf of the State, in any bank hereafter incorporated.”

Mr. MILROY. I move to lay the amendment on the table.

Mr. WALPOLE. I ask the yeas and nays. The yeas and nays were ordered, and being taken, resulted as follows:

YEAS.—Messrs. Alexander, Anthony, Allen, Bascom, Beach, Beeson, Berry, Bicknell, Biddle,

Borden, Bracken, Bright, Bryant, Butler, Carter, Chapman, Chenoweth, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermilion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Harbott, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of White, Logan, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Niles, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Thomas, Thornton, Trimble, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—91.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Edmonston, Farrow, Foster, Frisbie, Gootee, Hall, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kendall of Wabash, Kilgore, Lockhart, Maguire, March, Mathis, Miller of Gibson, Milligan, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Todd, Wallace, Walpole, Watts, Zenor, and Mr. President—52.

So the amendment was laid upon the table.

Mr. PETTIT. I shall move the following amendment, and when I have offered it, I shall move the previous question. [Cries of “No, no, no!”]

Mr. PETTIT. Most certainly I shall. The amendment I offer is as follows:

“The State shall not be a stockholder in any bank, after the expiration of the present bank charter.”

I call for the previous question.

The call for the previous question was not sustained.

Mr. PRATHER. I offer the following amendment:

“There shall not be incorporated in the State any bank or banking company, for the purpose of issuing bills of credit, or bills payable to order or bearer.”

Mr. KELSO. I desire to say a word or two in regard to the first amendment. The proposition is that the State of Indiana shall not be a partner in a State bank, or hold any stock therein. The very gentleman who takes occasion to make this proposition, and to force its passage under the lash of the previous question, is the very gentleman who, the other day, denounced all men who would ask for exclusive privileges, and all men who would submit to them—the one class as a set of thieves and robbers, and the other as a set of cowards and traitors. Now the only chance on earth by which all the people can reap a little benefit

from this system of banking, is to allow the State to be the owner of stock; and if the bank can make money by its operations, why not permit the people to share the profits of whatever stock the State may have in it.

Now I wish to know if the gentleman from Tippecanoe comes within his own rule? He denies to all, except those who have money and are able to purchase stock, the privilege of banking. Every man who has not money, is cut short of participating in the profits, in any way whatever; whereas, if the State is permitted to take an equal share with an individual in the stock, then every single citizen of the State would be entitled to an equal share of the profits. I say, sir, that such a proposition, to come from that gentleman, comes with a bad grace. If we are to have a State bank at all, I hope we will have it on the same principles as the present State bank. There should be, it is true, some additional restrictions which do not now exist, but I maintain that the State ought to have the privilege of taking stock, if it be found to be necessary or advantageous.

Mr. PETTIT. So far from the proposition I have offered having violated any general principle I have laid down to-day, or at any other time, it is directly and strictly in accordance with every one of them. It directly says, in fact, that no man shall be compelled to take stock or to have an interest in any bank whatever—that the State shall not compel any man, or all men, to take stock. This is nothing more nor less than the proposition of the gentleman from Allen, (Mr. Hamilton,) following the one we have now under consideration. In report No. 25 we have the following:

"The State shall not be a stock-holder in any bank, after the expiration of the charter of the present State bank."

I have only transposed the words in offering the amendment which I have submitted to the Convention. It was said here, a day or two ago, that it was universally conceded that the State was not to be a holder of stock in any banking institution. And is it now, for the first time, pretended by any gentleman on this floor that the State is to take stock in any bank?

Mr. WALPOLE (in his seat). Yes, sir.

Mr. PETTIT. The gentleman from Hancock says, "yes sir;" that is, that the State may take stock, in order that every man may derive a profit from banking. I illustrated that proposition very clearly and satisfactorily, I think, by the story of the boys swapping jackets.

Sir, what is the advantage of the State taking any such stock? The gentleman says that it has been taken heretofore without loss. I see by the Auditor's report that the State has taken, at various times, stock to the amount of two millions, four hundred and thirteen thousand, dollars; while the report from the bank tells you that the capital of the State in the bank is

only one million and six thousand dollars, thus making a dead loss of one million four hundred and seven thousand dollars, already lost to the State by taking stock in your State bank; for the report of that institution tells you, that out of the \$2,413,000, you have now placed to the credit of the State only \$1,006,000. But, sir, get round that statement as you please, the State of Indiana has pledged the people, the farms, and all the property of the State, that the people may have an interest in banking. The State bank says that we have got for all these bonds \$1,006,000, and that we have made no loss. But, sir, let me ask, is this establishment wound up yet? Look at the debts which have been incurred. The report speaks of other resources. Why, sir, what are they? They are just so much "wildcat" or "blue dog"—nothing more than broken bank paper, to re-imburse the State for the \$1,407,000. That is the history of it precisely.

Now, sir, I offer this amendment upon the broad principle that no man shall be compelled to be a banker; that bankers may choose for themselves, as men in all other business do. Nor do I hold to the doctrine that bankers ought to be responsible for each other's obligations further than as they become partners with each other. Sir, I would just as soon say that all farmers and all merchants in Indiana, or all shoemakers, or tailors, should be responsible for the debts and liabilities of each other. There would be just as much reason in the one proposition as in the other. Just as soon would I say this, as to establish a State Bank upon the faith of the State, in order that a profit may be made out of the people. Just as soon would I establish a State dry goods store, or a State grocery, or a State farm, or a State slaughter house, or a State pork packing establishment, and thus have the State monopolize every species of business of every kind. Tell me that there is no difference in principle, that the State should draw all the bills of exchange and issue all the currency? Why, sir, you might just as well tell me that the State should do all the farming and shoemaking, and tailoring, and every other sort of thing, and then carry its produce and its wares to market.

Sir, this is none of the legitimate business of the State. Protection to life and property and character, is all that is asked or required of the State. This is a proposition which coming as it does, from the bank committee itself, I had thought would meet with no opposition from the supporters of a State Bank. It simply says that the State shall not force the citizens of Indiana to become bankers, simply leaving them to bank or not to bank, as they please.

Mr. KELSO. Now, it would have been very easy to have told the whole story while the gentleman was at it. There have been issued \$2,413,000 of bonds, but I suppose the Auditor is liable to be mistaken like all other men. The

loss that has been sustained—if any loss there has been—is not the fault of the State or of the bank in any way whatever.

The gentlemen from Tippecanoe, says that by the proposition, he has offered her provides that no man need become a banker unless he pleases. Now, if the State is to take stock, it is to be taken for the people, and she does it upon the authority of the representatives of the people; and if my representative decides that I, as an individual of the State, shall take stock in a bank, it is done with my consent, for I send that man to the Legislature to do business for me; and if he votes for a charter providing that the State shall take so much stock in a State Bank, then it is done with my approbation.

The loss then, whatever it may have been, cannot be chargeable to the bank, nor shall I stop now to inquire further about it. As I understand it, however, the State sent a man to the east to sell her bonds, in order to raise cash to put into the coffers of the bank. That man sold the bonds on credit, and we had the misfortune to lose \$800,000. He, no doubt, believed that the money would be realized in due time; but it was not so realized; and these are misfortunes to which all men and all countries are liable.

Now, if banks are profitable at all, there is only one fair way in which this profit can be realized and divided, and that is, that all should be put upon an equality—rich and poor, alike; and that is that the State should take capital stock. We will have men in the General Assembly, as honest, as wise, as well instructed, and as ready to do the business of the people as we are, and they will take stock for the people, or decline to do so, just as the people may direct them. I think we should leave that question open, and not tie up the hands of the people in every corner. We have already said that the State should be prohibited from borrowing money for any purpose, except to repel invasion. That is not simply tying up the hands of the Legislature—it is going a point beyond that and tying up the hands of the people. We, the servants of the people, undertake to compel them to act within certain limits, whereas, we should leave them to act freely by themselves. I maintain that it is improvident and imprudent for us to introduce any such restriction into the Constitution, as will thus tie up the hands of the people.

Mr. STEVENSON. I move to lay the amendment and the amendment to the amendment, on the table.

Mr. PETTIT. I call for a division of the question.

The question was then taken on laying the amendment to the amendment, on the table, and a division being asked for, there were for the motion—yeas 67, nays not counted.

So the amendment to the amendment was laid upon the table.

The question being upon laying the amendment on the table,

Mr. PETTIT. I ask for the yeas and nays, sir, upon this resolution.

The yeas and nays were ordered, and being taken, resulted—yeas 62, nays 82—as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Butler, Carr, Clark of Hamilton, Clements, Cole, Conduit, Davis of Madison, Dobson, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Gregg, Hall, Harbolt, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kendall of Wabash, Kilgore, Lockhart, Logan, Maguire, Marchi, Mathis, Miller of Gibson, Milligan, Morgan, Morrison of Washington, Murray, Nave, Newman, Prather, Rariden, Robinson, Schoonover, Spann, Stevenson, Tague, Tannehill, Thomas, Todd, Wallace, Walpole, Watts, Wolfe, Zenor, and Mr. President—62.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bracken, Bright, Bryant, Carter, Chapman, Chenoweth, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warlick, Haddon, Hamilton, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of White, Kinley, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Taylor, Thornton, Trimble, Wheeler, Wiley, Work, Wunderlich, and Yocum—82.

So the amendment was laid upon the table.

Mr. OWEN. It is evident that the amendment of the gentleman from Tippecanoe, is not broad enough. It is perfectly clear that if it be wrong to loan the credit of the State in aid of a bank, it is equally wrong to loan it in aid of any individual, corporation or association. I move to amend the amendment, by adding these words:

“Nor shall the credit of the State ever be given or loaned in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association.”

Mr. KILGORE moved that the section and pending amendments be laid upon the table.

The question being on laying the section and pending amendment upon the table,

The yeas and nays were demanded, and having been ordered were taken, and resulted—yeas 53, nays 92—as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Conduit,

Crawford, Davis of Madison, Edmonston, Farrow, Foster, Frisbie, Gootee, Gregg, Hall, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kilgore Lockhart, Maguire, March, Mathis, Miller of Gibson, Mooney, Moore, Murray, Nave, Newman, Prather, Rariden, Robinson, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Wallace, Walpole, Watts, Zenor, and Mr. President—53.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bracken, Bright, Bryant, Butler, Carter, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hamilton, Harbolt, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, Kinley, Logan, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—90.

So the section and amendment were not laid upon the table.

THE PRESIDENT. The question is upon the amendment of the gentleman from Posey to the amendment of the gentleman from Tippecanoe.

MR. GOOTEE demanded the previous question.

The call for the previous question was decided in the affirmative—ayes 51, noes 47.

The question being, Shall the main question be now put?

It was decided in the affirmative.

The question being first upon the amendment presented by the gentleman from Posey, the yeas and nays were ordered and taken with the following result—yeas 87, nays 57—as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bracken, Bright, Bryant, Butler, Carter, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hamilton, Harbolt, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, Kinley, Logan, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Niles, Nof-

singer, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Thornton, Todd, Trimble, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—87.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Dunn of Jefferson, Edmonston, Farrow, Foster, Frisbie, Gootee, Gregg, Hall, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kilgore, Lockhart, Maguire, March, Miller of Gibson, Milligan, Mooney, Morgan, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Schoonover, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Wallace, Walpole, Watts, Zenor, and Mr. President—57.

So the amendment to the amendment was adopted.

The question then recurred upon the adoption of the amendment as amended.

MR. PETTIT demanded the yeas and nays; and the same being ordered, were taken, and resulted—yeas 89, nays 56:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bracken, Bright, Bryant, Butler, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hamilton, Harbolt, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, Kinley, Logan, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Niles, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Thornton, Todd, Trimble, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—89.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Dunn of Jefferson, Edmonston, Farrow, Foster, Frisbie, Gootee, Gregg, Hall, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kilgore, Lockhart, Maguire, March, Miller of Gibson, Milligan, Morgan, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Schoonover, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Wallace, Walpole, Watts, Zenor, and Mr. President—56.

So the amendment as amended was adopted.

THE PRESIDENT. The question now is, Shall the section be engrossed for a third reading?

The question was decided in the affirmative, *yeas 78, noes not counted.*

So the section was ordered to be engrossed for a third reading.

Mr. WALPOLE offered the following as an additional section:

"No person being a citizen of a foreign government shall be a stockholder in any bank, banking company, or association; nor shall such person subscribe for stock in any bank, banking company, or association, in the name of any citizen of the United States. Nor shall stock be subscribed in such bank, banking company, or association, for the use of any foreign citizen or corporation. All stock subscribed for in contravention of this section, will revert to the State for the use of common schools."

Mr. SMITH of Ripley moved to amend so that bank notes or bills shall not be issued on State stocks, or on stocks of any of the United States, or stocks of other States of the Union.

Mr. SHOUP. I move to lay both propositions on the table.

Mr. WALPOLE. I call for a division of the question.

The question being upon laying the amendment of the gentleman from Ripley on the table, the yeas and nays were demanded and ordered, and being taken, resulted—yeas 78, nays 67, as follows:

YEAS.—Messrs. Allen, Anthony, Badger, Barbour, Bascom, Beach, Bicknell, Biddle, Borden, Bracken, Bright, Bryant, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Elliott, Foley, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Hardin, Hovey, Howe, Kent, Kendall of Wabash, Kendall of White, Kinley, Maguire, Mather, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Thomas, Thornton, Todd, Trimble, Walpole, Wheeler, Wiley, Work, Wunderlich, and Yocum—78.

NAYS.—Messrs. Alexander, Ballingall, Beard, Beeson, Berry, Blythe, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Gootee, Graham of Warrick, Hall, Harbolt, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kilgore, Lockhart, Logan, March, Mathis, McClelland, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Prather, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Wallace, Watts, Wolfe, Zenor, and Mr. President—67.

So the amendment was laid upon the table.

The question then turned upon laying Mr. Walpole's amendment upon the table, and the yeas and nays being ordered and taken resulted—yeas 68, nays 75, as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Berry, Bicknell, Biddle, Borden, Bracken, Bright, Bryant, Chapman, Chenoweth, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Elliott, Garvin, Gibson, Graham of Miami, Gregg, Hamilton, Helm, Hovey, Howe, Kent, Kendall of Wabash, Kendall of White, Mather, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Morrison of Marion, Murray, Newman, Niles, Nofsinger, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, Wunderlich, and Yocum—69.

NAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Beeson, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Davis of Madison, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Foste, Frisbie, Gootee, Gordon, Graham of Warrick, Haddon, Hall, Harbelt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Pepper of Crawford, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Wallace, Walpole, Watts, Wolf, Zenor, and Mr. President—75.

So the amendment was not laid on the table.

The question recurred upon the adoption of the original section offered by the gentleman from Hancock.

Mr. PETTIT. I have no great predilection for Banking, at all. But it seems to me, that if there be any advantage in having banks in the State, there can be no objection to those who live abroad sending their capital here and having the banks carried on upon it. The gentleman from Allen says there is not capital enough in the State. Now, however, it is attempted to prevent capital from coming in here. I do not see any propriety in this proposition. For my part, if a man in England, France, Italy, or in Brazil, will send his money here and get men to circulate it for him, I do not think it is going to do the country any hurt.

Mr. SMITH of Ripley. I am going to propose an amendment to which I think no gentleman can object. This is what I propose: "Every bank established under the provisions of this Constitution, declaring six per cent. profit upon the stock paid in, shall pay over to the State for the use of common schools, one-

half per cent; and every bank dividing ten per cent. shall pay over to the State one per cent. for the use of common schools, as prescribed by law." I would ask gentlemen if they be not willing to charge these foreign stockholders one half or one per cent. upon their most extravagant profits?

Mr. WALPOLE. My object is not to exclude foreign capital as a bank basis. It is well known to every one that the principal part of the bonds for the internal improvements were held by three bankers in Europe—the Rothschilds, Sir Harsley Palmer, and the Barings. The question is, shall they realize all the profit? That gentleman (to Mr. Pettit) knows that half a million of these bonds are held by Lenier, of Madison, in trust for these people. My object, sir, is to force these men to disgorge these bonds, and sell them to the people, and let them become the bankers. If you bank upon bonds, let them be sent into the hands of the people.

I would here remark, that the reason I voted against the amendment of the gentleman from Ripley was because he excluded assistance from other States. My proposition refers only to foreign capitalists; that is the difference.

Mr. DUNN of Jefferson. If any gentleman had proposed to this Convention that we should bank simply upon the bonds of this State, the bonds of other States, or the bonds of the United States, there might be some plausibility in the arguments of the gentleman from Hancock. But no person has presented or advocated so ridiculous a proposition. Banks that give security for the redemption of their issues, will be required to keep on hand just so much specie as is necessary for the prompt redemption of their circulation.

Mr. WALPOLE (interposing). How much will that be?

Mr. DUNN. The amount will of course depend in a great degree upon the confidence the community may have in the solvency and good management of the banks. Now, sir, if our bondholders residing abroad, think proper to send their bonds here and deposit them as the security for the issue of bills, and accompanying those bonds with whatever amount of specie is necessary for the redemption of the bills, I do not think we shall be greatly injured by the operation. We need more capital in this State, more means for active trade. My greatest fear in regard to the free bank system is that it will not hold out sufficient inducements for the investment of capital. It must be remembered that the market is now glutted with stocks which are offered to capitalists at very low rates. These stocks, such as railroad bonds, will yield I think, a greater profit to the purchasers, than they could make by engaging in free banking.

As to the amendment proposed by the gentleman from Ripley (Mr. Smith) in regard to

the bonus to be charged for the privilege of banking, I think that is a matter that properly belongs to legislation. When the privilege of banking is asked for, the Legislature may require such bonus as under all the circumstances may be deemed proper. If the bonus be fixed in the Constitution it may be so large as to operate as a prohibition of banking, or it may be a less amount than would be willingly paid. I have listened with pleasure to the remarks of the gentleman from Allen, (Mr. Hamilton,) the chairman of the committee on banking. He has long been actively engaged in business, and I think we will find the suggestions of that gentleman on this subject always worthy of our attentive consideration.

Mr. WALPOLE. The free bank men are very sensitive when a proposition of this kind is introduced, and so is the gentleman from Jefferson. When a proposition is made to restrict their system, their cry is, "it is within the province of the Legislature to do it." Well, the Legislature, when incorporating a bank might say, there shall be no suspension of specie payments authorized by their charter. But they are not content with that—they must have it in the Constitution. Now, I want this thing to work like a two-edged sword. I want to have a general restriction thrown around the circulation.

Mr. KELSO. I rise merely to make an inquiry. I wish to know what has become of the old Jacksonian theory, that foreign capital should be kept out of the country. We used to hear, in Jackson's messages, that it was dangerous to invite foreign capital into the country. If that were democratic doctrine in Jackson's time, why is it not democratic doctrine now-a-days? Here is a proposition to prevent foreign capitalists from coming in to bank in our State, and I think it is a good safe-guard for the people, if the old Jacksonian doctrine were correct, which I think was, and is still. I think we ought to adopt this very section. I should like to see the vote taken: those who lectured us on Jackson's messages, I hope, will vote for the proposition.

Mr. SHOUP. There is a great difference between the old United States Bank, and the bank we are now speaking of. [Laughter.] That, I understand to have been a monopoly, instituted by the country. We propose to establish a general system of banking; we should, therefore, by no means, prevent the investment of foreign capital among us. Let them come with their capital and their labor; we can use both to advantage in this State. If the investment of this capital referred to, were a monopoly, I would vote to exclude the whole of it. But it is not; it induces competition, and competition is what we want.

Mr. DOBSON expressed himself as being in favor of the proposition before the Convention. Foreigners would derive all the benefit result-

ing from the banking operations of the State, by reason of the capital they had invested through the medium of their agents. By means of their capital they would wield an influence in the State, which no men should possess: it was too strong a power to have established in our midst. He thought there should be no opposition to inserting this clause.

Mr. COLFAX. The echoes have scarcely died away, of speeches of devotion to foreigners, made by members on recent occasions, and this Convention have, by an overwhelming vote, adopted a section, extending to foreigners the right to vote, after they have resided in the United States one year. Now, as I understand this proposition, it says, "no citizen of a foreign country shall have the right to subscribe stock in a bank in this State." Natives of Great Britain, France, Germany, &c., are still, though they may have the right to vote here, citizens of foreign governments, until they are naturalized, after five years residence, and swear allegiance to our institutions and laws, and yet gentlemen speak of their interests, and of our devotion to them, and say, "you may vote, but you shall not bank with us!"

Mr. RARIDEN (in his seat). You are mistaken in this.

A VOICE. No he is not.

Mr. COLFAX. Foreigners are not citizens of this country until they are naturalized: even England, after we naturalize them, claims them still—she says they cannot renounce the allegiance they once owed to her.

Now, sir, as we have gone so far, I desire to go farther, and say they shall have the privilege of banking, the same as our other citizens. If it is a profitable business, why shut out from it any who are voters with us, because they first saw the light of day in some foreign clime.

Mr. NILES. It is with difficulty that I have persuaded myself to believe that the Convention is soberly proposing to adopt this section. If this is all in jest, or if it is a mere scheme by one party in this Convention, to wear out the patience of others, it does seem that the matter has been carried far enough. Is it possible, I would ask, that gentlemen are really unwilling to permit foreign capital to come into the State? How could the richest man in Europe endanger our liberties, by sending his capital to Madison, to be managed by our citizens, or by coming here with it himself? Are men to be presumed to be outlaws, and the common enemies of the human race, because they happened to be born east of the Atlantic, and because they are not beggars? Instead of excluding, I would invite foreign capital, and would permit the foreigner equally with our own citizens, to invest his capital in manufactures, agriculture, banking, or any other lawful business. He would assist in paying our taxes, and contribute to the general prosperity of the State, no less than if he had been born here.

I trust this subject will be treated seriously. There seemed to be a prospect, this morning, that we could settle this question of banking in a spirit of candor. Let that spirit be shown on both sides, and we can agree in two hours. But if such propositions as this are constantly to be forced upon us, we never can agree while the world stands.

Mr. WOLFE. Sir, it seems strange to me that gentlemen should change their notions so soon on a matter of so much importance as the one under discussion. The doctrine contended for the other day was, that, as banking is profitable, we had better provide for banks at home, and let our citizens reap the benefit in preference to those of Ohio, Kentucky, and other States. But now these gentlemen contend that not only citizens of Ohio, Kentucky, and other States, may come in, or send in their funds or stocks upon which to bank, but that the door shall be thrown open for England and the whole world, and give to others what properly belongs to ourselves. If that doctrine then was right, this now is wrong. Certainly gentlemen should not be so forgetful of what they say, or inconsistent in what they do. I have been an attentive listener here during this discussion; I have not said one word on the bank proposition, except on re-committing one section with instructions, which I opposed for fear of delay; nor do I now propose to discuss the merits or demerits of the Bank. But, sir, is there not great danger, if we do what is asked and desired to be done, of bringing on ourselves the same train of evils or state of things that occurred in 1837, which was brought on by improvident legislation, the effects of which we will feel for an hundred years yet to come. The same causes will produce the same effects. Sir, I regard it as a very doubtful policy whether we should open the door of free banking or general banking to our citizens; and certainly the policy becomes more doubtful to induce foreigners to bring in or send in our bonds, and make them the basis of our circulating medium. I am fearful that the remedy or cure sought will aggravate the disease rather than cure it. It would be very desirable for us to get hold of our bonds in a legitimate way, but not by producing distress and ruin throughout the State. I have yet to learn how an individual or a State can create a good, sound currency on their indebtedness as a basis. A great deal has been said by gentlemen about banks. If banks be such monsters as they are represented to be, I am satisfied that we should go against all banks. For, according to the argument used, all banks are certainly the most fraudulent and corrupt things that have ever been created in any country. Our constituents, after reading our debates on this question, will be astonished that we made any provision in our amended Constitution for banks. Much has been said by some gentlemen about exchanges,

and that we could not get along without bills of exchange. Here permit me to remark that our corn in sacks, wheat, flour, pork, beef, and in fact the whole surplus productions of our State, put up in portable shape, shipped South or East, act and serve as bills of exchange. In the former direction, the balance of trade is decidedly in our favor, and will soon balance in the latter. I have no desire to detain the Convention; but, at the proper time, if I can get the floor, I will move to lay the whole subject on the table for the present.

On motion of Mr. DUNN of Perry,
The Convention adjourned.

TUESDAY, JAN. 14, 1851.

The Convention met, pursuant to amendment.

Prayer by the Rev. Mr. FARROW, a delegate from Putnam county.

SPECIAL ORDER.

The special order of the day, being the fourth section of article twenty, was taken up for consideration.

The pending question being the motion to amend offered by the gentleman from Crawford,

Mr. OWEN. I move to postpone the consideration of the special order, until Monday next at ten o'clock. [Cries of "No! no!" and "Consent!"]

Mr. PETTIT. I really hope the motion of the gentleman from Posey will prevail. We have just got in the centre of the bank question, and I think we had better get through with it, before proceeding with any further business. Let us postpone the special order.

The question was put, and, upon a division—ayes 59, noes not counted—it was decided in the affirmative.

IMMIGRATION OF PEOPLE OF COLOR.

Mr. BROOKBANK. I hold in my hand a petition, signed by ninety-one persons, residents of Union county, asking the Convention not to prohibit the immigration of people of color into the State, or to preclude them from giving testimony in courts of justice. Being personally acquainted with most of the signers of the petition, I know them to be some of the most respectable citizens of the county; and that their sentiments in this petition are a fair index of the common sentiment in the county. I know no better disposition of it than to lay it on the table, and have it taken up with the report of the committee on the subject, when that comes before us for consideration.

The motion was agreed to.

ORDERS OF THE DAY.

The PRESIDENT. The first thing in order is the section, on its third reading, declaring that the branches of any bank with branches

shall be mutually responsible for each other's circulation, and that the State shall not be a partner in, nor loan her credit to any bank or corporation.

Mr. KILGORE. I move to lay the section upon the table.

Mr. PETTIT moved a call of the Convention; but the call was not sustained.

The question being upon laying the section upon the table,

It was decided in the negative—ayes 58, noes 78.

So the section was not laid upon the table.

The question recurred upon the motion to indefinitely postpone.

Mr. RARIDEN. I think the last vote is indicative that it will not be postponed. On yesterday it was my understanding, without particularly saying who it was, or having any understanding with any one, of the purpose of this Convention, viz.: that the members of this body who were in favor of a State Bank, should organize it, and build it up according to their own notions of propriety. There was nothing, to be sure, offensive in it. Then, the gentlemen who were in favor of a free bank, it was understood, were to adjust them and make them stand together; that was unquestionably the understanding of this House. The moment that the prospect of a State Bank, organized as the present State Bank, came up—and here let me say I do not at all desire that the State should hold stock in a bank, but would like the matter left open so that the State could enter the field at any time, in order to restore the currency—I found then that the advocates of the free bank system did not wish to organize their banks until the State was bound hand and foot. They are not willing to invest their money in the free banks unless the State is forever tied down. That is the object of the latter clause of this section; it is to protect the free banks, if we should have any, against any assault of the State. I take it that those men who are in favor of a State Bank do not consider it a matter of any importance whether the State has stock in the Bank or not. But they wish to keep the action of the institution under the control, to some extent, of the State. They want to put it in the power of the State, and keep it there in case the bank should travel out of its proper sphere, to act upon the subject, under a constitutional enactment. Now, gentlemen who are in favor of free banks, do not appear desirous of embarking in them until the State is tied down; that is the manifest object of the latter portion of the section. Gentlemen may tell me "that these banks will never do wrong." Well, it may be that the projectors of the system seriously entertain that idea. But what did we see on yesterday? Look at them and their actions. When my friend from Hancock (Mr. Walpole) proposed that stock should not be held by foreigners, were

they not raised up at once? And when I make the proposition which I will hereafter make, "that no foreign stockholders shall be permitted to vote for the directors of such bank," you will find them, to a man, voting against the proposition. Well, sir, do we not know, offensive as the old United States bank was, that foreign stockholders were not allowed to vote for directors in that institution? Now, gentlemen have no fears about it, and you find them voting against the prohibition prohibiting foreigners holding stock in this State. I have heard it said on this floor, not upon any certain data of knowledge I admit, that it is proposed to bring in foreigners, whose capital is to constitute our banking basis. If so, they must control the currency of the country. Where does this ceaseless free bank cry come from? From the very points at which the agencies of these foreign stockholders will be established. These men are deeply interested as far as the stock is concerned; they want to get rid of it—to dispose of it for free banking or any other object, so that they can get it off their hands advantageously.

I heard of this thing of foreign influence for twenty years, and I heard it until it produced an effect. The dangerous and fatal effects of putting the circulating medium of the country under foreign influence is too vivid a remembrance to be easily effaced. I admit again that I, nor perhaps any man, want to have State money in a State Bank; but we want the State power protection and authority to direct, in their proper sphere, whatever other banking institutions that may grow up.

What do gentlemen mean when they wage this ceaseless kind of war upon the State? Is it proper to take every weapon out of the hands of the State. But not content with embarking their money in this enterprise they needs must take every weapon, offensive and defensive, from the people, that they may have a fair chance to operate upon their necessities, and the wants of the country. It is not that we want the State money to be hazarded in any bank, but to have the power of the State controlling whatever institution for banking purposes that may grow up hereafter. The other side want to cripple it, for is it not virtually crippling the power of the State when they say the State shall have no interest in the bank? Certainly it is.

Mr. PETTIT. If I had not been a very close observer I do not know whether I would be able to discriminate as to which section the gentleman had been debating. I understand the question is upon the indefinite postponement of the section which we have just now refused to lay upon the table. Yet I would have been led to conclude that the gentleman from Wayne was debating the section introduced yesterday by the gentleman from Hancock (Mr. Walpole,) prohibiting foreigners from holding stock in this State.

Now sir, I will not at this time undertake to answer again the objections to allowing foreigners to bring their stock here, but for my life I cannot see any danger or difficulty in it. It has been alleged by all the bankers in the house, that there is not sufficient stock or capital in the State to create the necessary circulation. Then why, sir, is there an objection to allowing the Frenchman, the Irishman, the Englishman or the Brazilian to bring his capital here and put it under the protection and restriction of your laws and go into banking?

Mr. RARIDEN. The proposition was not to prevent his coming here, but to prevent his sending his money here.

Mr. PETTIT. It is the money of the foreigner we want. That was your argument during the times of your internal improvements. Is there, sir, any such thing as consistency? Men forget, from day to day, their own actions. What, I ask, are you now banking on, but foreign capital? You sent out your bonds and sold them for money—one-half of it came here—the other is sunk or lost. You are now, I say, banking on foreign capital. Was the cry of "foreign influence" put forward when you wanted the capital of the foreigner to dig your canals and build your McAdamized roads? Does the farmer care, if he have a drove of horses or hogs to sell, and wants money, whether it comes from a Briton or an American? It is a mere *bagatelle*, that does not deserve liberal consideration.

Now a word in reference to the indefinite postponement of the section. The gentleman (Mr. Rariden) undertakes to get around the question. He says that all he wants is to have the power left with the State to control banks. There is not a line in the section, sir, that can be understood to divest the State of that power. That is not the bone of contention with that gentleman; it is because the section prohibits the State from borrowing two millions, and ultimately lending the money to the bankers. It is this withdrawal of power to borrow money and invest it, by the State, that draws the life-blood from the State Bank. I say that virtually, preventing the State from taking stock, prevents a set of men going together and issuing the credit and money of the State for their own exclusive advantage. To do that, is to have a State Bank—not to do it, is not to have a State Bank. Where is there a line in the section, that says the State shall not have any control over the banks which may be hereafter established? It says the State shall not be a stockholder in any corporation or association whatever. She has a control; she goes on and charters banks with that provision, and by her State officers, will superintend their operations. That, sir, is not the bone of contention. The true bone of contention is, just because the State credit will no longer be squandered for the benefit of a few bankers. And I charge

all who desire it, to dis sever the bonds of matrimony, for they were wrong in the beginning—they were incestuous and adulterous when they were joined together.

Mr. WALPOLE [interposing]. Will the gentleman permit me to ask a question?

Mr. PETTIT. Yes, sir.

Mr. WALPOLE. Did you not vote to authorize the increase of the capital stock of the bank, and were not the bonds lost under the very act you voted for?

Mr. PETTIT. I think not, sir.

Mr. WALPOLE. I merely desire to refresh your recollection of the occurrence.

Mr. PETTIT. Do so, if you can. I do not suppose I ever did such a thing, sir. When a member of the Legislature, in 1838-9, I was more than one-half of the time sick and confined to my room. Whether I did or did not vote in that way, I do not recollect; I only say, that if I did, I committed a grievous error, for which I ask the country's pardon. [Applause.]

I now say to all those in this House, of whatever color of politics or whatever face they may be, here is a plain, broad question—there is no skulking it; I do not want to do so. The question is—do you want to divorce the State from these banks?—do you want to say the State shall not take stock in any banking company or association? If you do, you will vote against the postponement, and for the section. I have declared the bands incestuous and adulterous; they ought to be dissolved, and I trust in God they will be.

Mr. FOSTER here withdrew his motion to indefinitely postpone.

Mr. MAGUIRE moved to re-commit, with instructions to strike out the latter part of the section, which prohibits the State from being a partner in any bank, or banking association, &c., &c., leaving that portion of it which makes the branches of every bank that may be established mutually responsible.

Mr. M. said: I make this motion, in order that gentlemen who desire to vote for a portion of the section, and not for the whole of it, may have an opportunity of doing so.

I explained the other day to this Convention, that the loss to which the gentleman (Mr. Pettit) referred so earnestly on yesterday, and to which he has adverted this morning also, was occasioned by the action of the Legislature. The gentleman was not then in his seat, and I will therefore briefly advert to it again. The loan was created under an act passed in 1839, for the purpose of aiding to pay the interest on the cost of the internal improvements, then in a course of construction. The gentleman has not controverted the positions assumed by me, but still attributes the loss to the bank. I had occasion, the other day, to examine the journals of the Legislature, to ascertain something of the history of the act authorising the loan referred

to, and I find that the bill was engrossed in the House of Representatives, by a vote of 77 to 7. It passed the Senate by a vote of 38 to 7. The gentleman, as I am just now informed, was at that time a member of the House of Representatives, but I do not know whether he voted for the bill or not.

Mr. PETTIT [in his seat]. Are the yeas and nays there? You will see by them whether I voted for the bill or not.

Mr. MAGUIRE. I am not now in possession of the journals. I examined the vote only for the purpose of ascertaining the number voting for and against it. If he did, I have no fault to find with him for it. I doubt not that those who voted for the bill did it from the best of motives. The result proved unfortunate, as did many other similar measures about the same time in this and other States. The error consisted principally in permitting the bonds to be sold on credit to the New York bankers, many of whom failed to meet their obligations. I ask then if this unfortunate transaction, with which, as far as I can learn, the bank had nothing to do, furnishes sufficient proof that the present banking system should be discontinued, or that those who are in favor of it are "swindlers" and "robbers."

I do not stand here to defend banks, nor any of their transactions, further than justice and truth require. The gentleman from Tippecanoe says that the officers report that the State has a million of capital in the bank, and that all the rest is lost. Sir, I have no information other than that which is furnished by the President and Cashier of the bank, to which every member has had access. From these reports, the bank is unquestionably in a sound and healthy condition.

[Mr. M. then took up the reports made by the bank, and analyzed them, item by item, for the purpose of showing the condition of the bank.]

Sir, the gentleman could have ascertained all these facts if he had taken the trouble to examine the reports, and had not been disposed to regard all connected with banks as swindlers. Sir, I believe an honest man will be an honest man any where, and a dishonest man will be dishonest, place him where you may. I do not believe that a man is necessarily a swindler because he is an officer of a bank, nor is he necessarily honest because he is pursuing any other avocation. I believe that there is such a thing as intrinsic honesty, and that such a principle will stand the test of any scrutiny to which it may be subjected.

Mr. President, as I said at the commencement, I made the motion to re-commit the section under consideration with instructions to amend, so that I and others may be enabled to vote for the first part of it, of which we approve, without having it encumbered with a

proposition of a different character, to which we are opposed.

The question being upon re-committing with instructions,

Mr. HALL moved to amend the instructions so as to provide that the Legislature may authorize the establishment of a State Bank with a suitable number of branches, to go into operation after the expiration of the charter of the present State Bank, the branches to be mutually responsible—and that the State should not be a partner with the exception that trust funds may be invested as a loan, to be secured by preference in payment over other stockholders in case of insolvency.

Mr. H. said: I have but little confidence that anything definite is going to be done by this Convention in relation to the question now before us. I am clearly convinced by every step we take, that we must come to some kind of a compromise, and that the only way by which we can come to a compromise, is by re-committing. But as the Convention seems determined not to do so, I have only to offer such amendments as I think it my duty to offer.

The question being upon the amendment to the instructions proposed by the gentleman from Marion, (Mr. Maguire,)

Mr. STEVENSON. I was anxious yesterday morning to compromise this question. I for one, am not willing to trust the whole banking interest of the State in the hands of the free bankers, but am willing to place it in the hands of a well regulated State Bank, and a free bank. I have no objection to take the two together. The State Bank has been experienced—the State has flourished under the system—and it has been satisfactory in its operations. Then, sir, I am not willing to strike down that institution to-day, and take up another to its exclusion.

It has been admitted to me by gentlemen in favor of free banking, that they cannot compete with the State Bank system, and the State of Ohio was brought up as an evidence that they could not. I think, sir, that the opposition to a State Bank has grown, in a great measure, out of the fact that the free banks cannot compete with the State Bank. What is the reason they cannot make an equal amount of money with the State Bank? Because they have to pay out too much. If they cannot make the same profits by banking that the State Bank does, they can compete with the State Bank only by controlling the commerce of the country. They establish their free banks in Madison, Lafayette, Evansville, and adopt the Illinois plan. You go to one of these free bankers—whose only object is to make money—and present him your note. He says he is not acquainted with your endorser; but if you have produce and bring it here and put it in my storehouse, I will keep it and sell it, and that will be a sufficient security for me." On these

terms he will cash your note. Thus they control the resources, the business, and commerce of the country. Should we, I ask, place the commerce of the country in the hands of a set of sharpers and brokers? I say we should not do such a thing. I am not willing for one; but am willing to make some compromise. Yet gentlemen tell us there is no danger in the subjects of foreign governments coming here and controlling the business and resources of the country by banking. I say we have much to fear. Are we to allow foreigners to come here and pay them six per cent. on the bonds which they hold on the State, and authorize them in addition, to issue and loan at six per cent. an amount of paper currency equal to the amount of bonds.

Gentlemen see no danger in this! I say there is danger in putting the control of the business or the country into the hands of individuals, but much more in putting it into the hands of foreigners. I am not willing to go for any system of free banking, if not connected with a State Bank; the one has been tried, the other has not, and could not be sustained without controlling the commerce of the country. I will fight this system to the end. But I am willing, and have been from the commencement, to take a fair system of well regulated State Banks, and a similar system of free banks. Let them go together, and if one attempt to control the commerce of the country, the other will correct it. There is no danger from either, if we meet upon a fair ground of compromise without crippling the one or the other. I know we have the power to cripple down the free banks, so with the State Bank. But nothing will enable us to act fairly upon the subject, unless we enter into a compromise imbued with some liberality of feeling. For my part I would leave the question with the legislature; and if the people, through their representatives, are willing to take a State Bank and branches, or free banks, or both, I say, "amen." There are things, in my opinion, that can be as well done outside of the Convention as in it. I say, establish general principles on the subject, and we then shall have about what is right, and need not remain here quarrelling eternally about this question. As long as we want to fix the details of either system, we cannot get along. I hope the matter will be re-committed. I see no danger in leaving the question an open one for the Legislature, that they may take such action in relation to it as in their judgment will seem best.

Mr. EDMONSTON. I voted yesterday against the section as engrossed. There are some principles in it, however, that I am in favor of. The mutual liability of the banks with branches, that may hereafter be established, I cordially approve of. But when gentlemen get up and say the State shall not be a stockholder in any bank, I think they go too far. I would

go for allowing the State to take stock to the amount of the trust funds.

In what way can we better invest the trust funds than in bank stock? Are we merely to loan these funds to the bank, as suggested by some gentlemen? Well, the bank would pay you but 6 per cent., while it made 10 per cent. upon your money. Should not this fund increase so as to benefit the State, and not the stockholders of the banks to whom you loan it? You might just as well loan the money to the farmers throughout the State, as to loan it to the bank.

I ask, is it not as safe to invest these funds in bank stock as to loan it to the bank?

Mr. PETTIT. I would not put one dollar of trust funds in any bank on the face of the earth. But I would loan it out to farmers of the State, if they desire it.

Mr. EDMONSTON. Nine times out of ten such a policy has been, and will be, an injury to the individual who has borrowed it.

Now, sir, I know this discussion has wandered from the true question before the Convention; but I trust the Convention will indulge me in following the course which the gentleman from Tippecanoe (Mr. Pettit) has taken upon the question, that will come up after this, upon the proposition introduced yesterday by the gentleman from Hancock (Mr. Walpole). Sir, it was astonishing to me to see that gentlemen diverge from the straight democratic path. Was it not a strong feature in Jackson's celebrated veto message upon the United States Bank, that foreigners holding stock, constantly drained the country of specie? I suppose the gentleman has preached that doctrine when stumping his Congressional district, and perhaps all over the country. He says now, "who would object to a foreigner bringing his money here to buy your horses or hogs?" But when a foreigner comes here to purchase the surplus products of the country, does he go into banking? No, sir, he merely buys our products and leaves his money with the producer. Does he pursue the same course when he goes into banking? No, sir. He will deposit our State bonds with some State officer, upon which he will issue an equal amount of paper, countersigned by the Auditor. By this operation he gets from the State five per cent. interest upon the bonds, and at least eight per cent. from our citizens upon the paper he issues by authority of the State—so that upon the bonds that we now pay five per cent. we will have to pay thirteen per cent., which will create a continual drain upon the precious metals of this State to an amount of nearly half a million annually, the greater part of which will go to Europe.

It is said that with your free banking "every man has equal privileges." That remark of the gentleman from Tippecanoe reminds me of a man with a large family of children of various

sizes; he goes out into the vineyard and takes a beautiful bunch of grapes, which he brings home and places in a position that the taller can reach, but the smaller cannot avail themselves of the delicious fruit. He then says to them, come, dear children, take and eat, they are free for you all," at the same time fully convinced that the smaller could not reach them.

This is the beautiful doctrine that is being preached by the free bank men. Say they, "banking is a monopoly in the end, one way or another, so let all enjoy the use of this swindling machine," when they know that all men cannot avail themselves of it.

In relation to the bonds held by foreigners, I wish to ask the gentleman from Tippecanoe a question. If we suffer these foreign bond holders to come here and bank with the bonds on which we pay them 5 per cent., and allow them to issue a dollar of paper for every dollar in bonds then with the exchange, which every bank is permitted to charge, will you not allow them to draw 14 per cent., the greater part of which is sent to Europe? Yet, gentlemen say, bring in all the foreign capital you can—let them have the control of the currency, and continually drain the country in the shape of interest. Is that democracy? It is strange indeed, if it be.

One word to the gentleman from Monroe, (Mr. Read,) who is so fond of quoting Jackson's messages, and which his colleague the other day moved should be engrossed for a third reading [laughter]. I ask him, is not one of the main features of the veto message a recommendation that foreign capital should not be encouraged to be invested in this country in the shape of bank stock? I am certain the gentleman will answer in the affirmative. I ask my democratic friends now, when it is just before day, and the darkest hour of the night, not to desert the Old Ship?

Mr. WALPOLE. I am somewhat surprised at the course pursued by the gentleman from Tippecanoe (Mr. Pettit). There was a proposition reported by the committee on the public debt, guaranteeing the establishment of a sinking fund by constitutional provisions; but the gentleman proposed to strike it out, thus preventing the Legislature from taking steps to pay off our debt, or reduce taxation when our necessities demanded, so that these foreign bondholders might be guaranteed in the enjoyment of the Wabash canal, and our other works of improvement. He says it is our business to encourage the investment of foreign capital here. Is it that we want foreigners to come here and support our government? It has never been the policy of the government of the U. S. or of any of the States, to erect a great moneyed influence within its borders, a sort of *imperium in imperio*. Every republican has ever been opposed to the idea. But it is left to the gentleman from Tippecanoe to controvert the posi-

tion that has been taken by our American statesmen upon this subject. The simple question is, are you to have the whole currency of the country in the hands of a few foreign capitalists, that they may contract or expand it at their will? Yet, sir, that will most undoubtedly be the effect, if we permit them to come here and bank upon our bonds. You want these Rothschilds, and Palmers, and Barings, to have the whole thing in their own hands. To-day they may have in circulation three millions—in three months there may be but fifty thousand dollars. I, for one, most solemnly protest against such a measure. Sir, that gentleman (Mr. Pettit) made a long speech to the effect that the State lost by the State bank over a million of dollars. He knew better than that, for he was a member of the Legislature at the time the bill was passed authorizing the negotiation of the million and half loan. Was his name recorded upon the passage of that bill? No, sir, he was absent. When the question of the State paying its public debt came up before the Legislature, it was a matter of such indifference to him that he does not now know whether or not he was present at the time of the passage of the million and a half bill.

Mr. PETTIT (in his seat). I was sick at the time.

Mr. WALPOLE. I have noticed the gentleman's course, and I am glad to see that his Democratic friends have taken alarm at it. But it is entirely consistent with the course he has taken in reference to the southwestern part of the State, when he proposed that, no matter what might be the condition of this people, yet the Legislature was still to go on to tax them; he was not willing to leave it to the Legislature. No, sir, nothing is to be left to the legislature.

Sir, if the advocates of free banking want to force their system upon us, then I stand here, and will vote against all banking; and I hope all men in favor of the present institution, or something like it, will stand together, and shift the responsibility upon the free bankers.

The gentleman from Tippecanoe made a very plausible argument yesterday upon the mutual liability of banks. He said you might as well have all the farmers, merchants, shoemakers &c., in the State, liable for each other's debts. There can be no parallel run in the case at all. You, sir, and I, and every man, who follows an occupation in life, pursues it as a common law right. But every man has not the right to bank. When you take from the masses this common law right, and confer it upon a few who realize great advantages therefrom, they should stand together, mutually bound, responsible for each other's liabilities. You allow them to issue notes and trade in bills of exchange, and, in fact, have the whole currency of the country under their control; are you to say, then, that they shall not be held mutually liable? If we

are to have foreigners banking in Indiana, not on the mutual liability principle, I should then like to have a Board of Control, so that we may know, every three months, what these foreigners are doing. I want to know a few days in advance, before the bankruptcy comes upon us, when it is going to take place.

If you establish free banks, then paper will be subject to discount in commercial points; a bank located, for instance, at Danville, would have its bills subjected to one or two per cent. discount at Madison. Mutual liability would make the Madison branch endeavor to keep up the credit of its sister branches, and receive their notes at par; and then if one branch got into doubtful circumstances, and a rush should be made upon it, the other branches could assist and keep it up. Without such mutual liability, the paper of such a bank would depreciate, and the bill-holder would be the loser. As there should be a mutual union of interest and purpose, so also should there be a mutual liability to the people of the country. But, sir, let gentlemen speak of their independent free banks as they please, I shall go against them.

The example of the Kentucky banks, which lost to the people several hundred thousand dollars, admonishes me of my duty. I want no such losses to accrue to the people of this State. I stand upon the experience of thirty years' banking in Indiana, and that experience will guide my vote.

Mr. RITCHIE. I regret the lengthy discussion which we have had upon this question, and feel a little sorry that I have any disposition to prolong it; but since so many gentlemen have spoken, I may be pardoned for making a few remarks. I am in favor of the passage of the section now under consideration. I shall vote for it just as it is, though I am not certain whether the two parts into which it is divided hang very well together or not. I believe in both of the propositions contained in the section—in the provision providing for mutual liability, if we have a State bank and branches, as well as the one declaring that the State shall not be a partner in any bank. I am willing to dissolve all connection between the State and banks. But, sir, I understand that a number of the friends of the State bank, if I can understand the course suggested by the gentleman from Dubois, (Mr. Edmonston,) if they cannot obtain permission to borrow money on the part of the State, to bank upon, they propose to go out among the counties of the State of Indiana, and withdraw the trust funds from the people of the State, in order to bank upon them—

Mr. WALPOLE (interposing). Those are not my sentiments.

Mr. RITCHIE (resuming). Neither State bank men nor the free bank men can agree among themselves.

Mr. EDMONSTON (interposing). The gentleman from Johnson mistakes my position. I

do not propose drawing out the trust funds of the different counties, until the winding up of the present banks. They must be vested somehow, and I know of no better plan than in bank stock.

Mr. RITCHIE. I see but very little difference between the gentleman's explanation and my statement. The trust funds of the State of Indiana are loaned out to the people of the several counties of the State, and those loans secured by ample security upon real estate.

Mr. MAGUIRE. The trust fund is not all loaned out. There is a large portion in the treasury vested in five per cent. scrip, and paying interest that is not in the hands of the people at all.

Mr. RITCHIE. I had the honor of a seat in the Legislature in the year 1840, when this same proposition came up for consideration, and the Legislature actually passed a bill calling in the surplus revenue and all the trust funds belonging to the State, to furnish capital to bank upon. So odious was this proposition, that the universal sentiment of the people demanded and secured its repeal at the very next session. If you call in the money now loaned out to the people of Indiana, among the honest farmers and mechanics of the country, to put it into banks to be loaned out to their friends and favorites, you will hear the indignant voice of the people of Indiana, denouncing the policy and demanding the immediate extirpation of the banks. The people prefer the present system; that these funds should be loaned out on mortgaged security to honest farmers and mechanics in the country, to pay off their indebtedness, and enable them to carry on their business operations.

On the other hand we find that the free bankers have no other idea in their heads, than to authorize banking upon State bonds, and they are willing to ransack the whole earth in search of our State bonds, and out of our very indebtedness, create free banking capital!

In the language of the gentleman from Franklin (Mr. Shoup,) they say let foreign capital come—we want more money—more capital. I am not certain whether this is correct or not; but the gentleman, (who spoke in favor of it on yesterday,) put me in mind of a conversation which I had in 1837, soon after the adoption of the system of internal improvements, with a gentleman of my own county, as to the propriety of adopting the system at that time. I argued that it was folly to borrow ten millions of dollars for the purpose of constructing roads and canals in every part of the State. It was not known that these works would be profitable, or that any good could result from their construction. Towards the close of the controversy, he remarked that he did *"not care a damn whether the works would be profitable or not, so that we get the money to spend among us!"*

SEVERAL MEMBERS. Name him.

Mr. RITCHIE. He was a gentleman who had had the honor of a seat in the Legislature from Johnson county. And this appears to be the cry now, with some of the free bankers—they do not care "a damn," so that they get more money! I am one of those who believe that the real interest of the people of Indiana is in her agricultural and mechanical productions. The only good realized from banking, is that it furnishes facilities for the transfer of the produce of our country to market. But, sir, these facilities are greatly overrated. Our produce would find a market, though there was not a State Bank or a bank of any kind in existence. The whole world is open to our commerce and the money would return in exchange for our production, whether there be banks or not. I am not for any system that will create a flood of paper or any other kind of money.

This overflow of money—a redundancy of currency—is always hazardous to the real interests of the country. Experience proves that a flush of money is always followed by commercial distress and general individual embarrassment. Sir, it is because banks have the power, at their own pleasure, to increase or diminish the amount of the circulating medium, that I feel so much opposed to them. I am opposed to banks of all kinds, and regard them as all belonging to the same species, and therefore, have but little preference for one kind or the other. I am happy in the belief that there is a glorious day approaching, when all banks will be swept away by the force of public sentiment. A few years since, the Bank of the United States, was regarded as the great, if not the only institution of the country! Now, who dare do her reverence? Since that, the State Bank was considered as the basis of our prosperity—as an institution, without which all our resources would remain dormant and undeveloped. Now, she too, has fallen in public estimation, as is clearly evinced by repeated votes in this Convention. Sir, I regard the effort to establish a system of free banking as the *last* experiment to be tried in banking in the country. Like its predecessors, it is, in my opinion, doomed to fail. And when it fails, the last of the tribe will have been exploded, and a sound public sentiment will have forever forbidden the creation of banks of any kind. I believe, sir, that such a day is coming, and in its approach I apprehend no danger to the country—although, I have no doubt, the cry of *ruin* will be sounded long and loud.

A great deal has been said, sir, although I think it out of place, against the proposition of the gentleman from Hancock, (Mr. Walpole) prohibiting foreign capitalists from having a hand in the banking affairs of this State. I agree with him, and shall vote for his proposition. I have always held to the doctrine contended for by Gen. Jackson, in his veto message of the United States Bank, that we should

guard against foreigners exerting an influence over the monetary affairs of this country.

Mr. OWEN. Mr. PRESIDENT: I am amazed at the degree of excitement prevailing in this Convention, and which has given rise to the proposition to strike out that which was inserted on my motion yesterday.

The section, as it has been adopted, is, in truth, not originally mine. It did not first come from any free banker. It was reported by my excellent friend from Gibson, (Mr. Hall,) chairman of the committee on State debt and public works.

What is the proposition? The credit of the State shall never be given or loaned in aid of any person or corporation. I am amazed at the argument advanced by the gentleman from Owen, that this is but a covert proposition to protect free banks. Did not a gentleman, known to be in favor of a State Bank and Branches, commence the war against the principle that the State should be a bank stockholder? Then, I think the opposition to that principle comes from strange quarters.

With the gentleman from Switzerland, I can say that I remember something of Jackson democracy. I remember well that Andrew Jackson was the great and the successful advocate of the doctrine that, as there was no union in this country between Church and State, so, also, should there be none between Bank and State. The great contest then commenced and carried on concerning that principle is even now in progress; and the question, at this very hour under consideration, is the same which agitated the country in 1832. Now as then, it is the question: Shall state and bank be connected, or shall they not? That they shall not be connected, is the true Jackson doctrine. The doctrine which passed yesterday by a vote of twenty majority embodies the true Jackson doctrine.

The principle has been sought to be introduced here, and indeed has for the time prevailed, that no foreigner shall be allowed to subscribe stock to any bank in this State. A proposal so false in principle and so mischievous in practice as this, must be ultimately defeated. There is not the least chance, when the sober second thought of the Convention is brought to bear upon it, that it should stand the test. Its sole effect will be, like that of a kindred proposition coming from the same quarter, to waste our time in useless voting and profitless debate. Like the former proposal by the gentleman from Hancock, (Mr. Walpole,) to prevent all Presidents and Directors of banks and railroad companies from being elected to the Legislature, it never can become a part of our new Constitution.

The true doctrine is this: No occupation should be tolerated in this country in which every man may not safely be allowed to engage. Is banking an occupation of a character so pe-

culiar, and so dangerous to our liberties, that foreigners ought to be precluded from investing their capital in it? Prove that to me, and I will vote against all banking, now and forevermore. Or is the objection only that it is a profitable business, and that its profits ought to be exclusively secured to our citizens, and competition from abroad shut out altogether? The old doctrine, sir—the old exploded doctrine—of a protective tariff, in a new garb! And, to be consistent, whither are the advocates of the doctrine led? If it be proper to shut out foreigners from one occupation, because it is deemed lucrative, why not from another? Why should not the gentleman's section be so amended, that foreigners shall be forbidden to become stockholders in any corporation whatever within our State, whether for banking, manufacturing, or any other purpose? Will the gentleman assent to such a doctrine as that?

Mr. WALPOLE. Certainly. Will the gentleman from Posey go for this proposition if I accept of his amendment?

Mr. OWEN. If I supported it at all, it should be in that form. I am opposed to it in every form. But the gentleman's proposition is, in truth, perfectly nugatory. It is not only wrong in principle, but powerless in practice. It provides that no foreigner shall take stock; but it contains no prohibition of a transfer of stock to a foreigner.

Mr. WALPOLE. My proposition reads—
"Shall not hold in trust for a foreigner."

Mr. OWEN. The section, as I understand it, does not forbid a transfer to an alien. But suppose it does. Is the doctrine to be recognized, that when a man takes stock, in a private business, recognized and incorporated by law, he is prohibited from selling that stock to whomsoever offers him the best price for it? That is a restriction on our own citizens quite as much as on foreigners.

Pass such a restriction for Indiana, and our neighbor States, all around us, will rejoice at the deed. They will rejoice to see us reject, by a constitutional provision, that capital from abroad which they desire, and which they invite. We, all of us, in these Western States, require such capital. In proportion as it flows in upon us, our resources are developed, and our labor finds profitable occupation. If we shut the door, it will go elsewhere. The loss of Indiana will be the gain of Illinois, of Michigan, of Wisconsin.

I said this proposal was in the nature of a protective tariff; I might almost have said, of a prohibitory one. Free banks do not, on the average, divide over eight per cent. We propose to shut out foreigners from a business yielding such a profit. And then, simultaneously, we propose to establish a State Bank, in which the stockholders, our own citizens, shall divide over twelve per cent. Is not this a tariff and of the most odious character? Does it

not virtually prohibit us from borrowing of foreigners at eight per cent., and compel us to borrow of our own citizens at twelve? The thing is utterly untenable in principle, and would be fatal to the interests of the State in practice.

In the State of New York, where the entire banking capital is some forty millions of dollars, eleven millions only of that sum are invested in free banks. The great difficulty there is, to find capitalists enough who will employ their money in a business of which the profits are so moderate. That difficulty will be even greater here. Most of us, who are engaged in any business, can make more than eight per cent. on the capital we employ. So long as we can do so, we shall not invest that capital in free banks. And shall we prevent foreign capitalists from engaging, if they see fit, in an occupation, of which the profits are too small to tempt ourselves? This proposition, then, to exclude foreign capital, is as mischievous as it is unjust.

MR. KELSO. I believe I must take leave to differ with the learned teacher of democracy.

MR. OWEN. Not a learned teacher at all.

[MR. KELSO here proceeded to make some remarks, which will be published hereafter.]

MR. BRACKEN called for the previous question, and the call was seconded by the Convention.

THE PRESIDENT. The question is, Shall the main question be now put?

It was so ordered by consent.

THE PRESIDENT. The main question is upon the adoption of the amendment offered by the gentleman from Gibson, to the pending instructions of the gentleman from Marion.

Upon this question, the yeas and nays were demanded and ordered, and the Secretary reported the following result:

YEAS.—Messrs. Allen, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foster, Frisbie, Garvin, Gordon, Hall, Hamilton, Hawkins, Helmer, Hitt, Hogin, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mower, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Schoonover, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Todd, Wallace, Watts, and Mr. President—63.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Borden, Bracken, Bryant, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foley, Gibson, Gootee, Graham of Miami, Graham of Warrick, Gregg,

Haddon, Harbolt, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Morrison of Marion, Niles, Owen, Pepper of Ohio, Pettit, Read of Clark, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Thornton, Trimby, Walpole, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—80.

So the amendment was not adopted.

THE PRESIDENT. The question is now upon re-committing, with the instructions proposed by the gentleman from Marion (Mr. Maguire).

On this question the yeas and nays were demanded, ordered, and taken, with the following result—yeas 59, nays 81:

YEAS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Dobson, Dunn of Jefferson, Edmonston, Farrow, Foster, Frisbie, Gregg, Hall, Hamilton, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kilgore, Lockhart, Maguire, March, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Todd, Wallace, Walpole, Watts, Zenor, and Mr. President—59.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bracken, Bryant, Butler, Carter, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Elliot, Fisher, Foley, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, Kinley, Logan, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Morrison of Marion, Morrison of Washington, Mower, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Thornton, Trimby, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—81.

So the section was not re-committed.

THE PRESIDENT. The question now recurs on the passage of the section.

The yeas and nays on this question were demanded, and ordered, and the Secretary reported the following result—yeas 89, nays 63:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bracken, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion,

Dick, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hardin, Helm, Hendricks, Holman, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Thorton, Trimby, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—39.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Blythe, Bowers, Brookbank, Clark of Hamilton, Clements, Cole, Conduit, Crawford, Davis of Madison, Dobson, Dunn of Jefferson, Edmonston, Farrow, Foster, Frisbie, Gootee, Gregg, Hall, Hamilton, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kelso, Kilgore, Maguire, March, Milligan, Morgan, Mowrer, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Todd, Wallace, Walpole, Watts, and Zenor—53.

So the section passed.

On motion of **MR. EDMONSTON**,
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

MR. HOLMAN. I rise, Mr. President, to ask for a suspension of the order of business, in order that I may be enabled to introduce a resolution. [Cries of "read, read, read."] For the information of the Convention, I will read it. It is as follows:

Resolved, That a further discussion of the questions of currency and banking is not required, either by the importance of the subject, the want of correct information, or the wishes of our constituents; and that, therefore, all such questions shall hereafter be acted on without debate.

The question was taken on the motion to suspend the order of business, and there were for the motion, yeas 51, noes 31.

So the order of business was not suspended—the rules requiring a vote of two-thirds of the members present.

THE PRESIDENT. The first business in the order of the day, is, the amendment offered by the gentleman from Ripley, (Mr. Smith,) to the amendment of the gentleman from Hancock (Mr. Walpole).

The amendment was read as follows:

"Every bank established under the authority of this Constitution, shall pay one-quarter of

one per cent. per annum, *bonus* on the capital stock, to the State, for common school purposes, and each bank dividing ten per cent., or over, profit, on the capital stock, established as aforesaid, shall in like manner, pay over to the State, for the use of common schools the half of one per cent., on the capital stock of each branch."

MR. PETTIT. I hope that proposition will not be adopted. I would tax bank capital just as I would tax any other property in the State—simply enough to guarantee its protection. I would just as soon say that the farmer who makes ten per cent. on his farm, shall pay over to the State, one per cent. No one doubts the desirableness of having an educational fund; but I contend that that fund ought to be raised by a direct tax on property, as all are able to bear it. That is the only way in which justice or fairness can be done. If a man goes into the business of banking, his bank property is protected by the laws of the State, and for that protection let him pay as others pay, and no more. There is no necessity, that I can see, for making an invidious distinction. On the present, as on all other occasions—in this matter, as in all others—I ask that all the citizens of the State shall have an equality of rights—that equal justice shall be done to all; and that all shall be equally taxed, according to their property.

MR. SMITH. I would just remark that this is precisely the provision existing in the present bank charter—that you should pay one-quarter of one per cent. on each share of one hundred dollars; and that when the stockholders divide a profit of ten per cent., they shall pay to the State, for educational purposes, the half of one per cent. I think no proposition could be adopted that would give more popularity to a currency than this. It is said that banking is demoralizing in its tendency; but if this proposition be adopted, its effect will be quite the opposite.

MR. MCFARLAND. By reference to the present Constitution, you will see that this is all the tax which is assessed upon bank property, and that the bank has paid less on the amount of capital employed in its business than any individual employed in any other business in the State. The proposition of my colleague is undoubtedly correct—that without attempting to control men in the kind of investments they shall make, it is wrong to impose a special tax on any given kind of property for any purpose whatever. We ought, beyond all question, to suffer the citizen to invest his money as he pleases; but whatever or wherever it may be, let it be subject to such tax as is necessary for its protection. By a reference to the 15th section of the charter of the bank, you will find that twelve and a-half cents on each share of stock, is "in lieu of all other taxes and assessments on the stock in said bank." Thus, instead of the bank being actually charged a bo-

nas for the privilege of banking, the provision secures the bank against taxation, except to that amount. It is true, sir, that, upon the happening of certain contingencies, this tax might be increased, but only to a limited extent.

I would say of banking, as of anything else, if it be wrong, prohibit it entirely—if right, impose no onerous burdens upon it—do not sell an indulgence to do wrong, in this or anything else. Under the pretext that the bank had to pay a bonus for its privileges, all the real estate held by it was exempted from taxation, and the amount held by the bank, if I am not mistaken, is over a quarter of a million of dollars. These special taxes are mere cheats, sir; they, for the most part, secure and cancel, as in this case, a special privilege, which would not be tolerated if left fully exposed.

MR. KENT. As an illustration of what has just fallen from the gentleman from Tippecanoe, (Mr. McFarland,) I will state that the branch bank of the city of New Albany has never paid one solitary farthing of tax for city purposes.

MR. OWEN. I offer the following amendment.

The PRESIDENT. There is an amendment to an amendment already pending.

MR. OWEN. Then with the permission of the Convention, I will read what I would propose as a substitute for the amendment of the gentleman from Ripley. I think it will be more satisfactory to a majority of the Convention:

"Bank stock shall be taxed as all other property is taxed, and the proceeds shall be applied to the support of common schools."

I have one word to say in regard to the proposition of the gentleman from Ripley. If he is familiar with the history of corporations, he must know that when their taxes are paid upon their dividends, nothing is more easy than to avoid taxation thus levied. They can put down their dividends to a certain rate, and thus avoid the first tax; or, if they must go above that rate, they can still avoid the tax, by making up the balance into so much surplus stock. I think, therefore, that it is safer and better to tax the stock rather than the dividends.

MR. SMITH. The gentleman from Posey has mistaken the purport of my proposition. It is, in the first place, to tax the stock a quarter of one per cent.; and when the dividends exceed ten per cent., to further tax that stock the half of one per cent.

MR. CRUMBACKER. I move to lay the amendment, and the amendment to the amendment on the table.

MR. WALPOLE. I call for a division of the question.

The PRESIDENT. The question will first be on laying the amendment of the gentleman from Ripley on the table.

MR. SMITH. I ask for the yeas and nays.

The yeas and nays were ordered, and being taken resulted as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Biddle, Borden, Bright, Bryant, Chapman, Chenoweth, Clements, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dick, Dunn of J., Duzan, Elliott, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Hendricks, Hovey, Kent, Kendall of White, McFarland, McLean, Miller of Clinton, Milroy, Murray, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Monroe, Ristine, Shoup, Sims, Smith of Scott, Stevenson, Taylor, Thornton, Todd, Trimble, Wheeler, Wiley, Work, and Yocum—56.

NAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Beeson, Blythe, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Cole, Davis of Madison, Davis of Parke, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Frisbie, Gootee, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Owen, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Spann, Steele, Tague, Tannehill, Thomas, Wallace, Walpole, Watts, Wolfe, Wunderlich, Zenor, and Mr. President—74.

So the amendment to the amendment was not laid upon the table.

The PRESIDENT. The question now is on laying the amendment of the gentleman from Hancock on the table.

MR. WALPOLE. I ask for the yeas and nays.

The yeas and nays were ordered and taken, and resulted as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Biddle, Bryant, Chapman, Chenoweth, Colfax, Cookerly, Crawford, Crumbacker, Davis of P., Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Garvin, Graham of Miami, Gregg, Hovey, Howe, Kent, Kendall of Wabash, Kendall of White, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Milroy, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Taylor, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Work, and Wunderlich—58.

NAYS.—Messrs. Alexander, Badger, Ballingall, Beard, Beeson, Blythe, Borden, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Coats, Cole, Davis of Madison, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman,

Huff, Johnson, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Pepper of Ohio, Prather, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Wallace, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—76.

So the amendment was not laid upon the table.

The PRESIDENT. The question now is on the adoption of the amendment offered by the gentleman from Ripley.

Mr. MAGUIRE. I feel it to be my duty to reply very briefly to the remarks of the gentleman from Tippecanoe (Mr. McFarland) in relation to the taxation of stock owned by individuals in the State Bank.

That gentleman read from the 15th section of the Bank charter to show that the tax of twelve and one-half cents on each share of fifty dollars was in lieu of all other taxes on the stock in said Bank, and contended zealously that that was all the tax to which Bank stock is or ever was subject.

Now, Mr. President, I stated in my remarks a few days ago, that, individual stock in the several Branches, in addition to this tax for school purposes, was taxed as other property in the counties in which the Branches are respectively located. This statement having been called in question by the gentleman from Tippecanoe, I deem it due to myself to sustain my assertion by proof. I read therefore from the same section from which the gentleman read, as follows:

“And, in case of an *ad valorem* system of taxation being adopted during this charter, the said stock shall be subject to the same ratio of taxation as other capital, not exceeding one per cent. including the aforesaid tax.”

Now, sir, the *ad valorem* system of taxation commenced very soon after the Bank went into existence, and the stock has been, ever since the commencement of that system, subject to the same tax imposed upon other property in addition to the tax to which the gentleman alludes.

I read further, sir, from an act of the Legislature approved February 6, 1841, the following section:

“That hereafter the capital stock of the said Bank shall be taxable, in addition to the tax of twelve and one-half cents on each share for education, only for State purposes; which tax shall be a per centum in amount each year equal to the amount of State tax and to the amount of county tax in the county in which the respective Branch may be situated for the year; and shall be paid over by the Cashier of each Branch to the Treasurer of State, and by such Cashier shall be charged to the stockholders and deducted from the dividends.”

This is the law under which the stock is now taxed, and by inquiry of the State officers any gentleman may ascertain that the tax has been regularly paid according to the provisions of the law.

Mr. STEVENSON. I trust this amendment will not be adopted, not because I am opposed to taxing bank property, but because I think it belongs to the Legislature to fix the tax when they fix the charter of the bank.

A VOICE. That is right.

Mr. STEVENSON. I think we ought to adopt some general principle and leave the details to the Legislature. For that reason I shall vote against the proposition.

Mr. BASCOM. If I understood the gentleman from Marion correctly, I understood him to say that the State Bank had paid a State and county tax. Now, sir, if that was what he said, either he or the Auditor of State is mistaken. At an early period of the session of this Convention I proposed a resolution of inquiry in regard to the amount of State, county, road, and school tax had been paid by the stockholders of the State bank; and in answer to that resolution it was stated that they had paid \$5,000 State tax, and \$2,000 school tax, but no county or road taxes. Now you may go to any county in which there is a branch of the State Bank and you will find that not a single cent has been paid for county or road purposes by the stockholders. The property in this bank is not taxed as other property is taxed; and I ask any man who will take the trouble to examine and find out whether the stock held by individuals is taken for these purposes. Gentlemen need not in this Convention attempt to make the people of the State believe that bank property pays taxes as other property is taxed. This is not the fact, for no evidence of it can be found. On the contrary, the Treasurer of State says positively that the stockholders pay no road or county tax. The law provides that they shall pay a certain amount of tax, but it goes for State purposes alone. This is the reason why I offered the resolution on the subject. Besides this, this bank owns a considerable amount of land, not one acre of which is taxed for road or county purposes. Now, sir, either the gentleman from Marion or the Treasurer of State is laboring under a great mistake. I contend that they pay no road or county tax, and that is the reason why I wish them to be taxed to the fullest extent.

Mr. KELSO. Will the gentleman allow me to read what is the law on this subject?

Mr. BASCOM. Certainly.

Mr. KELSO. Here it is;

“That hereafter the capital stock of the said bank shall be taxable, in addition to the tax of twelve and one-half cents on each share for education, only for State purposes; which tax shall be a per centum in amount each year equal to the amount of State tax, and to the

amount of county tax in the county in which the respective branch may be situated for the year; and shall be paid over by the cashier of each branch to the treasurer of State, and by each cashier shall be charged to the stockholders and deducted from the dividends."

Mr. BASCOM. Yes, but that tax all goes to the State except what is provided in regard to schools. There is no county or road tax provided for.

Mr. MAGUIRE. I have no anxiety as to the fate of the amendment offered by the gentleman from Ripley, and do not rise to say anything upon that subject. I felt it to be my duty to correct the mistake into which the gentleman from Tippecanoe had fallen, especially as his remarks went to question the verity of a statement made by me a few days ago on this subject. The gentleman from Wells, if I heard him correctly, still disputes the correctness of my position, and says he has authority from the State Treasurer to sustain him. Now, Mr. President, the law on this subject has been read over and over again, and I do not see how it can be misunderstood by any one who is not wilfully blind. The facts are all familiar to me for the reason that it was my duty as Auditor of State to assess the tax and attend to its collection. The process is this: the officers of each Branch Bank are required by law on or before the first Monday in November annually, to transmit to the Auditor of State a full and correct statement of the amount of stock owned by individuals in the respective Branches. Immediately on receiving which the Auditor is required to assess upon each Branch the amount of taxes due therefrom according to the laws in force on the subject. The amount assessed by the Auditor of State upon each Branch is the precise amount which is assessed upon personal property in the county in which the Branch is located for State, county, and road purposes, unless, including the school tax, it exceed one per cent., in which case it can only go to one per cent. The whole of this tax goes into the State Treasury in pursuance of the law which has been read. Now, if the gentleman from Wells has any authority which contravenes this statement, I can only say that his authority contradicts the law and the practice under it.

As to the real estate held by the Bank, to which the gentleman has several times referred, I will state that that property is held as part of the capital stock, and is taxed as stock and not as real estate. The Supreme Court has decided that it constitutes a part of the capital stock, and cannot be taxed otherwise than as stock.

Mr. BADGER. It appears to me that debate on this question has gone far enough, and I therefore move the previous question.

The previous question was sustained, and the main question being ordered to be now put,

the question was first on the amendment offered by the gentleman from Ripley (Mr. Smith).

The yeas and nays having been ordered, they were taken, with the following result:

YEAS.—Messrs. Alexander, Ballingali, Bascom, Beard, Beeson, Blythe, Borden, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Cole, Colfax, Davis of Madison, Dunn of Perry, Edmonston, Fisher, Foley, Foster, Frisbie, Gootee, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, March, Mathis, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Prather, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Tague, Tannehill, Thomas, Wallace, Walpole, Watts, Wolfe, Wunderlich, Zenor, and Mr. President—70.

NAYS.—Messrs. Allen, Anthony, Badger, Barbour, Beach, Biddle, Bourne, Bright, Bryant, Chapman, Clements, Conduit, Cookerly, Crawford, Crumbaker, Davis of Parke, Dick, Dunn of Jefferson, Duzan, Elliott, Farrow, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Hendricks, Hovey, Howe, Kent, Kendall of Wabash, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Milroy, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Steele, Stevenson, Taylor, Thornton, Todd, Trimby, Wheeler, Wiley, Work, and Yocum—61.

So the amendment was adopted.

The PRESIDENT. The question is now upon adopting the section as amended.

Mr. WALPOLE. I ask for the yeas and nays.

The yeas and nays having been ordered, were taken, and resulted—yeas 76, nays 58—as follows:

YEAS.—Messrs. Alexander, Badger, Ballingali, Beard, Beeson, Blythe, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Coats, Cole, Davis of Madison, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gootee, Gordon, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Nave, Pepper of Ohio, Prather, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Wallace, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—76.

YAYS—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Biddle, Bourne, Bright, Bryant, Chapman, Chenowith, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Garvin, Gibson, Graham of Miami, Gregg, Hovey, Howe, Kent, Kendall of Wabash, Mather, McFarland, McLean, Miller of Clinton, Milroy, Morrison of Marion, Murray, Niles, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Taylor, Thomas, Thornton, Todd, Wheeler, Wiley, Work, and Wunderlich—58.

So the section as amended, was adopted.

The **PRESIDENT**. The question now is on ordering the section to be engrossed for a third reading.

Cries of "consent," "consent," and "no!" "no!"

A division being called for, there were ayes 80, noes 55.

So the section was ordered to be engrossed for a third reading.

The **PRESIDENT**. The next thing in the order of the day is the following section:

"**SEC. 2.** No bank shall receive directly or indirectly, any more interest than shall be allowed by law to be received by persons loaning individual money."

The **PRESIDENT**. The question is, Shall the section be engrossed for a third reading?

Mr. OWEN. I move to amend the section by striking out the words "any more interest," and inserting the words "a greater rate of interest."

The question being taken on the amendment it was agreed to.

Mr. MATHER moved further to amend the section so as to provide that the specie basis of all banks shall be in such proportion to the circulation as the Legislature may determine; in addition to which there shall be ample collateral security filed with some State officer sufficient to ensure the redemption of the entire circulation.

Mr. WALPOLE moved so amend the amendment so that "no issue, discount, or exchange shall ever be authorized or permitted, on any security other than the gold and silver of the Bank."

Mr. PETTIT. The provision which the gentlemen from Hancock has just now offered provides that there shall be no such thing as exchange except upon gold and silver. The utter absurdity of such a proposition ought to be apparent on the first blush. You do not draw bills of exchange upon gold or silver, but upon produce and other merchandize. The produce dealer ships his produce to New York or New Orleans, and the banker draws upon that, or the avails of it, and not upon gold and silver.

Mr. WALPOLE (in his seat). That is your side of the question.

Mr. KENT. I move to lay the amendment to the amendment on the table.

Mr. WALPOLE. I ask for the yeas and nays.

The yeas and nays were ordered, and taken, and resulted—yeas 86, nays 41, as follows:

YEAS—Messrs. Allen, Anthony, Barbour, Beach, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Butler, Carter, Chapman, Chenowith, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Helmer, Hitt, Hugin, Hovey, Howe, Johnson, Kelso, Kent, Kendall of Wabash, Lockhart, Maguire, Mather, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Moate, Morgan, Morrison of Marion, Morrison of Washington, Murray, Niles, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Taylor, Thomas, Thornton, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—86.

NAYS—Messrs. Alexander, Badger, Bahingall, Bascom, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Clements, Davis of Madison, Edmouston, Farrow, Foster, Frispie, Gootee, Hall, Hawkins, Hendricks, Holman, Huff, Jones, Kilgore, Logan, March, May, Miller of Gibson, Milligan, Mooney, Nave, Prather, Robinson, Smith of Ripley, Spann, Stenson, Tague, Tannehill, Walpole, Watts, Zenor, and Mr. President—41.

So the amendment to the amendment was laid upon the table.

Mr. COLFAX. I do not know but that all hopes of a compromise upon this question are now gone. The growing excitement exhibited upon both sides—the increased pertinacity with which members cling to their individual opinions—the apparent determination to make no concession—all seem to forbid the hope that an amicable adjustment of this question can be agreed to.

It is, or ought to be, however, apparent to every one, that the conflicting sentiments expressed and advocated here can be settled only by compromise. But all attempts, thus far, to adopt any such settlement, have failed. Each section of this Convention distrusts the other. And vote after vote has shown us, as it has shown the people of the State at large, that the no bank party, small though they are in numbers, are the controllers of every decision that has thus far been made. So closely divided are the free bank and State Bank parties, that the no bankers have upon every vote the balance of power, and they use it very impartially to cut the

throats of both systems. First, they unite with the State Bankers to load down the free bank system with restrictions that make it unacceptable to its own friends; and in turn, they unite with the free bankers, when they, in a retaliatory vote, seek to impose countervailing restrictions upon the rival system. The no bankers thus are the real victors, and if this plan of operations is continued, you may as well adopt at once a provision prohibiting all banks in the State—look to your neighboring States for your currency—and send your business men there to seek facilities to enable them to purchase and ship the produce of the farmers of Indiana.

If the friends of either system desire to continue this destroying of both by piece-meal, well and good. They will answer of course to their constituents for the result. But, believing there should be—nay, that there *must* be—moderate men enough of both sections to adopt a fair and honorable compromise—end this long and exciting debate—and stop the suicidal course that both parties have been practising. I have drawn up a section which I now move as a substitute for that offered by my friend from Elkhart, (Mr. Mather,) and which I desire to read, and briefly comment on in my place before sending it to the Secretary's desk:

"The Legislature shall not have power to authorize any system of banking except under a general law based upon the principles of ample security for the redemption of the bills in specie, to be filed with some State officer, registry of notes, preference of payment to the bill holders in case of insolvency, and the individual liability of stockholders to an amount equal to their stock:

"*Provided, however,* That the Legislature may also have power to charter a bank and branches without collateral security as described above, which branches shall be mutually responsible for the circulation of each other, the stockholders of which shall be individually liable to an equal amount with their stock, and in which the State shall not be a partner. But this shall not be construed to prohibit the investment of the Trust Funds, their security to be suitably guaranteed."

[Cries of "Consent."]

A few words of explanation, When I reflect that the extreme members of both sections—those who are in favor of their favorite system being exclusive—with the anti-bank men, will of course vote against the proposition I offer, and that its success must depend upon its being supported by a majority of both the State Bank and free bank parties, I confess that it does look venturesome to propose it. But candidly believing that it presents the only feasible grounds of compromise, and that its rejection will seal the last hope of an amicable adjustment of this exciting and difficult question, I desire before resuming my seat, to say a few words in regard to its details.

This compromise is framed, in the first place, so as not to run athwart the votes of those gentlemen who say that they cannot incorporate in positive language, any banking privileges in the Constitution—that they cannot make it obligatory upon the Legislature, to establish banks—that they deem that the Constitution should only define provisions and restrictions, and then leave the General Assembly to authorize banks under such provisions if the people desire them. The section does not *compel* the Legislature to authorize any banks; but it says, if they do authorize them, it shall be under the provisions therein stated.

In the general banking portion of it, it requires "ample security," but it leaves the Legislature to define from time to time what that security shall be. It is almost universally conceded that, at first, no other securities but Government and State bonds would be received; but if twenty years hence there should be no such bonds in existence, it does not prevent the Legislature from then saying that other securities may be taken—for instance, preferred railroad bonds whose interest is guaranteed, by prepayment in dividends, &c.

In all banks of either system, it provides that, besides all other securities, there shall be individual liability of stockholders to an amount equal with their stock. It recognizes that principle, but does not carry it to excess. It does not create an unlimited individual liability. It does not aim to repress capital from being invested in banks by saying to a rich man who would be willing to bring in capital from abroad to increase the business facilities of the State—"If you send money here for one thousand dollars' worth of stock—your whole fortune, one hundred thousand dollars or more or less, shall be liable, if our own citizens here, of more limited means, who hold small sums, but in all a majority of the stock, should mis-manage the institution." But it says, besides all the other safeguards, that if you, sir, subscribe for one thousand dollars' worth of stock, and pay it in, you shall be liable for one thousand dollars more—if you subscribe for fifty thousand, for fifty thousand more—or if you subscribe for but one hundred, for one hundred more. This is just, equitable, and unexceptionable.

The Convention, by a very large majority, have decided that the State should not be a partner—a stockholder—in any bank. That point is settled, and it is recognized and affirmed in the section. But many of those who voted for that prohibition—and a number of State Bank men, as is well known, voted for it—are willing, and some of them desirous, that the trust funds of the State—not the county trust funds, but those now managed by the State Bank—might be invested as stock, or as a loan, in a new State Bank. They hold that the interest upon these trust funds might be much increased by such an investment, and al-

so that they might thus be made conducive to the increase of the business facilities of the State—While their security could be suitably and safely guarantied by a preference in payment over all other stockholders if the bank should wind up; or the State might, in addition thereto, reserve sufficient control over the bank if chartered, as she does now, to insure their being well guarded. They should be sacredly guarded, if they were so invested. This section, therefore, while it does not require them to be so invested, declares that it shall not be construed to prevent it, if the people through the Legislature, desire it—but that, if thus invested, they must be abundantly secured.

Besides these provisions there is a mutuality of compromise between the two systems as respects the security of their circulation. The free banks are to deposit ample security for their bills and have them registered, but no one bank is to be responsible for another; no stockholder in a bank at Logansport is to be responsible for the circulation of another bank at Rushville. Each Independent Bank will file securities for itself, manage for itself, be responsible for its own debts, and not be governed or controlled by any other bank. But the bank with branches, which I call for convenience the State Bank, while exempted from the filing of security, is to secure the bill holder by the mutual liability of each branch for all its associates. The stockholder in the branch at Indianapolis is to be responsible not only for the redemption of its circulation, but for the redemption of the paper of the branches at Madison, Lafayette, &c. He cannot, therefore, be as independent as the stockholder in the free bank of his own town, for this mutual endorsement renders it necessary that there should be, as now, a Board of Control to supervise the affairs of all the branches, to restrict them, and if necessary for the security of the whole, even to forbid the declaring of dividends.

Thus evenly are the two systems balanced, and the most approved features of both grouped in the compromise that I have had the temerity to offer. To the friends of a general banking law, I say, that if it can be adopted it will secure a distinct recognition of our favorite system, which, thus far, it is idle to deny that we have failed to obtain. I do sincerely believe that it can be obtained in no other way but this. To the State Bank men I say, that, though they seem flushed now with an apparent triumph, won by the aid of the anti-bankers, they must know that that same party will combine with us if we should make the proposition to vote down their system altogether. To both, I say, that this compromise will give either of you all the advantages you could have procured if you had succeeded in authorizing your favorite system in the Constitution, unaccompanied by a positive exclusion of its rival. If the State Bank had been authorized, the Legislature could

also, unless positively prohibited, establish a free bank system in addition. And if free banks had been authorized, the Legislature could still organize a bank and branches besides, if the Constitution did not directly forbid it. Nay, more than this, we avoid the hazarding of the adoption of the whole Constitution, which might result if either system was exclusively authorized in it.

This compromise has been offered, also, because my position is such that I could present it without being liable to any charge of inconsistency. As I have heretofore stated, my position at home was clearly defined. I declared myself opposed to the monopoly existing under the old Constitution in favor of the State Bank, and was unqualifiedly hostile to the continuance of that exclusion in the new Constitution. But every voter of St. Joseph county knows, also, that while earnestly and warmly in favor of authorizing a general banking system in the instrument we are framing, I distinctly stated to them that I did not wish, and would not advocate one exclusive of other systems. And, though I dislike to quote from circulars, I may be pardoned in confirmation of this declaration, for quoting from an address to the people who elected me to represent them, dated June, 1850.

"I am opposed to a continuance of the exclusive privilege of banking in favor of the State Bank. I should be in favor of authorizing the Legislature, if they deemed it expedient, to adopt a free banking system, with any additional improvements in the way of salutary checks, such as personal responsibility of the stockholders for the redemption of the circulation, but I would *not* be in favor of making a monopoly in favor of that system more than any other."

Without any sacrifice, therefore, of previously conceived opinions or expressed pledges, I happen to be in the proper position to propose this compromise, which it may be hoped may prove successful.

It is best, Mr. President, to speak plainly, without any concealment. The State Bankers have, but a few minutes since, applauded over a victory won over the free bankers by the aid of the anti-bank delegates. It may be, therefore, that they will now spurn this, or any other compromise. Without the least unkind feeling to them, it might as well be known first as last, that if we are driven to the wall—if there is to be a monopoly hereafter as heretofore, of all the banking privileges of this great State by a single institution, we are determined to make the bill holder under such system safe beyond all peradventure. We will secure this at all hazards. And they know right well that in such efforts, we shall have the votes of their late allies, the bank haters, to assist in the imposition of the restrictions. If our favorite system is thrust out of this body, its friends put

down, and a fair compromise rejected, they cannot complain of this.

The pathway is now clear. My friend at my side, the delegate from Elkhart, (Mr. Mather,) is like myself, in favor of compromise. But to prepare the way for the section that I have offered, he proposed his amendment. This compromise is now proposed as an amendment to that amendment, where it cannot be loaded down with additional provisions or emasculated by striking out any of its parts. It must be voted on by our rules, just as it is. And if it is rejected, it may as well be understood that we have determined to fall back upon the next thing to be voted upon—the amendment offered by the gentleman from Elkhart, and declare, in order that the bill holder shall be absolutely safe, that the specie basis of the bank shall be in such proportion to its circulation as the Legislature may determine; but that *in addition thereto*, ample security shall be filed with some State officer for the redemption of the entire circulation.

But I appeal to moderate men on all sides. Let us end this difficulty which has caused so much warm debate here—which has cost nearly \$10,000 to the people of the State, which even threatens the defeat of the instrument we are framing, by meeting together on this platform of concession, adopting this section which, though it may not in all things agree with each one's personal preferences, is a basis on which the whole controversy can be amicably and honorably adjusted.

Mr. President, I move the section which I have read as an amendment to the amendment of the gentleman from Elkhart.

Mr. PETTIT. There it is again, the same old song—flesh of one and fowl of another. That section allows one set of men to bank upon one set of principles and special rights, and another set of men upon other principles and other rights. One set of men shall give ample security for their circulation, but the other set shall not be required to give any security at all. Now sir, I protest, in the name of justice, in the name of reason, and in the name of every principle of right and fairness known in the civilized world, against the passage of any such provisions. Sir, if men are to go into banking, I say again, put them all upon a par; let them all bank upon the same principle; put down your general restrictions upon all, and with them I will go as far as any man in this Convention. But I never will go for giving one man a right to go into banking, or any thing else, on one principle, and another man a right to go into it on a different and perhaps more favorable principle. I protest against it; I want equality for all.

Mr. COLFAX (interposing). There is a part of the proposition which the gentleman from Tippecanoe seems to overlook, the mutual responsibility of the branches of a State Bank

for the issues of each other. This is a setoff against the security required under the free banking system.

Mr. PETTIT (resuming). I do not regard it at all. In the first place that section is objectionable because it authorizes the trading in paper without responsibility for debts. I insist that if you trade in paper you ought to trade in it just as you would trade in horses, that the contractors, whether there be a dozen or only one, should all be responsible for every debt of every kind which they may contract as partners. Here, then, you say that those who bank independently of the State Bank and its branches, shall deposit ample security for the redemption of their paper, while those who bank under the other system shall not deposit any security at all. It is making a direct distribution which I trust will never be adopted here.

Mr. LOCKHART. Mr. President, I for one am rejoiced at the introduction of this section. I think it must be apparent to every gentleman upon this floor, that before any thing can be done, there must be a compromise. I regard this proposition as a fair one, and coming as it does from the free banking side of the House, I think that the friends of the State Bank ought to accept it. I, as one of the advocates of the State bank system, if the free bankers will stand up to this proposition will ground arms and support it; and permit me, sir, to express the hope that the section may at once be engrossed.

Mr. PRATHER. I merely wish to say that I should be glad to learn from my friend from St. Joseph, what security he proposes. If the security he proposes should satisfy me, in all probability I will vote for his proposition. The kind of security I prefer is the cash paid in, and not State stocks.

Mr. COLFAX. If the gentleman from Jennings votes against the compromise because all the details are not entered into, he will vote against all compromise on this question, for it will be impossible to draft any plan to which some one will not have objection to this or that detail.

Mr. PRATHER. That may be all very true but I have a constituency to represent, who are satisfied with the present State Bank with some modifications, and I feel bound to represent their wishes, and in representing their wishes I vote my own sentiment on that subject. By voting for a State Bank, I am sure I vote the sentiment of nine-tenths of my people. My action thus far I believe on this subject voted on in this Convention, will be approved by them; and if a compromise is made, and the security satisfies me, I will vote for it, as I am convinced we cannot all get every thing we may desire; and if it does not satisfy me, I will vote against it. I hope we may bring this mat-

1st to a close, as we have already spent time enough.

Mr. COOKERLY. I stated here before, that I was willing to compromise this matter, but I do not conceive that the proposition offered by the gentleman from St. Joseph is any compromise at all. It is just a proposition of that kind which I never can and never will vote for, so long as I have a seat on this floor. Now I am willing to compromise the question on fair grounds, but if you adopt the amendment of the gentleman from St. Joseph, you adopt every thing the State bank men want. You give up your general system of free banking; and I ask the gentleman from St. Joseph, if he is prepared to give up that measure, for which he has contended here with so much ability and perseverance, for the last two weeks? I trust he is not. As I have already said, I am willing to compromise the matter on fair grounds. I stated last Friday, that I am willing to compromise; but in order to have a compromise, the concessions must be mutual. Now the State bank men must not suppose that we who go in favor of a general banking system will compromise everything and let them have it all their own way. If I can get the following amendment attached to the amendment of the gentleman from St. Joseph, I will go for it:

"The General Assembly shall, after the adoption of this Constitution, provide by law for a general system of banking."

[Loud cries of "no, no, no, no," and "consent, consent."]

Mr. STEVENSON. It is not to be expected from the nature of things, that any proposition of compromise can be presented here that will be satisfactory; but I think that there are moderate men here enough to be satisfied that no State Bank can be established alone, and that neither can any free bank system be established alone. I know that there are gentlemen who are willing to take either the one or the other, but not to take them both together. But are there not men enough here who are willing to take a fair compromise? I have made a proposition, as broad as any free bank man can wish. I think that it gives to the free bank men all that they can ask for, and all that any State bank man can expect. Now if we do anything, we have to adopt this compromise. There is no other that can be adopted, in my opinion. The question simply is, shall we accept it, or go on fighting here, as we have been doing for nearly two weeks, and accomplish nothing at last?

Mr. PEPPER of Ohio. If I viewed this proposition in the light in which my friend from Tippecanoe (Mr. Pettit) views it, I certainly could have no thought of voting for it. I could not vote for granting authority even to the Legislature to authorize any company, association, or individual to establish any banking or monied corporation the like of which may not be es-

tablished for the benefit of another corporation, association, or individual. I will not vote for any such proposition; nor will I vote for putting any proposition in the Constitution requiring the Legislature to make any bank. But I am willing to vote for a proposition like the present one, leaving it in the power of the Legislature, when the people and their representatives shall think proper, to establish banks under a general law that shall give no special privilege to any company or association. I do not view this proposition in that light. I may not have heard it very correctly, but it does not appear to me, so far as I was able to understand it, to confine the use of the security to either system of banking. I think it is a proposition that I can go for. I would not go for requiring the Legislature to pass any such law; but if the people want banks, let them authorize the Legislature to establish them.

Mr. SHOUP. I may not understand this question, but it strikes me that if the amendment is adopted as proposed by the gentleman from St. Joseph, the free bank men will accomplish nothing. It is evident that those who desire to go into banking will adopt that system which they believe to be most profitable, because they can realize larger dividends, and free banks will never be established. I have no hesitation in saying, that if that section is adopted, there will never be a law authorizing the establishment of independent banks. Never, sir! never! If it should be adopted, the free banks never can exist, because the State Bank with its influence, would inevitably break them down. The capitalists of the State will go into that system which is most profitable; and where they can issue two and a half or three dollars in paper for every dollar in specie, they are sure to do so.

Now I believe that it is the object of the free bank men on this floor, not to create shin-plasters, but to give security for the redemption of the notes, and just as rapidly as the business of the State increases, so will your currency increase. Now, sir, I must say again, I do not look upon this proposition as any compromise. There is not the first principle in it which favors free banking.

Mr. MAY. I have looked over the amendment offered by the gentleman from St. Joseph, and I think I understand the meaning of the language there used. One thing is very certain, that I do not understand it as I imagine he understands it. I am not, however, disposed to argue the question at the present time. He appears upon this floor as a friend of the free banking system, and is of course satisfied with his own proposition. I think the friends of the State Bank are also well satisfied with that proposition, as in my opinion they may very well be. I am here, not the friend of either system—and certainly not the friend of both; and as a friend to no banks, I will make a mo-

tion which I very seldom do, and that is, that the amendment of the gentleman from St. Joseph be laid upon the table.

Mr. COLFAX. I ask the yeas and nays on that motion.

The yeas and nays were ordered and taken, and resulted as follows:

YEAS.—Messrs. Anthony, Bascom, Beeson, Berry, Biddle, Borden, Bourne, Bryant, Chapman, Cookerly, Crumbacker, Dick, Dunn of Perry, Duzan, Elliott, Graham of Miami, Holman, Jones, Kendall of White, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Nave, Pettit, Read of Clark, Ristine, Ritchey, Shoup, Smiley, Smith of Ripley, Taylor, Thornton, Wheeler, Wiley, Wolfe, Work, and Yocum—43.

NAYS.—Messrs. Alexander, Allen, Badger, Ballingall, Barbour, Beach, Beard, Bicknell, Blythe, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gooatee, Gordon, Gregg, Haddon, Hall, Hamilton, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Kelso, Kent, Kendall of Wabash, Kilgore, Lockhart, Logan, Maguire, March, Mathis, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Mowrer, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Monroe, Robinson, Schoonover, Shannon, Sims, Snook, Steele, Stevenson, Tague, Tannehill, Thomas, Todd, Wallace, Walpole, Watts, Wunderlich, Zenor, and Mr. President—90.

So the amendment was not laid upon the table.

Mr. READ of Monroe. I have a very slight amendment which I wish to propose.

The **PRESIDENT.** The Chair would remark that it is not in order, let it be ever so slight. The question is on striking out the amendment of the gentleman from Elkhart, after the word "the."

Mr. OWEN. I hope, sir, that the amendment will be engrossed. I am not prepared at this moment to say that I will go for its passage, nor that I will not; but if there should be some things which we desire to amend, we can amend them when it comes up on its passage, by a motion to re-commit. I think it comes as near the thing as we can get. The gentleman from Franklin (Mr. Shoup) seems to suppose that the State Bank should be declared to cease. I think not; and if we are prepared to say that the people may make their election, they will perhaps choose free banks, and there may never be a State Bank at all. The only thing is, that we leave it to the people to decide whether there shall be a free bank or a State Bank.

Mr. READ: Is it in the power of the gentleman from St. Joseph to accept of an amendment?

The **PRESIDENT.** It is not now in his power.

Mr. NILES. It is well known, that I am a decided friend of free banking. I believe it to be the true policy of the State; but at the same time I am satisfied that we must make some compromise. Now this amendment is not what I desire; but from my present impressions I shall go for it solely on the ground that if a system of free banking is adopted as it might be by the Legislature, before the expiration of the present charter, that system would become the only system that would be tolerated in the State. I am really at the present moment willing to run that risk and take my chance, and trust to the good sense of the people and the intelligence of the Legislature, in regard to this system of free banking, requiring good security. I go for it, if at all, solely on that ground, and because we cannot obtain all that we wish. [Cries of "question, question."]

The question was then taken by yeas and nays on the adoption of the amendment, and they resulted as follows—yeas 86, nays 52:

YEAS.—Messrs. Alexander, Allen, Badger, Ballingall, Barbour, Beach, Beard, Bicknell, Blythe, Bracken, Brookbank, Butler, Carr, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gooatee, Gordon, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Kent, Kendall of Wabash, Kingley, Lockhart, Logan, Maguire, March, Mather, Mathis, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Mowrer, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Sims, Snook, Spann, Steele, Stevenson, Thomas, Todd, Wallace, Walpole, Work, Wunderlich, Zenor, and Mr. President—86.

NAYS.—Messrs. Anthony, Bascom, Beeson, Berry, Biddle, Borden, Bourne, Bowers, Bryant, Carter, Chapman, Cookerly, Crumbacker, Dunn of Perry, Duzan, Elliott, Graham of Miami, Graham of Warrick, Hendricks, Holman, Howe, Johnson, Jones, Kendall of White, Kilgore, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Nave, Nofsinger, Pettit, Read of Clark, Ristine, Ritchey, Shoup, Smiley, Smith of Ripley, Smith of Scott, Tague, Taylor, Thornton, Watts, Wheeler, Wiley, Wolf, and Yocum—52.

So the amendment to the amendment was adopted.

The PRESIDENT. The question is now on adopting the amendment as amended.

Mr. BORDEN demanded the yeas and nays. The yeas and nays were ordered.

Mr. KILGORE. I move to postpone the further consideration of this section until tomorrow week. I have been a silent listener to the debate on this subject, and not being in feeling or at heart in favor of any banks, I have not been disposed to participate in the discussion of this subject. But having an eye to the great interests of the people—those who are most deeply interested in a safe and sound circulating medium—I do desire that if we go into a system of banking, we should go into such a system as will be amply sufficient to secure the bill holders against loss, and indeed all the parties interested, against the depreciation of that paper. The gentlemen who are the advocates of the free banking policy seem to be strangely circumstanced. I have cast my eyes over the country from which the gentlemen hail. We find them commencing on the Madison and Indianapolis Railroad and extending along the Wabash and Erie Canal, and then we find them upon the Northern Railroad for which the celebrated agent is now concerned with the Legislature of the State, endeavoring to secure rights and privileges for that Company. Sir, I cannot but believe that these bonds are to be the basis of the free banking system. The State bonds are to be the basis on which the paper is to be predicated and—

The PRESIDENT. The gentleman from Delaware is not in order. If he will refer to the 28th rule, he will find that all questions in relation to the priority of business are not debatable.

Mr. KILGORE. Then I will withdraw my motion and proceed with my argument. I suppose that will be in order.

The PRESIDENT. Certainly.

Mr. KILGORE. As I was remarking, the only security which the bill holder is to have is the bonds of the State. I cannot be mistaken in this, when I see the location from which the free bank party hail. That is to be the security. And what security is that for the paper with which the State is to be flooded. The State is to be indemnified, and that may be ample security so far as the State is concerned; but I ask you—if it will be any indemnity or security to the bill holder? This paper has gone into all the interests and business operations of the country; and when the bill holder applies at the counter for the redemption of the bills, is he to be met with a thousand dollar bond of the State? If the specie is not there what is to be the effect? Why, sir, the depreciation of this paper, and the scenes which we have witnessed in gone-by days in Indiana are again to be encountered, and the country is to be flooded with depreciated bank paper from

one end to the other. And, sir, the burden does not fall upon the banker, but upon the individuals who hold the paper—the farming and laboring interests of the country, who are the first to feel the shock. They hold the paper, and it is depreciated in their hands. They then become subject to the operations of the banker and the shaver. They are to sustain the loss.

Now if we are to go into a system of banking, I want the character of the State to be pledged for every dollar, and that she will not be driven to the necessity of suspending specie payments; but that she will at all times be ready to meet the bill holder and redeem her liabilities. Now suppose that we go into free banking, and that State bonds are to be the basis. What condition will we be placed in? Gentlemen come here with a million of State bonds pledged with an officer of State, and on that security is issued a million of paper. Suppose also that he has a million of specie, and that he asks the State to be allowed to issue two millions of paper—one on his million of specie and the other on his million of State bonds which we are not able to pay. They go on and issue the money and get the specie for it; they pocket the funds and leave the country, and Indiana has the bonds which she issued years ago, and on which she is unable to pay the interest—she has these bonds with which to meet the bill holder. This is the system proposed on which to base your banks, and assuredly the result which I have indicated will follow.

We have been told again and again that none but knaves would advocate the doctrine advocated by the State bank party. Sir, on the other hand, I say that no man but a knave would advocate the flooding of the country with such a paper as that which must issue from the free banks founded on the basis which has been here suggested. None but a knave would seek to bring about such a state of things; and none but a craven coward would submit to such a state of things. A State Bank is proposed as a compromise. And what kind of a State Bank? Not such a one as I can support. As a State Bank man in preference to the free banking system, I shall oppose the proposition now before the Convention. It says that the State shall not be a stockholder but that she may deposit her funds in the bank when proper security is given for the same. She loans her funds here; and suppose you give her the preference over all other creditors, what is the effect of such an arrangement? Why, sir, it can have no other effect than to depreciate the character of the paper on which the bills are issued. [Applause and thumping on the benches.] I dislike to speak amid so much applause and perhaps I have said enough. [A pause, during which Mr. K. took his seat.]

I now move to postpone the further consideration of this subject until Monday next.

The **PRESIDENT**. The gentleman from Hendricks (Mr. Todd) has the floor. The Chair supposed the gentleman from Delaware had finished when he took his seat.

Mr. **TODD**. I move the previous question.

The motion for the previous question was sustained, and the main question was ordered to be now put.

The **PRESIDENT**. The question is on adopting the amendment as amended.

Mr. **BORDEN**. I ask for the yeas and nays.

The yeas and nays were ordered.

A **MEMBER**. I move that the Convention adjourn.

The question being taken on the motion to adjourn, it was decided in the negative.

The question was then taken on the adoption of the amendment as amended, and there were yeas 79, nays 57, as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Ballingall, Barbour, Beard, Bicknell, Blythe, Bracken, Brookbank, Butler, Carr, Chenoweth, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Gregg, Had-don, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mather, Mathis, Miller of Gibson, Moon-ey, Morgan, Mower, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sims, Snook, Spann, Steele, Steven-son, Thomas, Todd, Wunderlich, Zenor, and Mr. President—79.

NAYS.—Messrs. Anthony, Bascom, Beeson, Berry, Biddle, Borden, Bourne, Bowers, Bryant, Carter, Chapman, Crumbacker, Dick, Dunn of Perry, Duzan, Elliott, Graham of Miami, Gra-ham of Warrick, Hendricks, Holman, Howe, Johnson, Jones, Kendall of White, Kilgore, Kinley, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Moore, Mor-ri-son of Marion, Morrison of Washington, Nave, Nofsinger, Pettit, Ristine, Ritchey, Shoup, Smiley, Smith of Ripley, Smith of Scott, Tague, Tannehill, Taylor, Thornton, Wallace, Wal-pole, Watts, Wheeler, Wiley, Wolfe, Work, and Yocum—57.

So the amendment, as amended, was adopted.

The section was then ordered to be engrossed for a third reading; after which,

On motion,

The Convention adjourned.

WEDNESDAY, JANUARY 15, 1851.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. STEELE.

FREE BANKING.

Mr. **DUNN** of Jefferson presented the petition of J. S. Weyer and others, citizens of the county of Jefferson, and remarked that the peti-tion had been circulated and signed some month or six weeks since, but that it had not been received here until yesterday. The peti-tioners express themselves in favor of free banking as an exclusive system. Among the subscribers I find the names of many of our most enterprising business men, for whose opinions on the subject of banking I entertain the highest respect. From conversation with some of the petitioners, I believe they will be satisfied if the business of banking is left open to wholesome competition, and, sir, I confidently believe that all the petitioners will be satisfied with the compromise course pursued by their delegates upon this floor, when all the circum-stances with which we are surrounded come to be considered. As the subject of banking is now before this Convention, I shall not ask the reference of the petition, but move that it be read and laid upon the table.

The motion was agreed to.

WOMEN'S RIGHTS.

Mr. **HOLMAN**. I hold in my hand, sir, a petition of a somewhat different character, signed by about one hundred ladies of the county which I, in part, have the honor of representing; and I hope the Convention will permit me to say, that while the signers of this petition dis-claim any intention of emerging beyond those bounds within which their sex generally moves, and in which their charms and virtues can most happily produce beneficial results, they still claim, upon a subject in which they are deeply interested, the right of being heard. I have the honor of being acquainted with a large portion of the fair petitioners, and I must say that in all their developments, socially as wives, daughters, and mothers, they are worthy of the highest admiration, as the embodiments of all the peculiar virtues pertaining to womankind. The petitioners pray for a provision in the Con-stitution giving married women the right of holding real and personal property separate from their husbands, at the same time disclaiming any intention of asking improper political rights. They appeal to the Convention, in strong terms, as husbands, fathers, and brothers, for justice in the premises.

The petition was referred to the committee on rights and privileges.

ORDERS OF THE DAY.

The section, as amended on yesterday, by Mr. Colfax, providing for a mixed system of banking, was read a third time; when

Mr. **HOWE** moved to re-committ with instruc-tions to add—“but such charter shall not extend beyond the period of eight years from the expi-ration of the charter of the present State bank,

and its capital stock or profits shall in all cases be subject to the same rate of taxation with other banks."

Mr. HOWE remarked that he offered the proposition as one of compromise between the two parties, the one in favor of State and the other of free banks. He had conversed with the gentleman from Laporte (Mr. Taylor) on the subject—a gentleman who was thoroughly conversant with the subject, and his (Mr. T.'s) views on the present scheme of compromise he (Mr. H.) had, upon reflection, with some modification, adopted as his own.

Mr. TAYLOR moved to amend the instructions by striking out, and inserting a provision, that "the General Assembly shall, at the first session under the new Constitution, pass a law for a system of free banking, on good and sufficient securities, and shall continue the present State bank until the year 1862, and after that time there shall be no other banks than those existing under general laws—the State not to be a stockholder under said general system; stockholders to be individually liable to amount of stock; and no law to be passed authorizing a suspension of specie payments."

[Mr. T. spoke at some length in support of this proposition; his remarks will be published hereafter.]

Mr. OWEN. I am well aware that it is useless to say more than a few words, at this stage of the progress in the debate. Every man here knows that I am in favor of a general system of banking—that I believe the securities are better under that system than under the State system. Every man here knows that if I consulted my own opinions alone, I should vote against the State bank system; but every delegate here must, by this time, have become convinced that he cannot obtain exactly what he desires. Each must cede a portion of his opinions.

My judgment is, that if we are about to compromise this matter, we had better pass, just as it stands, the section which was presented yesterday by the gentleman from St. Joseph. As to the proposition of the gentleman who has just taken his seat, it will never do. In the first place, it declares that there shall be free banking, and in the next place it declares that there shall be a State bank. In both cases the provision is imperative. But a proposition, to pass here, must be that which does not impose either the one or the other system on the people of the State.

In regard to the proposition of the gentleman from Lagrange, individually I am in favor of it, but I believe, if inserted, it may defeat the Constitution, seeing that there is a large portion of the people of the State, at this moment, in favor of a State bank. I do not agree with them, but I know such to be the feeling, and it is proper that we should shape our course accordingly. We must not put anything in the Con-

stitution that will be in opposition to the opinions, or, if you please, the prejudices, of a large portion of our people. If you do, you will endanger the safety of the whole work in which we have been so long engaged.

Now, sir, I should like to see these words inserted, "readily convertible security." I hold it to be not enough that we use the words "ample security" alone. But still, I shall vote against re-committing the section, with any instructions, trusting, in subsequent sections or amendments, to throw such restrictions around the system as may be omitted here. In the meantime, if we desire to do something, I hope the section, just as it stands, will be adopted.

Mr. EDMONSTON. I think this matter has been debated long enough. I therefore move the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being first on the amendment proposed by the gentleman from Laporte, (Mr. Taylor,) to the instructions moved by the gentleman from Lagrange.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 17, nays 117—as follows:

YEAS.—Messrs. Beeson, Bicknell, Biddle, Borden, Bourne, Bryant, Chapman, Coats, Cookerly, Davis of Vermillion, Dick, Gregg, Howe, McClelland, Shoup, Taylor, and Thornton—17.

NAYS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Berry, Blythe, Bowers, Bracken, Brookbank, Butler, Carter, Chenoweth, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kelso, Kent, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McFarland, McLean, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Todd, Wallace, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—117.

So the amendment was not adopted.

The question then being on the re-commitment of the section, with the instructions moved by the gentleman from Lagrange, it was decided in the negative.

The question being, Shall the section pass?

The yeas and nays were taken under the rule, and resulted—yeas 81, nays 56—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Ballingall, Barbour, Beach, Beard, Bicknell, Blythe, Borden, Bracken, Brookbank, Butler, Carr, Chenowith, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogan, Hovey, Huff, Kelso, Kent, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, Miller of Gibson, Mooney, Morgan, Murray, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Shannon, Sherrod, Sims, Snook, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Work, Wunderlich, Zenor, and Mr. President—81.

NAYS.—Messrs. Badger, Bascom, Beeson, Berry, Biddle, Bourne, Bowers, Bryant, Carter, Chapman, Coats, Cookerly, Crumbacker, Dick, Dunn of Perry, Duzan, Garvin, Graham of Miami, Graham of Warrick, Haddon, Hardin, Hendricks, Holman, Howe, Johnson, Jones, Kinley, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Morrison of Washington, Nave, Pettit, Ristine, Ritchey, Schoonover, Shoup, Smiley, Smith of Ripley, Smith of Scott, Tague, Tannehill, Taylor, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, and Yocum—56.

So the section was passed, and was referred to the committee on revision.

The section which provides that no person being a citizen of a foreign government, shall be a stockholder in any bank, &c., was taken upon its third reading.

Mr. STEVENSON said that the compromise section which had been adopted, was perhaps as good as any that could be adopted; he would move, therefore, that this section be laid upon the table.

Mr. WALPOLE demanded the yeas and nays and they were ordered, and, being taken, were—yeas 80, nays 53—as follows:

YEAS.—Messrs. Allen, Anthony, Badger, Ballingall, Barbour, Beach, Bicknell, Biddle, Blythe, Borden, Bourne, Bracken, Brookbank, Carr, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dunn of Jefferson, Dunn of Perry, Farrow, Foley, Frisbie, Garvin, Gibson, Gootee, Gregg, Hall, Hamilton, Hawkins, Helm, Hovey, Howe, Kent, Kinley, Lockhart, Maguire, March, Mather, Mathis, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Morrison of Marion, Murray, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Stevenson, Taylor, Thomas, Thornton

Todd, Wallace, Wiley, Work, and Wunderlich—80.

NAYS.—Messrs. Alexander, Bascom, Beard, Beeson, Bowers, Butler, Carter, Cole, Duzan, Edmonston, Fisher, Foster, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hardin, Helmer, Hitt, Holman, Huff, Johnson, Kelso, Logan, McClelland, McLean, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Nave, Pepper of Ohio, Prather, Rariden, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Walpole, Wolfe, Watts, Wheeler, Yocum, and Zenor—53.

So the section was laid upon the table.

The section which provides that the security shall be in State stocks, &c., was read a second time.

Mr. OWEN moved to strike out the section and insert a provision, that should a general banking law be adopted, the notes put in circulation shall be registered, and ample security given to redeem the same, in specie, dollar for dollar; but for the first twelve years, United States or Indiana stocks shall alone be taken as security.

Mr. NILES. It seems to me that enough has been already adopted on this subject. ["Consent."] We should trust something to the Legislature. The proposition already adopted is as stringent as the provision in the old N. Y. Constitution, under which there has been established the safest system of banking that was ever established on earth. I hope there will be no disposition to tie up the Legislature, or to embarrass or encumber this matter farther. I, therefore, move that the section and the amendment be laid upon the table.

Mr. OWEN. Will the gentleman give me an opportunity to say a word, by withdrawing that motion.

Mr. NILES. Certainly, sir, withdraw it.

Mr. OWEN. A single word, sir. I am not in favor of all the details of the present New York system of free banking for our State.

A VOICE. It is the best in the world.

Mr. OWEN. Yes, but it has one feature which I think we had better not copy; that of mortgages on real estate, as part of its collateral security. It was expressly for the purpose of cutting that off, that I moved my amendment.

Whether such mortgages may be convertible in New York or not, they are not readily convertible here. I hope the amendment will be adopted, so as to give additional security.

Mr. BORDEN. If that be the motive of the gentleman from Posey, why did he move to strike out the third section reported by the committee, and insert his long proposition. It appears to me that the original section, being short and to the point, would answer the purpose quite as well.

A VOICE. It does not apply.

I do not know why it does not apply. I do not know why security should not be required of the State Bank, as well as of any other.

Mr. BORDEN. I renew the motion of the gentleman from Laporte, to lay on the table.

The question being on laying the section and the amendment on the table,

Mr. PETTIT asked for a division of the question.

The question being first on laying the amendment of the gentleman from Posey on the table, it was, on a division—yeas 66, nays not counted—decided in the affirmative.

The question then being on laying the section on the table,

Mr. PETTIT demanded the yeas and nays and they were ordered, and, being taken, were—yeas 94, nays 36 :

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Barbour, Beach, Beard, Beeson, Blythe, Bourne, Bowers, Bracken, Brookbank, Butler, Carr, Carter, Chenoweth, Clark of Hamilton, Clements, Coats, Colé, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Dick, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster Frisbie, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Jones, Kelso, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Murray, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Taylor, Thomas, Todd, Watts, Wolfe, Wunderlich, Zenor, and Mr. President—94.

NAYS.—Messrs. Bascom, Biddle, Borden, Bryant, Chapman, Cookerly, Crumbacker, Dunn of Perry, Duзан, Garvin, Graham of Miami, Hardin, Hendricks, Holman, Howe, Johnson, Kent, May, McClelland, McLean, Miller of Fulton, Morrison of Marion, Nave, Pettit, Ritchey, Shoup, Smiley, Steele, Tannehill, Thornton, Wallace, Walpole, Wheeler, Wiley, Work, and Yocum—36.

So the section was laid on the table.

Mr. READ of Monroe offered an additional section, providing that the trust funds of the State, if loaned to a bank, shall have priority of payment over stock and all other debts whatever.

Mr. PETTIT. I hope the section will not be adopted. I hope, sir, that if the State ever puts one dollar of the public funds, whether it be the mortgage fund, or the university fund, or the common school fund, or any other trust fund, in a banking institution, it will be annihilated. The State has no trust fund to put into a new bank. It has already been put into the old bank and it will never be paid back. I hope if the State ever dabbles in banking institutions,

she will lose everything she puts in of her own and of every body else.

Mr. WALPOLE. I hope this amendment will not be incorporated in the Constitution. I want the Legislature to see the impropriety of lending the credit of the State.

I am satisfied that gentlemen who proposed to lend these funds, are not aware to what extent they are going. I never will consent to withdraw over a million of dollars of the public funds now loaned on mortgage, and place them in a State Bank. If it were not for the consideration of the distress which such withdrawal would certainly produce the security of the fund itself should be a consideration.

Mr. READ. Will the gentleman allow me?

Mr. WALPOLE. Certainly.

Mr. READ. By the proposition of the gentleman from St. Joseph, it will be seen that power is given to loan these funds to the bank.

It is not because I advocated the principle, but in case it is adopted, the security proposed in the section which I have offered should be required. I wish to give no opinion as to whether they should be put into the bank, but if so, there should be security.

Mr. WALPOLE. The Legislature may change the security in the possession of the State Bank. I want to give no such power. I want to confer no power on the Legislature of the State to bring about compromises such as never should be entered into. Gentlemen have declared themselves hostile to the doctrine, and to-day you see those very men striking hands upon this question. So will it be in the General Assembly. They will meet together and rob the State of these trust funds, for the purpose of compromising, to bring about the free banking and State bank policy. Yes, sir; and this is a compromise. Some gentlemen seem to suppose that the meaning of the section is, that the amount is to come out of the sinking fund. But, sir, it comprehends all other kinds; everything may be brought together and made servicable to the bank, while the State is to have no profits. I trust it will not be done; for if it be, it will be made an inducement for corrupt legislative action.

Mr. PEPPER of Ohio moved to amend the section proposed by the gentleman from Monroe, by adding, "That the charter of the present State Bank shall not be renewed or extended." ["Consent"—"that is the doctrine."]

Mr. PEPPER. I think that gentlemen are by this time prepared to vote, and I therefore call the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on the amendment of the gentleman from Ohio,

The yeas and nays were demanded and they were ordered, and being taken, were—yeas 66 nays 63—as follows :

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Beeson, Berry, Borden, Bryant, Carr, Carter, Chapman, Coats, Cookerly, Crumbacker, Dick, Dunn of Perry, Duzan, Edmonston, Fisher, Foley, Gibson, Gordon, Graham of Miami, Haddon, Harbolt, Hardin, Hendricks, Holman, Hovey, Howe, Johnson, Jones, Kent, Kendall of White, Logan, May, McClelland, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Thornton, Wheeler, Wiley, Work, Wunderlich, and Mr. President—66.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Bicknell, Blythe, Bowers, Bracken, Brookbank, Butler, Clark of Tippecanoe, Clements, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Foster, Frisbie, Garvin, Gootee, Gregg, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Huff, Kelso, Kinley, Lockhart, Maguire, March, Mathis, Milligan, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Robinson, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Todd, Wallace, Walpole, Watts, Wolfe, Yocum, and Zenor—63.

So the amendment was adopted.

The question then being on the section as amended,

Mr. KELSO. The previous question, I believe, is exhausted.

Mr. COOKERLY. No, sir, it goes a little further.

THE PRESIDENT. The previous question extends to—

Mr. KELSO. No, sir, it does not.

THE PRESIDENT. The gentleman is somewhat hasty.

Mr. KELSO. I was replying, sir, to a very meddlesome gentleman on the floor.

THE PRESIDENT referred to and read the rule in relation to the effect of the previous question, as follows: "And its effect shall be to put an end to all debate, and bring the Convention to a direct vote upon amendments reported by a committee, if any, then upon pending amendments, and then on the main question."

Mr. KELSO. That is true; but I supposed— if the Chair, will indulge me; for it may be that others, as well as myself, may be mistaken—that when I move an amendment, and call the previous question, the previous question, if seconded, would apply only to my amendment.

THE PRESIDENT. The gentleman will see that, according to the rule which has just been read, it would apply to the section to which the amendment is proposed to be made.

The question being on the adoption of the section as amended,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 64, nays 66:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Bicknell, Borden, Bryant, Carr, Carter, Chapman, Coats, Cookerly, Crumbacker, Dick, Dunn of Perry, Duzan, Edmonston, Gibson, Gordon, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Holman, Howe, Johnson, Jones, Kent, Kendall of White, Logan, May, McClelland, McLean, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Niles, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Thornton, Wheeler, Wiley, Work, Wunderlich, and Mr. President—64.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Beeson, Blythe, Bourne, Bowers, Bracken, Brookbank, Butler, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Haddon, Hall, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Kinley, Lockhart, Maguire, March, Mathis, Miller of Gibson, Milligan, Morgan, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Todd, Wallace, Walpole Watts, Wolfe, Yocum, and Zenor—66.

So the section was not adopted.

Mr. SMILEY proposed an additional section, that mortgages on real estate shall not be taken as a basis of issue for any bank or banking association.

Mr. READ of Clark moved that the amendment be laid on the table.

The motion was agreed to.

Mr. DUNN of Jefferson proposed an additional section, providing that no bank charter shall be granted to continue in force more than twenty years.

Mr. DUNN. I have introduced this section for the purpose of preventing the Legislature from granting a charter extending for a long period of years, as they do now from fifty to an hundred. I wish to have it so provided, that, if any objection should arise to the charter that may be granted, the people, after a certain time, may withdraw the charter. And all the favor that I ask of the Convention is, that no incongruous amendment may be tacked upon it, but that a fair vote shall be taken. We have seen the difficulty that arises from proposing amendments which have no connection with the original proposition.

Mr. HOLMAN proposed to amend so that all companies chartered for banking purposes shall be compelled to close up their business in twenty years.

The only argument, said Mr. H., that I shall offer in favor of the proposition as against the proposition of the gentleman from Jefferson is, that it covers both cases of banking; it applies to both special charters and general banking. A general law may be passed for the formation of banking associations.

Mr. DUNN of Jefferson. I will accept the gentleman's amendment.

Mr. HOLMAN. Very well, sir; then I will not detain the Convention with any further remarks.

Mr. WALPOLE offered the following amendment:

"And the law authorizing banking shall be subject to be repealed by the General Assembly."

The amendment having been read,

Mr. WALPOLE. At the request of some of our friends, I will withdraw my amendment for the present, and offer it as a distinct section.

Mr. MORRISON of Marion proposed to amend so that no privileges, franchise, or immunity shall be granted for banking that may not be repealed.

Mr. MORRISON of Marion. I have sat still for eight or nine days listening to the debate on this subject, and have not except on one occasion said a word in relation to it. I have seen this body go through with a number of sections which I think are very incongruous, as well as restrictive to such an extent that I think it will be very difficult at any time, to organize banks under them. This being the case, I think it will be right that there should be a power left with the people to supply the defect. It is a republican principle that there should be no right withheld from the people longer than they are willing that it shall be withheld. I desire that the people shall be enabled to change all laws whenever they shall be found to operate to their disadvantage. In all the other States whenever a proposition of this sort has been presented they have adopted provisions of the broadest character. I see no reason why Indiana should be behind them in this respect.

Mr. BADGER. I have sat still and heard debates upon this subject quite as long as the gentleman from Marion, and I have not opened my mouth. There seems to be a disposition to restrict the Legislature so that in reality they can do nothing. Every proposition that is moved is restrictive in its character. For one, I am tired of the discussion, and I believe that a great many others are also tired of it, I therefore move to lay the section and the amendment on the table.

Mr. CHAPMAN asked for a division of the question.

The question being first on laying the amendment of the gentleman from Marion on the table, the yeas and nays were demanded, and

they were ordered, and being taken were—yeas 68, nays 57, as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Bicknell, Blythe, Bourne, Bowers, Brookbank, Butler, Carr, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Dick, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogan, Holman Hovey, Huff, Johnson, Kelso, Lockhart, March, Mathis, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Nave, Newman, Prather, Robinson, Shannon, Sims, Smith of Ripley, Spann, Stevenson, Taylor, Thomas, Thornton, Todd, Wallace, Watts, and Mr. President—68.

NAYS.—Messrs. Anthony, Bascom, Beach, Beeson, Borden, Bryant, Carter, Chapman, Chenoweth, Coats, Cookerly, Crumbacker, Dunn of Perry, Duzan, Garvin, Graham of Miami, Graham of Warrick, Hardin, Hendricks, Howe, Jones, Kent, Kendall of White, Kinley, Logan, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Steele, Tague, Tannehill, Walpole, Wheeler, Wiley, Wolf, Work, Yocum, and Zenor—58.

So the amendment was laid on the table.

The question was taken on laying the section proposed by the gentleman from Jefferson on the table, and it was decided in the negative.

Mr. HOVEY moved to amend, so that the Legislature every twenty years after the passage of any law authorizing banking, may repeal the same.

Mr. DUNN of Jefferson moved that the amendment be laid upon the table.

The motion was agreed to.

Mr. CRUMBACKER moved to amend by striking out "twenty," and inserting "ten."

Mr. FOSTER. Oh! for the Lord's sake have done. We have had amendments enough.

Mr. CRUMBACKER. A single word, sir. I am utterly opposed to giving any monied power so long a period for the transaction of their business without holding them to an accountability. I should like to see them compelled to wind up their affairs as often, at least, as once in ten years.

Mr. BASCOM moved the previous question.

The previous question was seconded, and the main question ordered.

The question being on the amendment of the gentleman from Lake, to strike out "twenty" and insert "ten," it was decided in the negative.

The question was then taken on the adoption of the section proposed by the gentleman from Jefferson, and it was decided in the affirmative.

So the section was adopted.

The section was then ordered to be engrossed for a third reading.

On motion by Mr. FOSTER,
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

Mr. BASCOM. Is it in order now to offer a new section?

The PRESIDENT. It is in order.

Mr. BASCOM. Then I offer the following:

"All bank stock and bank property real and personal, shall be taxed at the same rate as other property in this State is taxed."

Mr. DUNN of Jefferson. I hope the Convention will adopt some general provision on the subject, with the view of taxing all property alike. That will include bank stock and other bank property. I therefore move to lay the section on the table.

Mr. BASCOM. I ask for the yeas and nays on that motion.

The yeas and nays were not ordered, and the question being taken, the section was laid upon the table.

Mr. BORDEN. I propose the following additional section:

"No note shall be issued or put into circulation of a less denomination than five dollars; and, after the year 1860, less than ten dollars. And the Legislature shall reserve the right, after the year 1870, to prohibit the issuing of any note or bill, of a less denomination than twenty dollars."

Mr. KENT. I move to lay the section on the table.

Mr. BORDEN. I ask the yeas and nays.

The yeas and nays were ordered.

Mr. KELSO. I would ask the gentleman from Allen whether he means bank notes or promissory notes?

Mr. BORDEN. The gentleman from Switzerland could not mistake the purport of the section. It is on the subject of banking and bank notes that we are treating, and not on that of promissory notes.

The question being taken, there were—yeas 78, nays 42—as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Beard, Blythe, Bourne, Bowers, Bracken, Carr, Chenowith, Clark of Hamilton, Clements, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Frisbie, Garvin, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Kent, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, McLean, Mil-

ler of Gibson, Milligan, Mooney, Morgan, Morrison of Washington, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Robinson, Schoonover, Sherrod, Sims, Spann, Steele, Stevenson, Taylor, Thomas, Thornton, Todd, Wallace, Yocum, Zenor, and Mr. President—78.

NAYS.—Messrs. Bascom, Beach, Beeson, Borden, Butler, Chapman, Coats, Dick, Dunn of Perry, Duzan, Foster, Graham of Miami, Hendricks, Holman, Johnson, Jones, March, May, McClelland, McFarland, Milroy, Moore, Morrison of Marion, Pettit, Read of Monroe, Ristine, Ritchey, Shannon, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Tague, Tannehill, Trimby, Walpole, Watts, Wheeler, Wiley, Wolfe, and Wunderlich—42.

So the amendment was laid upon the table.

Mr. EDMONSTON. I offer the following as an additional section:

"In all cases where the General Assembly shall grant any bank charter, or create any corporation with power to issue bills of credit, or bills payable to order or bearer, they shall require at least one-half per cent. per annum, on the capital for the benefit of common schools."

Mr. KENT. I move to lay the section on the table.

Mr. WALPOLE. I ask the yeas and nays.

The yeas and nays were ordered.

Mr. KELSO. I wish to inquire for information, whether we did not pass a section the other day requiring a quarter of one per cent. on such stock, and then in certain cases, the addition of the half of one per cent. on this capital?

The PRESIDENT. That section was not passed.

The question being taken on the motion to lay the section on the table, there were yeas 68, nays 51, as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Beach, Blythe, Bourne, Carr, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Colfax, Crawford, Davis of Madison, Dick, Duzan of Jefferson, Farrow, Fisher, Garvin, Gordon, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Kent, Kendall of White, Lockhart, Logan, Mather, May, McClelland, McFarland, McLean, Milroy, Mooney, Morrison of Washington, Murray, Nave, Newman, Niles, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Sims, Smiley, Snook, Steele, Stevenson, Taylor, Thomas, Thornton, Todd, Trimby, Wiley, Work, Wunderlich, Yocum, and Mr. President—68.

NAYS.—Messrs. Alexander, Badger, Ballingall, Bascom, Beard, Beeson, Biddle, Bowers, Bracken, Borden, Butler, Conduit, Davis of Parke, Dunn of P., Duzan, Edmonston, Foley, Foster, Frisbie, Gootee, Graham of Miami, Haddon, Hendricks, Holman, Huff, Johnson, Jones, Kelso, Kinley, Maguire, Mathis, Miller of Gibson, Milligan,

Moore, Morgan, Morrison of Marion, Owen, Prather, Ritchey, Robinson, Shannon, Sherrod, Shoup, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Wallace, Walpole, Watts, Wolfe, and Zenor—51.

So the proposed section was laid on the table.

Mr. DUNN of Jefferson. I ask the Convention to suspend the order of business for a few moments, in order to give me an opportunity of offering a resolution.

Mr. COOKERLY. What is the purport of it? Read it. Let us know what it is.

Mr. DUNN. It is as follows:

Resolved, That the Convention suspend the further consideration of the bank question, until Tuesday next."

Mr. COOKERLY. What is your object in offering this resolution? State your reason.

Mr. DUNN. I offer this resolution with the view that we may have time to reflect upon what we have already done, so that we may know where we are.

The question being taken on the motion to suspend the order of business, it was decided in the negative.

Mr. SHOUP offered an additional section, to the effect that the Legislature should have the right to alter or amend any law authorizing or incorporating any banks, and that no bank having branches should have the power to prevent the establishment of additional branches.

Mr. HAMILTON moved to lay the proposed section on the table.

The motion was agreed to.

Mr. MOORE offered the following, as an additional section:

"Any bank or branches established under this Constitution, shall never be permitted to issue more than two dollars for every one of specie which they have in their vaults."

Mr. KELSO. From the very first start of our coming here, I believed that we were assembled for the purpose of making a Constitution for the State of Indiana, and not a bank charter. But we appear now to have got far beyond that point, and in order that we may now stop and certainly have nothing further than a bank charter, I will move to lay that amendment upon the table.

The question being taken, the motion to lay the amendment upon the table, was agreed to.

Mr. HOLMAN offered the following as an additional section:

"No special act of incorporation or general law authorizing the issuing of bills, or notes to circulate as money, shall ever take effect until the same is submitted to the people at a general election, and shall have received the approval of a majority of the voters voting at such election.

Mr. MATHER moved to lay the section on the table.

Mr. HOLMAN demanded the yeas and nays.

The yeas and nays were ordered, and being taken, resulted as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Ballingall, Barbour, Beach, Beard, Bicknell, Blythe, Bourne, Bracken, Butler, Carr, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Conduit, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Edmonston, Farrow, Fisher, Frisbie, Gibson, Gregg, Hall, Hamilton, Helm, Hitt, Hovey, Kendall of White, Lockhart, Logan, Maguire, March, Mather, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Sims, Smiley, Smith of Scott, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimby, Wallace, Wiley, Wunderlich, and Mr. President—76.

NAYS.—Messrs. Badger, Bascom, Beeson, Biddle, Borden, Bowers, Carter, Cookerly, Dunn of Perry, Duzan, Foley, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hawkins, Helmer, Hendricks, Hogin, Holman, Huff, Johnson, Jones, Kelso, Kent, Kinley, Mathis, May, McClelland, McFarland, Miller of Fulton, Milligan, Pepper of Ohio, Prather, Ristine, Ritchey, Shannon, Sherrod, Shoup, Snook, Smith of Ripley, Tague, Tannehill, Walpole, Watts, Wheeler, Wolfe, Work, Yocum, and Zenor—52.

So the proposed section was laid upon the table.

Mr. PETTIT offered the following as an additional section:

"All the members of the political State of Indiana, shall have the same rights, privileges, and immunities."

Mr. P. said, he did not wish to debate the question at all. He only asked that he might have the yeas and nays on its adoption.

The yeas and nays were ordered.

Mr. DUNN of Jefferson moved to lay the proposed section on the table.

Mr. PETTIT demanded the yeas and nays.

The yeas and nays being ordered and taken, resulted as follows:

YEAS.—Messrs. Alexander, Badger, Barbour, Beard, Blythe, Carr, Chenowith, Clark of Hamilton, Clements, Cole, Crawford, Davis of Madison, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Frisbie, Gibson, Gootee, Hell, Hamilton, Harbott, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Jones, Kelso, Lockhart, Logan, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Schoonover, Spann, Stevenson, Thomas, Thornton, Todd, Wunderlich, Zenor, and Mr. President—55.

NAYS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beeson, Bicknell, Biddle, Borden, Bourne, Bowers, Bracken, Bryant, Carter, Chapman, Coats, Colfax, Conduit, Cookerly, Crum-

backer, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Foster, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hardin, Hendricks, Holman, Howe, Johnson, Kent, Kendall of White, Kinley, Maguire, March, Marher, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Murray, Nave, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Trimble, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, and Yocum—75.

So the proposed section was not laid upon the table.

Mr. BRACKEN. I move to amend the section by adding at the end of it, these words:

"Because one man is as good as another, if not a little better." [Laughter.]

Mr. BORDEN. I wish to make a suggestion to the Convention. It is evident we have got weary of this business, and I propose that we pass on for the present, and go to other business. For myself, I cannot tell what has been done upon this subject. I cannot tell what amendment I ought to vote for and what I ought to oppose; nor do I believe that any gentleman can vote intelligibly, until the subject, as it is now situated, is fairly before him. I trust that we shall lay the whole subject on the table, and proceed to the consideration of something else. [Loud cries of "No, no, no."]

The PRESIDENT. Does the gentleman from Allen move to lay the whole article on the table?

Mr. BORDEN. I do.

Mr. PETTIT. A vote has just been taken on laying the section on the table, and the Convention refused to do so. I think, therefore, the motion of the gentleman from Allen is out of order.

The PRESIDENT. The question of laying a single section, and that of laying the whole article on the table, are two very different questions.

The question being taken on the motion of Mr. Borden, it was decided in the negative.

The PRESIDENT. The question now recurs on the amendment offered by the gentleman from Rush.

Mr. PETTIT. I have only one word to say in reference to that amendment. If the gentleman supposes that it includes negroes and mulattoes, or if there be any desire on the part of the Convention to insert words particularly including them, I have no objection to vote for the insertion of such words. Let me remind gentlemen of the language of the section which I have offered. It is that "all the members of the political State of Indiana shall have the same rights, privileges, and immunities—"

Mr. ROBINSON (in his seat). In banking,

Mr. PETTIT. Yes, and in everything else. It may be well to say who are members of the political State of Indiana. You intend, undoubtedly, to exclude the negro. We all admit that negroes are not members of the political State. You and I are members of the political State; but they are not. It must be understood, too, that this section relates to a particular class. Children cannot enjoy these rights; but all men of the age of 21 years, enjoy them. All children, simply as children, and all women have certain political rights; but they are not of the kind contemplated by this section. The Indians are not members of the political State, nor is the negro; but this is simply saying that all the members of the political State shall have the same political rights. I hope that the amendment will not be adopted, and that the amendment will be passed.

Mr. STEVENSON. I move to re-commit the section and pending amendment to the committee on rights and privileges. [Cries of "consent, consent."]

Mr. PETTIT. I am quite willing that it should go there. I have no objection whatever.

The question being taken on the motion to re-commit, it was decided in the affirmative.

Mr. PEPPER of Crawford. I move to suspend the order of business, for the purpose of offering a resolution. It is as follows:

"Resolved, That no more new sections shall be offered to article twenty-four."

A MEMBER. I ask for the yeas and nays on the motion.

The yeas and nays were not ordered and the question being taken,

The motion to suspend the order of business was not agreed to.

Mr. MILROY offered the following as an additional section:

"No bank hereafter established in this State shall be allowed to issue or pay out any bill or note, to circulate as money, of a less denomination than five dollars."

The PRESIDENT. The Chair would remark to the gentleman from Carrol, that such a section is out of order; the Convention having voted down that proposition already.

PREFERENCE TO BILL HOLDERS.

The PRESIDENT. The next business in the orders of the day is the following section on its third reading:

"The bill holders shall be entitled to preference of payment, over all other creditors, in case of insolvency."

Mr. COLFAX. There appears to be an impression upon the minds of the Convention, that this is embraced in the compromise section. It is the free bank part of it, but is not in the State bank, and should certainly be passed now; so that it will operate on both systems.

The PRESIDENT. The question is on ordering the section to be engrossed for a third reading.

The section was ordered to be engrossed by consent.

LIABILITY OF STOCKHOLDERS.

The PRESIDENT. The next business in the orders of the day, is section 5, on its second reading.

The section was read by the Secretary, as follows:

"The stockholders shall be individually responsible to an amount equal to that of their respective shares of stock, for all the debts or liabilities of every kind."

Mr. PETTIT. I offer the following amendment to that section: Strike out the words "to an amount equal to that of their respective shares of stock;" and then the section will read:

"The stockholders shall be individually responsible for all the debts or liabilities of every kind."

That will make the stockholders in any bank liable for all the debts and liabilities of every kind that may be incurred. That is what I want.

Mr. HAMILTON. I move to lay the section and pending amendment on the table.

Mr. PETTIT. I ask the yeas and nays on that motion.

The yeas and nays were ordered, and being taken, resulted as follows:

YEAS.—Messrs. Allen, Badger, Ballingall, Barbour, Beard, Blythe, Bourne, Bracken, Carr, Chenowith, Clark of Hamilton, Clements, Cole, Colfax, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Edmonston, Farrow, Foley, Frisbie, Gibson, Gregg, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hovey, Huff, Kendall of White, Lockhart, Maguire, Mather, Mathis, Miller of Gibson, Mooney, Morgan, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Sims, Spann, Stevenson, Thomas, Thornton, Todd, Wallace, and **Mr. President**—58.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Borden, Bowers, Bryant, Butler, Carter, Chapman, Coats, Conduit, Crawford, Crumbacker, Dick, Dunn of Perry, Duzan, Fisher, Foster, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hendricks, Holman, Howe, Johnson, Jones, Kelso, Kent, Kinley, Logan, March, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Pettit, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Trim-

bly, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—75.

So the section and amendment were not laid upon the table.

The question then recurred on the amendment offered by **Mr. PETTIT**.

Mr. STEVENSON moved to lay the amendment on the table.

Mr. PETTIT demanded the yeas and nays.

The yeas and nays were ordered and taken, and resulted as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Beard, Blythe, Bourne, Bowers, Carr, Chenowith, Clark of Hamilton, Clements, Cole, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Edmonston, Farrow, Foley, Foster, Frisbie, Gibson, Gregg, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kendall of White, Kinley, Lockhart, Maguire, March, Mather, Mathis, Miller of Gibson, Mooney, Morgan, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Sherrod, Sims, Snook, Smith of Scott, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimby, Wallace, Work, Wunderlich, Zenor, and **Mr. President**—76.

NAYS.—Messrs. Bascom, Beach, Beeson, Berry, Borden, Bryant, Butler, Carter, Chapman, Coats, Dick, Dunn of Perry, Duzan, Fisher, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hendricks, Holman, Howe, Johnson, Jones, Kelso, Kent, Logan, May, McClelland, McFarland, McLean, Milligan, Milroy, Moore, Morrison of Marion, Morrison of Washington, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Ritchey, Shoup, Smiley, Smith of Ripley, Tague, Tannehill, Walpole, Watts, Wheeler, Wiley, Wolfe, and Yocum—55.

So the amendment was laid upon the table.

Mr. KELSO. I have a motion now that I desire to make, but I will preface it with a few remarks. The section now pending, since the amendment of the gentleman from Tippecanoe has been laid upon the table, is simply to make the stockholders liable for all the debts of a bank, to an amount equal to their stock in such bank.

Mr. COOKERLY. That provision has been adopted already.

Mr. KELSO. Now permit me to state briefly the true condition of this matter. In the first place, I put this to the bank men, whether every man here—no matter whether he be in favor of a State Bank or a free bank—will dare to declare himself in favor of any institution other than a safe and sound one? Then if we so arrange it that all the banks hereafter in Indiana shall be safe and sound institutions, I do desire gentlemen to tell me where is the danger or objection to asking a banker to stand behind it and give security to its issues? I go further

than that; I would make them give security for their deposits. Here, for instance, is a poor man with a hundred dollars, or a poor widow with a like amount, perhaps the last remnant of her husband's estate, which she deposits with the banker for safe keeping, or perhaps with the view of increasing it by obtaining a little interest in order that she may, by and bye, use it for the education and bringing up of her children; and in case of failure she is to lose this little pittance—little in itself, though all to her—while the rich man who has perhaps ten thousand dollars in the paper of this bank, must first have every dollar redeemed at its full amount before the widow can obtain one cent. I ask if that is having equal rights in banking?

But I go further and say, that there is but one method by which you can put the banker on an equality with the people. If you hold him responsible in no greater amount than that of his stock, you hold out to him an inducement to break with the public. Then while he is living in luxury and riding in his carriage and four, you cannot, even with a hundred dollars of his worthless paper money, buy a single pound of butter.

If, then, Mr. President, the object is to furnish a safe and sound medium, let us compel the banker to stand at the back of his bank and back it up with his property as long as he has a single dollar to back it with. Now, for the purpose of giving gentlemen a fair opportunity to consider this matter, which I believe to be one of very great importance, I will move to lay the section on the table for the present.

The PRESIDENT. The Chair would remark to the gentleman from Switzerland that the Convention has just refused to lay the section on the table.

Mr. KELSO. I beg pardon, but it appears to me that that was a very different question. The motion was to lay the section and amendment on the table, and the Convention refused to accede to it. A motion was then made to lay the amendment on the table, which was agreed to. And certainly, according to my notions of parliamentary rules, if the motion to lay an amendment on the table, after the Convention had refused to do so when made in connection with laying the section on the table, was in order, a motion to lay the section on the table must also be in order. I cannot understand why the section should be protected more than the amendment.

Mr. COLFAX. The gentleman from Switzerland, it appears to me, does injustice to the section. He says that the stockholders are only liable to the amount of their stock for the redemption of their bills.

Mr. KELSO. I said nothing of the kind.

Mr. COLFAX. That was the way I understood the gentleman, and so did other members around me. Now the reason why I prefer the

section in its present form is this: The object in authorizing banks at all is to increase the business facilities of the country, and we should, while we made them safe by all healthy restrictions, not incorporate provisions which will actually discourage and prevent the investment in them of capital from abroad. What man worth fifty thousand dollars will invest a thousand dollars in a bank, if he knows that, while the management of the bank will be in other hands, he would, in case of its failure, be liable to lose all the remainder of his property? Is it not the fairer rule to provide, as we have distinctly in the compromise section that has been passed, that he who subscribes a thousand dollars in stock, shall be liable to a thousand dollars more, and he who invests ten thousand for ten thousand more? Then the responsibility is graduated by the amount of interest the stockholder possesses in the bank, and he who pockets dividends and profits on a large amount is responsible for a large amount, while he who has but a small amount of dividends is made responsible in proportion. This certainly is the fairest and most equitable rule, and I trust no more stringent one will be adopted.

Mr. PETTIT. It is only the same rule that is applied to men who join together in trading in goods; precisely the same; and I see no reason why the man who trades in paper which in itself is of no value, should not be subjected to the same laws which govern partnerships in other business. That is equality. To make the paper traders an exception, is to give them privileges over and above what are given to other citizens; and it is to that that I object, and shall continue to object.

Mr. NILES. In order to avoid any ambiguity or misunderstanding, I move the following amendment to the section: Insert at the end of the fifth line the words, "over and above their stock."

The section as I propose to amend it will then read as follows:

"The stockholders shall be individually responsible to an amount, *over and above their stock*, equal to that of their respective shares of stock for all the debts or liabilities of every kind."

Mr. BORDEN. The gentleman from St. Joseph supposes a case of two persons going into banking together—the one being worth, say, three thousand dollars, and the other say, a hundred thousand dollars. The one puts in one thousand, and the other ten thousand. Now I ask whether such a provision would not constitute an inducement to men of wealth to inveigle men of small capital to join them, and perhaps to risk their all, they knowing that in case of failure they are only liable for the obligations of the bank to the amount of stock they may hold; and thus, while they lead hundreds of small capitalists to ruin, they themselves are not only safe, but perhaps fattening

on the alleged profits of the establishment—profits too often made by dividing as dividends the actual stock or capital advanced by the less wealthy class of stockholders. Sir, from the year 1834 to the year 1842, this system was carried on in England to a most alarming extent, involving thousands in the most absolute ruin. If, then, gentlemen of wealth and integrity chose to go into banking, and to take rogues into partnership with them, let them stand the brunt of it. I do think that this principle ought to prevail. In regard to depositors, I have no objection to the section as reported by the committee. But whenever you come to the issue, I think they ought to be responsible to the full amount of their property.

The PRESIDENT. The Chair would remark to gentlemen that the very same thing is passed in another section which we have adopted.

Mr. HOLMAN. I offer the following amendment: Strike out the whole section and insert as follows:

"Every stockholder or incorporation issuing bills to circulate as money shall be individually liable—"

The PRESIDENT. The Chair must inform the gentleman from Dearborn that there is an amendment pending which has preference.

Mr. HOLMAN. That is a motion made to amend the original section. Will not the motion to strike out and insert be in order?

The PRESIDENT. Most certainly not. The question will be upon the pending amendment first; because the friends of the section have a right to perfect it before any motion can be made to strike out. And, in addition to that, the pending amendment was first offered.

Mr. OWEN. I hope, sir, that the amendment of the gentleman from Laporte (Mr. Niles) will be adopted. I know very well, as you yourself have said, that this provision is in the compromise section, and that it applies both to free and to State Banks. But there is, perhaps, something equivocal about it. As the few words proposed as an amendment by the gentleman from Laporte will make the matter absolutely certain, I hope that amendment will be adopted.

Mr. STEVENSON. I wish only to say a single word. It is clear that we never can have any system of banking until the Legislature passes a charter; and, when they do so, they can impose just such restrictions as they please from time to time. Sir, there is not a Constitution in any State in the Union which has gone so far in regard to placing restrictions on banking, as we have gone. We are acting here as if we were making a bank out and out. Now, Mr. President, the result of this will probably be, that the State will have to call another Convention within ten years, unless we leave something for the Legislature to do when they incorporate a bank system; and there is

no doubt that, whatever is left for them to do, they will do it right. Unless, when you adopt some very general principle, and leave the details to be settled by the Legislature, you may depend upon it that there will be continual demands for the holding of Conventions to revise the Constitution in this respect. I trust, sir, that neither the section nor the amendment will be adopted.

Mr. COOKERLY. What would be the effect of a motion to indefinitely postpone the section?

The PRESIDENT. The Chair cannot answer the inquiry of the gentleman from Vigo until we have a vote upon the proposition.

Mr. COOKERLY. I would certainly like to see the matter disposed of in some way. I see that a great many gentlemen are determined to offer amendments; and it appears to me as if they would make a revised code of our Constitution.

Mr. BASCOM. I move the previous question.

The call for the previous question was sustained, and the main question being ordered to be now put, the question was first taken on the amendment offered by Mr. Niles, and it was adopted.

The section was then ordered to be engrossed for a third reading.

Mr. BRACKEN moved that the Convention adjourn.

The motion was decided in the negative.

SUSPENSION OF SPECIE PAYMENTS.

The PRESIDENT. The next business in the order of the day is section No. 6.

The section was read as follows:

"No authority shall be given sanctioning, in any manner, the suspension of specie payments."

Mr. KELSO. I have some objections to offer to that section, and if the Convention will bear with me, I promise gentlemen that I will not detain them more than five minutes. Now, sir, it is urged that, unless we ourselves bank, the State of Ohio, and other adjacent States having banks, we shall be compelled to receive their notes, and even to pay them a premium for the use of them. We then create a system of banking in self-defense, in order that we may provide our own citizens with a circulating medium, that whatever may be made by it may be kept at home. Now, if we put a clause in our Constitution providing that the Legislature of Indiana shall never have power to sustain the banks in case of a pressure and a suspension of specie payments by the banks of other States, the Legislature will of course be bound by that clause. Suppose now, that every bank in the adjoining States should suspend specie payments, and that it would be their direct object and interest to run upon us for every dollar of silver and gold they could get out of the

Bank; while they are sustaining themselves under this suspension rule, and reap all the benefit, we are subjecting ourselves to be destroyed, simply because we have given up the privilege of defending ourselves as they defend themselves. Nothing is more certain than that, if specie payments had not been suspended in 1838, the State would have been ruined and the Bank broken. There is no certainty whatever that a similar crisis may not again occur. Now, sir, we talk largely about State stock and General Government securities. In times of suspension of specie payments by banks, or any difficulty of this kind, we all know that stocks are worth less, and sales can with difficulty be effected. All our securities become depreciated, and if the Legislature might sustain a suspension of specie payments for a short time, until the stocks could be profitably disposed of, so that they might not be forced into market when the market was depressed, then, perhaps, each branch might be able to sustain itself. I say it certainly is folly to throw that barrier in the way of the action of the Legislature, by supposing that that body will not have the confidence of the people and honesty enough to do right when a crisis may come. Sir, we are tying up the hands of the Legislature in every corner, and not allowing the people to act. It seems to me that we are going far beyond our province—far beyond any object for which we were sent here. It is my candid opinion that we should leave this matter open to the Legislature. It is for them and the people to settle, if a difficulty of that kind should come upon them. I hope, therefore, that the Convention will not pass this section.

The question being then taken, the section was ordered to be engrossed for a third reading, and,

On motion,

The Convention then adjourned.

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THURSDAY, JAN. 16th, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

Mr. RITCHEY moved to postpone the special order for the purpose of enabling him to make a report from a select committee.

The motion was not agreed to.

THE SPECIAL ORDER.

The section in relation to hail in criminal cases, on its final passage, having been made the special order for this day, was taken up.

The question being on a motion to re-commit, with instructions to abolish capital punishment, with an amendment to said instructions, excepting for the crime of wilful and deliberate murder,

Mr. KELSO. It seems to me that we might with all propriety, as very few gentlemen, I apprehend, are prepared to meet this question at this moment, inasmuch as we have been engaged with the banking question from day to day for some time past, defer this subject for the present. I therefore move that its further consideration be postponed until this day week.

The motion was, upon a division—ayes 36, noes not counted—rejected.

The question being on the amendment to the instructions,

Mr. READ of Clark demanded the previous question.

The previous question was—by ayes 61, noes 37—seconded, and the main question ordered to be now put.

The question being first on the amendment to the instructions, it was not agreed to.

The question was then taken on the motion of the gentleman from Carroll to re-commit the section with instructions, and it was rejected.

The question then being, "Shall the section pass?"

The yeas and nays were taken with the following result—yeas 128, nays 0:

YEAS.—Messrs. Allen, Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Braeken, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenoweth, Clark of Hamilton, Clements, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Murray, Nave, Newman, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clarke, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spans, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimby, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—128

NAYS.—0.

Mr. OWEN, from the committee on rights and privileges, to whom was referred the memorial from the ladies of Lawrenceburgh, reported the following section:

"SEC. —. The real and personal property of married women, and a liberal provision for

widows, shall be and remain secured to them, respectively under equitable conditions, by law."

The section was read a first time, and passed to a second reading.

Mr. RITCHEY, from the committee on future amendments to the Constitution, reported two sections, providing that "whenever two-thirds of all the members elected to each branch of the General Assembly shall think it necessary, a vote for or against a Convention may be ordered, and if the people decide in favor of a Convention, then a Convention may be called for the purpose of revising, altering, or amending the Constitution. Amendments may be proposed to the Constitution in either branch of the General Assembly, and if agreed to by two-thirds of all the members elected to each of the two Houses, then the amendment or amendments shall be referred to the next regular session of the Legislature, and shall be published three months before the time of electing members of the House, and if, at the next regular session, a majority of all the members elected in each branch shall agree to such amendment or amendments, then it shall be their duty to submit the same to the people, at the next general election, for their adoption or rejection; and if the people shall vote for such amendment or amendments, the same shall become a part of the Constitution. If more than one amendment is submitted, the vote shall be taken separately," &c.

The sections were read a first time and passed to a second reading.

Mr. DUNN of Jefferson, from the committee on that subject, reported back an amended section, in relation to reprieves, and the remission of fines and forfeitures by the Governor, requiring him to submit the same to the Legislature, and giving the Legislature power, if deemed necessary, to appoint the officers of State to act as counsel to the Governor in granting reprieves.

The report of the committee was concurred in.

The question being on ordering the section to be engrossed for a third reading,

Mr. KELSO proposed to amend by adding the words "or remittances."

This, said Mr. K., is the most important, or at least an equally important branch of the Governor's duty. When a man commits an offense against the criminal law of the State, if after having given security, he absconds from the country, there is a forfeiture incurred, and it becomes a part of the educational fund of the State. By this section the Governor is left at full liberty to remit all these forfeitures at his pleasure, whereas, he cannot grant a pardon without the advice of his council.

Now, I maintain that he should have the advice of the council as well in relation to the remittance of fines and forfeitures, as in relation to the granting of pardons.

Mr. DUNN of Jefferson. The committee thought that another provision contained in the section would probably be a sufficient restraint upon the Governor in regard to the granting of pardons and the remission of fines and forfeitures.

That is the provision which requires that he shall report to the Legislature at each session, all cases of the remission of fines and forfeitures, and the amount so remitted. We supposed, sir, that this would be a sufficient check. The only alteration made in the original section is this: It now gives the General Assembly power to provide a council for the Governor, to advise with him in relation to the granting of pardons, if the General Assembly should see proper so to do. It is not obligatory; it is merely a power which they may exercise or not, as they shall see proper. The proposition for providing a council for the Governor in relation to the remitting of fines and forfeitures was before the committee, and it was thought that great difficulty might arise out of it. I think, myself, it is sufficient as it now stands. But I have no great objection that the whole matter should be left in the hands of the Legislature.

The question was then taken on the amendment of the gentleman from Switzerland, and it was decided in the negative.

Mr. WATTS moved to amend by adding the following:

"And that said remittances and pardons shall in no case be granted unless recommended by the court before which the party is tried and convicted."

The amendment was not agreed to.

The section was then ordered to be engrossed for a third reading.

#### THE BANK QUESTION.

The section providing that the bill holders shall have the preference in case of insolvency, was read a third time and passed.

The section providing that stockholders shall be individually responsible to the amount of their stock, over and above the amount of such stock, was read a third time.

Mr. BORDEN moved to recommit with instructions to insert:

"The stockholders in every corporation or association for banking purposes issuing bank notes or any kind of paper credit to circulate as money, shall be individually responsible for all the notes or bills issued or put in circulation by said corporation or association."

Mr. BORDEN said, he would ask the attention of the Convention but a few minutes. He said it was his intention on yesterday to have occupied their attention for a short time in discussing this proposition. But he saw at the time that the Convention was impatient of the debate. But now having submitted his proposition he hoped they would excuse him if he should



briefly attempt to point out his reasons for it. He believed that the stockholders should not only be individually liable in the whole amount of their estates for all the bills which they should put in circulation as money; but, also, for all money deposited with them, as well as for bills of exchange, which they may have drawn; indeed, sir, for all contracts of every name and description, the same as private citizens. But, sir, I think I see a disposition on part of the Convention not to go as far as I do in this matter. Therefore all that I propose now is that they shall be individually responsible for the bills or notes which they may issue and put in circulation as money. Sir, thousands who may know nothing of the management of the bank or the responsibility of those who we authorized to go into banking will be compelled to take their paper. I say compelled to take it, for every business man is forced by public opinion to receive such currency as is in circulation or quit business. As to those who choose to transact business with the banks by depositing with them, as they generally live in the same neighborhood with the institution, or who may purchase bills of exchange of them. I have no objections to their doing so at their own risk; but, sir, I trust this Convention is prepared to go far enough to secure the bill holders, the farmers and mechanics of the country, far away from the institution, and who are necessitated to receive the notes of these institutions. And, sir, for the purpose of seeing who will and who will not stand by the interest of this State, I will demand the yeas and noes upon my proposition.

Mr. WOLFE demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being upon re-committing with instructions,

Mr. BORDEN asked for the yeas and nays; and they were ordered, and being taken, were—yeas 61, nays 69—as follows:

YEAS.—Messrs. Allen, Ballingall, Bascom, Beeson, Berry, Bicknell, Biddle, Borden, Bowers, Bracken, Bryant, Carr, Carter, Chapman, Coats, Cole, Cookerly, Dick, Dunn of Perry, Duzan, Foster, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hamilton, Harbolt, Hardin, Holman, Johnson, Jones, Kelso, Kent, Kendall of White, Logan, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Murray, Pettit, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Smiley, Smith of Ripley, Steele, Taylor, Walpole, Wheeler, Wolfe, Work, Wunderlich, and Mr. President—61.

NAYS.—Messrs. Anthony, Badger, Barbour, Beach, Beard, Blythe, Bourne, Brookbank, Butler, Chenowith, Clark of Hamilton, Clements, Colfax, Crawford, Crumbacker, Davis of

Parke, Davis of Vermillion, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Frisbie, Gibson, Gregg, Hall, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Kinley, Lockhart, Maguire, March, Mather, Mathis, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Nave, Newman, Owen, Pepper of Crawford, Prather, Read of Clark, Schoonover, Shoup, Sims, Snook, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wiley, Yocum, and Zenor—69.

The question then being, Shall the section pass?

The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 95, nays 10—as follows:

YEAS.—Messrs. Allen, Anthony, Ballingall, Barbour, Beach, Beard, Beeson, Berry, Biddle, Blythe, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dunn of Jefferson, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kelso, Kent, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—95.

NAYS.—Messrs. Badger, Bascom, Borden, Dunn of Perry, Garvin, Howe, McFarland, Pettit, Ristine, Ritchey, and Sherrod—10.

So the section passed and was referred to the committee on revision.

#### THE SUPPLEMENT TO THE COMPROMISE.

The section which provides that no suspension of specie payments shall be sanctioned, was read a third time.

Mr. OWEN. I desire to make a motion to re-commit the section, and I shall preface it with a very few words. A true navigator never puts out with a small skiff on a stormy sea, and therefore I did not present this proposition yesterday, because I knew the excitement that prevailed in this House. It is a very simple proposition which the friends of the free banking system desire should be adopted, and to

which, I am sure, the friends of the State Bank can have no objection. I have shown my proposition to the gentleman from St. Joseph, and he has assented to it. It proposes to introduce the words "readily convertible security," so that the security may not only be ultimately good, but readily convertible into specie. I propose to re-commit this section with instructions to insert these words: "all collateral security required under the general banking law shall be readily convertible."

Mr. PETTIT moved to amend the instructions by adding the following: "All charters shall be repealable by the Legislature."

Mr. KENT demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being on the amendment proposed by the gentleman from Tippecanoe,

The yeas and nays were demanded, and they were ordered, and being taken, were—yeas 57, nays 70—as follows.

YEAS.—Messrs. Anthony, Bascom, Beach, Beeson, Berry, Borden, Bryant, Carter, Chapman, Chenowith, Coats, Cookerly, Crumbacker, Dick, Dunn of Perry, Duzan, Garvin, Graham of Miami, Graham of Warrick, Haddon, Hardin, Holman, Howe, Johnson, Jones, Kent, Kinley, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Marion, Nave, Owen, Pettit, Read of Monroe, Ristine, Ritchey, Sherrod, Shoup, Smiley, Smith of Ripley, Steele, Tague, Tannehill, Walpole, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—57.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Biddle, Blythe, Bourne, Bowers, Bracken, Brookbank, Butler, Carr, Clark of Hamilton, Clements, Cole, Colfax, Crawford, Davis of Parke, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Gibson, Gootee, Gordon, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Kendall of White, Lockhart, Logan, Maguire, March, Mathis, Mooney, Morgan, Morrison of Washington, Murray, Newman, Pepper of Crawford, Prather, Read of Clark, Schoonover, Shannon, Sims, Snook, Smith of Scott, Spann, Stevenson, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Zenor, and Mr. President—70.

So the amendment was rejected.

The question being on re-committing the section, with the amendments proposed by the gentleman from Posey,

Mr. OWEN demanded the yeas and nays, and they were ordered.

Mr. DUNN of Jefferson. Will it be possible, by unanimous consent, to add a word or two to the instructions?

The PRESIDENT. The subject is under the operation of the previous question.

Mr. PETTIT. It requires the addition of the word "specie," otherwise it appears to me it means nothing.

Mr. OWEN. The word "specie" is in the compromise section, and it is not necessary to repeat it. Mr. President, may I be permitted a single word of explanation?

The PRESIDENT. Debate is not in order.

The yeas and nays were then taken, with the following result—yeas 70, nays 51—as follows:

YEAS.—Messrs. Allen, Anthony, Ballingall, Barbour, Bascom, Beach, Beeson, Berry, Biddle, Blythe, Bowers, Bracken, Bryant, Chapman, Clark of Hamilton, Clements, Cole, Colfax, Crumbacker, Dick, Dunn of Jefferson, Duzan, Edmonston, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hamilton, Hawkins, Helmer, Hogin, Holman, Howe, Huff, Jones, Kent, Kendall of White, Kinley, Lockhart, Maguire, March, Mathis, May, McFarland, McLean, Miller of, Fulton, Milligan, Milroy, Moore, Morrison of Marion, Murray, Owen, Pepper of Crawford, Prather, Read of Monroe, Ristine, Ritchey, Smiley, Steele, Tannehill, Trimble, Watts, Wheeler, Wiley, Work, Wunderlich, and Mr. President—70.

NAYS.—Messrs. Badger, Beard, Bourne, Brookbank, Butler, Carr, Chenowith, Coats, Cookerly, Crawford, Davis of Parke, Farrow, Fisher, Foley, Gibson, Gootee, Haddon, Hall, Harbolt, Hardin, Helm, Hitt, Hovey, Kelso, Logan, Mather, McClelland, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Nave, Newman, Pettit, Read of Clark, Schoonover, Shannon, Sims, Snook, Smith of Scott, Spann, Tague, Taylor, Thomas, Thornton, Todd, Wallace, Walpole, Wolfe, Yocum, and Zenor—51.

The section which provides that banks shall close up their business at the end of twenty years, from their organization, was read a third time.

Mr. CARTER moved to re-commit the section with instructions to amend so as to give power to the Legislature, whenever they may deem that the public good requires it, to repeal all laws in relation to banking and bank charters.

Mr. COLFAX rose to a question of order. His point of order was, that the proposition contained in the instructions had been decided over and over again by the Convention.

Mr. CARTER. No, sir, it is not the same proposition. This has reference to banking corporations exclusively. I hope the section will be re-committed with these instructions. It is said by gentlemen, that a private corporation is a matter of private concern. I believe that heretofore all charters have been considered in the light of contracts, and that the Legislature have no right to revoke or repeal them. If we establish a provision of this kind, we de-



stroy this construction of the law, and place the whole matter in the hands of the Legislature, so that whenever they deem the public good requiring it, they can repeal and revoke the law or charter under which the corporation acts. The Legislature should not give to any set of men powers and privileges greater than those enjoyed by his fellow citizens, which they cannot withdraw when they please. My instructions embody what has been recognized in Ohio. It is the present law in New York. If it is right on Ohio soil and on New York soil—if it be right that it should be ingrafted in the free banking laws of other States, I cannot see why it is not equally applicable to a law for free banking, or any other kind of banking, in Indiana.

Sir, when a corporation is once established, without some such restriction as this, it will have an almost unlimited power. It will be beyond the control of law, unless it violates the charter under which it acts, which thus renders what is called the contract void.

Sir, is a banking charter a contract? The Legislature grants to the corporation powers that the rest of the State do not possess. Is there a "value received," on the part of the people? Sir, the mere title means nothing. The word corporation gives nothing in itself. It is the privileges that you give to the corporation, that make it formidable. You may call a man lord, king, or tyrant, but unless you give him the power of a lord, king, or tyrant, he is harmless. So with corporations. They have power, and it is to protect the people, and defend their rights, that I wish to see this section re-committed, with these instructions.

A law of incorporation is not a contract, and let us so declare it, and then, whenever the people think that a corporation is not discharging its duties or accomplishing the ends they desire, they may have the power to revoke, repeal, or amend, the charter or law under which the corporation exists.

Mr. GORDON demanded the previous question.

The PRESIDENT. The Chair would remark in regard to the motion of the gentleman from Montgomery, that it is not in order, inasmuch as a similar proposition has been offered by the gentleman from Tippecanoe, and rejected by the Convention.

Mr. PETTIT. My proposition applied to all charters.

Mr. CARTER. Mine applies to laws relating to banking and to bank charters.

The PRESIDENT. The instructions of the gentleman from Tippecanoe related to charters of all kinds and they were negatived. That of the gentlemen from Montgomery relates to bank charters only. As the major includes the minor, therefore it is not in order to entertain the motion of the gentleman from Montgom-

ery on the same day and at the same stage of the bill.

Mr. RITCHEY. I voted against the proposition of the gentleman from Tippecanoe merely on the ground that it embraced all charters, but I am in favor of the proposition of the gentleman from Montgomery.

Mr. CARTER appealed from the decision of the Chair.

The appeal was debated by Messrs. Pettit, Carter, Ritchey, Smith of Scott, and Kelso; and after some remarks by the President.

The question was taken on the appeal by yeas and nays, with the following result—yeas 68, nays 43, as follows:

YEAS.—Messrs. Allen, Anthony, Badger, Ballingall, Beard, Blythe, Bourne, Bracken, Brookbank, Bryant, Butler, Carr, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Crawford, Davis of Parke, Davis of Vermillion, Dick, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Hall, Hamilton, Harbolt, Hawkins, Helm, Hitt, Hovey, Huff, Kendall of White, Lockhart, Logan, Mathis, McClelland, Mooney, Morgan, Morrison of Washington, Nave, Pepper of Crawford, Prather, Schoonover, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—68.

NAYS.—Messrs. Bascom, Beach, Beeson, Berry, Biddle, Borden, Carter, Chapman, Cookerly, Dunn of Perry, Duzan, Garvin, Gordon, Graham of Warrick, Gregg, Haddon, Hardin, Helmer, Holman, Howe, Johnson, Jones, Kelso, Kinley, March, Mather, McFarland, McLean, Miller of Fulton, Milroy, Moore, Morrison of Marion, Newman, Pettit, Read of Clark, Ristine, Ritchey, Shoup, Smiley, Smith of Ripley, Walpole, Wheeler, and Wiley—43.

So the decision of the Chair was sustained by the Convention.

The question being, Shall the section pass?

Mr. STEVENSON moved the previous question, which was seconded and the main question ordered to be put.

The question was taken on the passage of the section and decided in the affirmative—yeas 107, nays 8—as follows:

YEAS.—Messrs. Allen, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Berry, Blythe, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hitt, Hogan, Holman, Huff, Johnson, Jones, Kelso, Kent, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClel-

land, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Newman, Niles, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Smiley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—107.

**YAYS.**—Messrs. Clark of Hamilton, Hovey, Howe, Pettit, Ristine, Shoup, Walpole, and Wiley—8.

So the section passed and was referred to the committee on revision.

**Mr. READ** of Clark remarked, that the newly-elected United States Senator (Mr. Bright) was anxious to meet his fellow citizens this evening in this Hall, and it would require several hours to make the necessary preparations. He therefore moved that the Convention adjourn until to-morrow morning, at nine o'clock.

Upon this motion the question was taken by yeas and nays, with the following result—yeas 36, nays 56—as follows:

**YEA.**—Messrs. Allen, Anthony, Berry, Bryant, Butler, Carr, Dick, Dunn of Jefferson, Frisbie, Gibson, Graham of Miami, Graham of Warwick, Gregg, Hall, Harbolt, Hawkins, Jones, Kendall of White, Logan, Maguire, Milroy, Mooney, Niles, Prather, Read of Clark, Read of Monroe, Shannon, Smith of Scott, Spann, Steele, Tannehill, Taylor, Thornton, Wallace, Walpole, and Mr. President—36.

**NAYS.**—Messrs. Ballingall, Bascom, Beach, Beeson, Blythe, Bracken, Brookbank, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Colfax, Crawford, Davis of Parke, Edmonston, Fisher, Foley, Garvin, Gootee, Gordon, Haddon, Hardin, Helmer, Hitt, Holman, Huff, Johnson, Kent, Kinley, March, Mathis, McClelland, McLean, Miller of Fulton, Morgan, Morrison of Marion, Nave, Newman, Pepper of Crawford, Ritchey, Schoonover, Shoup, Smiley, Smith of Ripley, Stevenson, Tague, Thomas, Todd, Triamble, Watts, Wiley, Wolfe, Yocum, and Zenor—56.

So the Convention refused to adjourn until to-morrow morning.

On motion, the Convention then took the usual recess until two o'clock.

#### AFTERNOON SESSION.

The Convention having been called to order,

On motion,

The Convention adjourned.

#### REMARKS OF MR. NILES,

*On Banking and Currency, in Convention, January 4, 1851.*

**Mr. NILES.** It will be admitted by all, that we should be careful to adopt as constitutional

provisions, none but wholesome general principles and rules, and that we should equally avoid unsound principles which must from their nature, at some time and in some way, operate badly, and mere legislative details which may after a series of years lead to great inconvenience. From the intimate connection of currency and banking with all the commercial and pecuniary interests of society, the importance of this rule, as applicable to the subject now before the Convention becomes apparent. In legislation a lesser evil may sometimes be substituted for a greater; but no such policy should prevail in settling the principles of banking. I desire to bring the various proposed plans to the test of this doctrine, and to discuss the subject as briefly as possible with that view.

In the first place, I may be permitted to remark that in reference to this question there are four parties among us, as, perhaps, also among the people. One party stands opposed to all banks and banking, as unsound in principle and pernicious in practice. Another is in favor of the present State Bank, or some other institution organized upon similar principles to succeed it. Then we have another party who are in favor of what is called "Free Banking," though the name, which seems to be odious to some, is far from expressing the true idea. And we have others who are in favor of combining the two systems, or of authorizing both or either. In this arrangement of parties, I find myself among those know as free bankers.

I desire to submit a few remarks in reference to the questions presented by each of these parties. And first as to the question of bank or no bank. I hold, sir, that banks and banking in the present condition of the commercial world are not an evil in themselves, and necessarily, but only in their abuse. The abuses of banking are full of evils, destroying confidence, giving fictitious and fluctuating values to commodities, and deranging credit and commerce.

Commerce gives life to society and sound credit is the life of commerce. The operations of commerce have for centuries been carried on by means of bills of exchange and other commercial paper. Bank notes may accomplish in a limited sphere, the same objects which are subserved on a wider scale, by bills of exchange. But in order that bills of exchange or bank notes should answer a useful purpose, they must have a substantial basis, and be the real representatives of value. The precious metals in the form of coin, are of no value except as a standard, and an instrument of commerce. It is evident that nothing is added to the wealth of the country by the transfer of the precious metals from point to point, and that the transfer of commodities by means of an actual representative of value is equally useful, and generally far more convenient than the direct exchange of bulky articles. It is equally consistent with my own and the public interest, that I



have ten dollars of bank notes to meet my current expenses as that I should be compelled to carry in my pocket ten dollars of silver, provided that the bank notes have a substantial basis, and be convertible at any moment into specie, and it is far more convenient for myself and others. It would be a retrograde movement to dispense with paper as a representative of value, even in the limited commerce of a single State. In its way, it would be like dispensing with labor saving machinery. We might as well think of returning to the Spartan currency of iron as to the sole use of the precious metals. Some safe and legalized system of banking seems peculiarly necessary in a new country like ours where individual capital and credit are limited, and even in an old and wealthy community, I see no reason why associated wealth may not be permitted to compete with capital accumulated in the hands of individuals.

We all know that sound banks do not only furnish a most convenient circulating medium, but that by occasional and temporary loans they aid the commercial, agricultural, manufacturing, and all other industrial interests.

But sir, even if we would, we are wholly unable to exclude the use of Bank paper by the people of the State. It will circulate among us, and by prohibiting banks which would be subject to our own laws, we would only flood the country with less reliable bank paper of other States. There is "a higher law" upon this subject than constitutions—the convenience and necessities of the people. Illinois has refused to permit banks, and yet in the city of Chicago, a private individual, acting under the charter of a Marine and Fire Insurance Company, granted by the Legislature of Wisconsin, which has been long since repealed, has issued and put in circulation a million or upwards of dollars in bank paper, which passes throughout that country as gold and silver. And what has Illinois gained by her prohibition? Nothing but to compel her citizens to pay exorbitant rates of interest on loans from private bankers or shavers. If the private banker, or broker, or money lender can be tolerated, why may not banking be made useful when regulated by law?

But I apprehend, sir, that the anti-bank party can never secure a majority of this Convention, and that some system of banking will be authorized, unless, unfortunately, the whole policy should be defeated by dissensions among its friends.

A word, sir, to those who favor the State Bank, or one organized on similar principles. I am opposed to such a Bank, as being strictly a monopoly, though I would not use that word in its odious sense, or for the purpose of arraying prejudice. The State Bank is the only Bank which can exist in the State under our present Constitution. It has the sole privilege of issuing bank paper under the authority of

law; it may issue the amount of twice and a half its capital, and has, at the present moment, about three dollars of bills in circulation for every dollar of specie in its vaults; and it is authorized to loan its bills at the same rate of interest at which a private individual can loan gold or silver. These rights belong to the present owners of the stock, and to their heirs and assignees, to the exclusion of all other citizens of the State. Now, sir, suppose that the stock of the Bank is at this moment owned by one hundred or one thousand men; what would be the difference, in effect, if these privileges were conferred exclusively upon those men by name, and upon the persons whom they should by contract appoint as their successors, or upon them and their eldest male descendants? In that form, such a law could not be tolerated; and yet every exclusive bank charter, upon the principles of our present Bank, is of precisely such a character. It does give to a few citizens exclusive privileges which are denied to all others. Such monopolies should be created only on the ground of absolute necessity, for they are inconsistent with the doctrine of equal rights. And if it can be shown that another system may combine the principle of free competition and equality of rights with safety and usefulness, that circumstance alone will be a strong argument in its favor.

Again, sir: the continued solvency of the State Bank depends almost entirely upon the integrity and good conduct of the men who manage it. It has been our good fortune to have cautious and honorable men connected with the Bank; and it is said that the experiment of State Banking, under an exclusive charter, has been proven to be successful, and ought to be continued. But, sir, though successful here thus far, the system has failed in nearly all the other States which have tried it. Let the State Bank be perpetuated, and we have no guarantee for the future in its past history. Accidental circumstances can never be relied upon as elements of permanent security. In a series of years, the present managers of the Bank will disappear, and their heirs may not possess their prudence. They may sell their stock to reckless speculators, in or out of the State; and then what will have become of your security?

A large portion of the people are friendly to the present State Bank, simply because its bills have been good. And I have been surprised to learn the extent to which the idea has prevailed, that the faith of the State is pledged for their redemption. The State, of course, is not liable for the bills, or any of the debts of the Bank. Who, I might ask, would be willing to commit the custody of the faith of the State to any one set of men and their heirs, or whoever should offer to them the largest price for the privilege of becoming its keepers? And yet the bankers are in effect the guardians of

the State's credit to the amount of her capital in the institution.

It is also said that State Banking ought to be encouraged because part of the profits of the Bank are applied to purposes of education. A Bank report was submitted to this Convention, showing a profit to the State for the use of schools of near a million of dollars. That report has been published in many of the newspapers of the State, and has had its influence upon the public mind. But, sir admitting the Bank to be now solvent—a fact of which I have no doubt—and what has the State made by meddling in the banking business? If she has made a million of dollars, she has lost a million; and on balancing the account, the profit will be found wanting. It will be remembered by all, that when the State proposed to increase its capital in the Bank, and authorized a loan for that purpose, bonds to the amount of a million of dollars were sold to the Morris Canal and Banking Company, which proved an almost total loss. That million of dollars is to-day an incumbrance upon the property of the State. What assurance have we that a time of wild speculation may not come upon the country—that the control of the Bank may not pass into the hands of wild speculators, and its whole capital be lost as effectually as if sunk in the middle of the sea?

Mr. HAMILTON. I would take the liberty to correct the gentleman in one statement which I think he made inadvertently, or perhaps without correct information upon the subject. It is this: The Bank had nothing to do with the Morris Canal and Banking Company, and did not desire thus to have an increase of bank stock. The President of the State Bank was appointed by a law of the General Assembly to act in connection with the Fund Commissioners, and not by any action of the State Bank. I was in the State of New York when they were negotiating that loan, and opposed both it and the surrender of the bonds. Three of the Commissioners were present, and, so far as I could perceive, appeared to favor the negotiation, and they at least had as much to do with it as the President of the Bank, who was acting with them in pursuance of a law conferring that trust upon him. The Legislature seemed to determine to increase the State stock in the Bank without consultation with the branches. How the Banks could be accountable for money they never received, I cannot imagine.

Mr. NILES [continuing]. I am gratified to hear the explanation. It was an act of justice due to a man for whom I have always entertained the highest respect. The principle, however, is the same, no matter what man or men were engaged in the negotiation. The money was lost in connection with the scheme of State banking, and on account of that scheme.

But in justice to the present bank, I must admit, that it does possess one principle of safety—in the common supervision and mutual liability of the branches. It is made the interest of all to guard against the failure of any one branch. At the same time, the institution is more obnoxious to the charge of monopoly for this feature. The branches, distributed throughout the State, holding the key to all bank accommodations, and acting through one head, have great power for evil, no less than for good.

Now, sir, in opposition to this system, I desire to see one established which shall combine the principles of free competition and of security to the bill-holder. Unless these two principles can be combined, all legalized banking must, at no distant day, go out of date. Bills issued to circulate as money should be always, and under all circumstances, redeemable in gold and silver. Such is the design under the old system of special charters. But while that system is wholly incompatible with free competition, it has not possessed the merit of security. Unless banks are made amply secure, the amount of bank capital must be limited by special legislation. In all the common affairs of trade and commerce, men are permitted to pursue their own interests in their own way. The business of issuing paper to circulate as money is of a widely different character, and must be governed by stringent rules. But mere arbitrary rules which may be suited to the condition of a people at one time, may operate badly at another. Under special and exclusive charters you may have too much or not enough bank capital. Permit men to establish banks on the old plan, at their pleasure, and the country will be flooded with paper money, and in time the whole system must fail. But make the system secure, so that every bill issued must certainly be paid to the bill-holder, without any contingency even remotely probable, and even with free competition, the business will not generally be extended beyond the wants of the country. The exigencies of commerce will regulate the demand for money, and the demand will regulate the supply. The free competition of capital and enterprise under equal laws, is a kind of self-regulating principle. It may be made to operate somewhat like a self-regulating power in machinery. When the steam engine learned to open and close its own valves, and to control its own action, a great advance was made towards its present improved condition.

Now, sir, as an indispensable pre-requisite to free competition, the system must be made secure. And how shall this object be attained? Not by merely requiring the bank to keep on hand, in specie, one-third or more of the amount of its issues. The specie in the vaults of the bank is not under the control of the State, or of the bill-holders. It comes and goes at the bidding of the bankers. Not merely by making the persons engaged in banking indi-



vidually liable for the debts of the bank, for their solvency or insolvency is only accidental, and such a security may fail, when most needed. Not even by trusting to the obligations of oaths and official bonds. They are proverbially worthless, as checks upon the spirit of cupidity and speculation. Checks and safeguards of this description may be very well so far as they are worth any thing. But they are not sufficient to insure stability and uniformity and entire safety in the business of banking.

We propose, in addition to all reasonable checks and safeguards of this description, to require the bankers to deposit with the Treasurer of State collateral securities amply sufficient for the prompt redemption of all the bills issued, and that all bills shall be countersigned and registered by some public officer.

Mr. HAMILTON. Will the gentleman from Laporte pardon me for interrupting him; but I would much like to know what kind of securities he would offer.

Mr. NILES. In answer to the gentleman's inquiry, I will say, that doubtless the stocks of the United States, and of this State, and of other solvent interest paying States, would be the most suitable description of security at the present time. They have an ascertained market value, and are always convertible into specie at that value. They will be subject to very little depreciation. Repudiation will soon be an obsolete idea. There seem to be two sufficient reasons why mortgages upon real estate should never be received as such security—one that real estate in the west, has no fixed market value, and of course is not readily convertible; the other that a government should never hold out inducements to a people to incur their farms with mortgages. At the same time, I would not limit the securities to public stocks, but would trust the details to legislation. The principle that the billholder should be protected beyond contingency, will remain sound through centuries, but the condition of the country may greatly change. Government and State stocks can be procured abundantly in the market at present, but within a quarter of a century, it is to be hoped, that the debts of the General Government and of the States will be largely reduced. These stocks will be used in connection with banking in our large commercial cities, and in most of the older States. Why, then, should we impose a restriction which in ten or twenty years may amount to the prohibition of all banking? Were all the public stocks in the world exhausted, the importance of collateral securities in banking would be no less apparent. And when the exigency arises, it will be for the wisdom of the Legislature to specify the description of securities to be used.

The stocks or collateral securities of whatever description, it will be understood, are not intended as a basis for bank issues, like specie in the vaults of the bank, but merely as a su-

peradded protection to the billholder, and as a means of regulating and restraining the business within proper limits.

The system which we propose is not an untried experiment. It has been tested in New York, and we are assured by official reports of the highest authority, that it works well. The free banking law of that State was not sufficiently guarded at first. It went into operation at an unfavorable time, and in connection with severe pecuniary revulsions, which affected the commerce and credit of the whole country, some of the banks failed and some losses were incurred by billholders. But for a series of years past, and under the system as matured by experience, a loss to the billholder seems to have become nearly impossible.

It would be a needless tax upon the patience of Convention to speak of the details of this system. They will of course be left to the wisdom of the Legislature. We establish the two principles of security and of free competition, and in doing that we discharge our whole duty.

I desire to see the plan of free banking exclusively adopted, and should fear that were the two systems combined a State Bank with the extraordinary privileges secured by the present charter, might prove a too formidable rival to the independent banks. But should free banking be authorized by the Legislature at its first session under the new Constitution, the system could be tested before the year fifty-seven, when the charter of the present bank will expire, and under such circumstances I should have little fear of the creation of another great monopoly.

But it may be asked if I am an enemy to the present State Bank. I answer, no. With my present views, I would not renew its charter. But I would do no injury to the stockholders, and should regret to see its capital withdrawn from its present channels. At an early day in this State, the necessary bank capital could not be supplied by individuals. There was then a reason for the State to engage in banking which no longer exists. A government should attempt nothing which can be accomplished with equal benefit to the public, by individuals. At this day, I can see no more necessity for the State to be engaged in banking than in purchasing produce, or in any other commercial or industrial pursuit. I should regard it as the true policy for the State to sell out her share of the bank stock and apply the proceeds towards the payment of her indebtedness. The amount would then be placed beyond contingencies. The stock of the various branches of the bank would then be owned by individuals. They would have their banking houses and other facilities for continuing the business, and could re-organize under the general law. Most of the branches would take that course, as the old banks of New York have done, on the expiration of their special charter. In this manner the

State would become separated from a business which is not necessarily connected with the purposes of government, and the one system of banking would blend imperceptibly into the other without loss to the stockholders or injury to the public interests.

FRIDAY, JAN. 17, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. LONG.

The journal of yesterday was read and approved.

There being no reports made by committees, The Convention proceeded to the consideration of the

#### ORDERS OF THE DAY.

The first thing in order being the section in relation to reprieves and pardons,

That section was taken up on its third reading.

Mr. PRATHER moved that the section be re-committed, with instructions to strike out the entire section, and insert a provision to the effect that the whole subject be left to the Legislature.

It seems to me, said Mr. Prather, that this is all that is necessary. I am willing to leave the matter to the Legislature.

Mr. READ of Monroe. I would like to be informed whether, under the proposition of the gentleman from Jennings, the Governor would not be permitted to pardon before conviction?

The Secretary read the instructions.

The question being taken on the motion of the gentleman from Jennings to re-commit with instructions, it was decided in the negative.

The question being, Shall the section pass?

On motion by Mr. Pepper of Crawford,

The rule which requires the yeas and nays on the final passage of a section, was dispensed with, and

The section was passed and referred to the committee on revision.

The PRESIDENT. The next thing in order is the twenty-sixth article, reported from the select committee on the subject of home-stead exemption, on its second reading. Shall the sections be considered separately or collectively?

The Convention determined that the vote be taken upon the sections collectively.

Mr. STEVENSON moved that the article be laid upon the table.

Mr. McCLELLAND demanded the yeas and nays, and they were ordered, and being taken, were—yeas 79, nays 38—as follows:

YEAS.—Messrs. Badger, Ballingall, Barbour, Berry, Blythe, Bowers, Bracken, Brookbank, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Crawford, Davis

of Parke, Davis of Vermillion, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Harbolt, Helm, Helmer, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kent, Logan, March, Mathis, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Nave, Newman, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Taylor, Thornton, Todd, Trimble, Watts, Wolfe, Wunderlich, Youm, Zenor, and Mr. President—79.

NAYS.—Messrs. Anthony, Bascom, Beach, Beard, Beeson, Biddle, Borden, Bourne, Chapman, Colfax, Dick, Dunn of Perry, Duzan, Gregg, Hamilton, Hawkins, Hendricks, Hitt, Howe, Kelso, Kendall of White, Kinley, Maguire, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Niles, Pettit, Shoup, Smiley, Thomas, Wallace, Wheeler, and Wiley—38.

So the article was laid upon the table.

The PRESIDENT. The next thing in order is article 27, on its second reading.

The first section was read. It provides that all prosecutions shall be carried on in the name of the State, &c.

Mr. HAWKINS moved to amend by inserting the word "criminal," so that it would read, all criminal prosecutions shall be carried on in the name of the State.

The amendment was adopted.

The section was then ordered to be engrossed for a third reading.

The section which provides that no county shall subscribe for stock in any incorporated company, unless paid for at the time, nor shall any county loan her credit to, or borrow money for the purpose of taking stock in any incorporated company, was read a second time.

Mr. BASCOM moved to amend the same by adding, at the end of the section, the following: "Nor shall the General Assembly, on behalf of the State, assume the debts of any county, city, town, or township, within the State, or of any corporation whatever."

Mr. DAVIS of Parke moved to amend the amendment, by adding the words "without a vote of the people."

Mr. PEPPER of Crawford moved to lay the section and the pending amendments on the table.

A division of the question was asked for.

The question being first on laying on the table the amendment of the gentleman from Parke, it was decided in the affirmative.

The question then being on laying the amendment of the gentleman from Wells on the table,

Mr. PETTIT demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 25, nays 94—as follows:



**YEAS.**—Messrs. Badger, Ballingall, Beard, Blythe, Bowers, Clark of Hamilton, Crawford, Davis of Parke, Farrow, Frisbie, Garvin, Gibson, Harbolt, Helm, Kent, Kendall of White, Kilgore, Mooney, Niles, Pepper of Crawford, Prather, Read of Clark, Schoonover, Sherrod, and Wallace—25.

**NAYS.**—Messrs. Barbour, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bourne, Bracken, Butler, Chapman, Chenoweth, Clark of Tippecanoe, Clements, Coats, Colfax, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Fisher, Foley, Foster, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kinley, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Murray, Nave, Newman, Owen, Pettit, Read of Monroe, Ritchey, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tagne, Tannehill, Taylor, Thomas, Thornton, Todd, Trimby, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—94.

So the amendment was not laid on the table.

The question then being on laying the section on the table,

**MR. PEPPER** of Crawford. I withdraw the motion to lay on the table.

**THE PRESIDENT.** The gentleman cannot withdraw it.

The question being taken,

The section was not laid on the table.

The question then being on the adoption of the amendment of the gentleman from Wells,

**MR. PRATHER** moved to amend the amendment by adding the words "Nor the debts of individuals."

**MR. BORDEN.** I do not know what the object of the gentleman from Jennings is, but it appears to me the gentleman need not be apprehensive that the Legislature will assume the debts of individuals. I think there is no great danger of that. Sir, I do not want a useful and necessary proposition like this to be laughed out of the House. The consequence of the omission to pass such a provision, will be that every county will be in debt, and combinations will come up here and over-ride the Governor's veto, and although you have declared that the State shall not go into debt, your purpose will be defeated by the action of the counties. They will compete with each other in the race of indebtedness, or in running into debt, and in a few years there will be a debt of fifteen or twenty millions to be assumed by the State. There is no provision of more importance to the community than this. I hope it will be adopted.

**MR. PRATHER.** It is true that some counties are now indebted, and are likely to be more so, but there is no more probability that counties will ride the State down with debts, or that they will force the State to assume their debts than that individuals will do so. There is just as much probability that the State will assume the debts of individuals as that she will assume the debts of counties. We have already declared that the State shall not loan her credit, and we are now declaring that the State shall not assume the debts of counties. There is just as much propriety in the one proposition as there is in the other, and no propriety whatever in either.

**MR. PETTIT.** I ask the indulgence of the Convention for one moment on the subject of county indebtedness. I may commence by saying that I am opposed to all public indebtedness. Experience has shown us in this State that it has been a vast and ever-during curse to us. I am as much opposed to political bodies, less than States, getting into debt, as I am to States getting into debt. I am opposed to the indebtedness of States, towns, or counties. I will not delay the Convention by undertaking to show the vast injustice of counties going in debt for public purposes. I have only risen to state what I regard as the law in relation to this matter—and what I warn the Convention, when the question shall be tested, will be found to be adjudicated as law—and it is, sir, that where a county, a corporation less than a State, a political corporation less than the sovereignty of a State, shall get into debt, the individual property of every citizen of the corporation, or of the county, is liable for the debt, and may be sold on execution for such debt. Let me repeat, that there may be no misunderstanding of what I now declare to be the law, and it will be found to be so, that if a county by a vote of its people, or by the action of a board of Commissioners of the county, shall become involved in debt, whether it be a thousand, or an hundred thousand dollars, a suit at law lies against the county for that indebtedness, and when judgment shall be obtained, and execution issued, it may be levied by the sheriff upon the individual farm of A., B., or C., upon any one of the citizens composing the body politic of the county. It does not require that it should be levied on the public property—the county property as such—the court house, or the alms house, but the property of every individual member of the county is liable to execution. I say, sir, that upon examination this will be found to be the law. And this being known, I doubt not the counties will hesitate about going in debt, and I trust they may.

But, sir, the great difficulty that arises in regard to this matter—the great desire I have for the passage of the section, is to avert the ultimate calamity of being burthened with these debts from the whole people. Various counties and

towns are running into debt largely, they will find themselves overborne, crushed to the earth, unable to pay the interest on their debts, and they will create such combinations and influence as to induce the Legislature to shift the whole burthens incurred by their imprudent acts upon the more prudent—they will shift the liability from the county, and compel the State to assume the debts of the improvident few. That is the great objection that I have to leaving this matter open; this is the reason for the desire that I feel that it shall be closed by the passage of such a section as this.

There is another then. It is but naked justice if counties, when warned and forewarned, shall continue to go into debt, it is but proper that we guard ourselves against having to shoulder the whole of the burthen—against casting upon the more prudent the burthens incurred by the improvident.

And, I ask members of this Convention who represent counties which have not gone into debt to stand by this proposition, and secure their people against being saddled with the debts of the more improvident counties, that are incurring debts for the making of railroads, plank roads, turnpike roads, and other works for the purpose of accumulating and concentrating within their borders all the wealth of the State.

I live in a county that is, perhaps, as much infected with this wild mania for expending money as any other, and I warn the people of the State, especially of the western counties, not to let such counties as Tippecanoe, and Marion, and Jefferson; and such towns as Indianapolis, and Madison, and Terre Haute, and Evansville, pursue the mad career of incurring debts beyond their ability to pay; for if they do not they may have to pay those debts; they may, and probably will, have to pay for the improvident acts of those ambitious points, one of which I represent myself. I will not detain the Convention any longer.

The question was taken on the amendment proposed by the gentleman from Jennings, and it was decided in the negative.

The question then being on the amendment of the gentleman from Wells,

Mr. KELSO. I will ask to have the article and the amendments now pending, re-committed with instructions so to amend the article as to include the pending amendment, and to allow counties to create debts by a vote of the county and not otherwise. [Cries of "no, no."] That part of the proposition may be unpopular with a majority of the Convention, but I, for my part, say I feel safe in the assertion that we have, from the time that we have commenced our labors here, taken more pains to tie the hands of the people, than they will thank us for when we go home. I say the people at home, are as intelligent as we are; they understand their business as well as we understand it; and the reason why I propose to send this section back

to the committee is, that they can arrange the matter for us as well as we can do it; and in a shorter time. Now I maintain that the people of a county, after they have a proposition submitted to them and have consulted upon it, and by a majority of the voters of the county determined upon it, should not be prevented by us from carrying out their wishes. They are the competent judges, and it is not for us to dictate to them what they shall do. We may prescribe to the Legislature their duties—we may declare what they shall do and what they shall not do in relation to creating debts, but when it comes to restricting the people themselves, we are going a little beyond our mark. We had better leave them to determine for themselves. For this reason, I have asked that the section be referred back to the committee.

Mr. SPANN. I wish to illustrate this matter by a single instance. The county of Jennings, by a vote of the county, or at least of so many as voted at the time, concluded to take stock to a considerable amount in a railroad. The county casts about two thousand votes, but the election took place at an unusual time, and there were but six or seven hundred votes cast. A majority of those, however, voted to take stock. The vote in favor of taking stock, was cast mainly by those living upon the line of the proposed railroad, and who expected to be directly benefited by it, while the voters of those parts of the county through which the road did not pass, were either quiescent or else voted against it. I was opposed to the proceeding at the time, and I still stand upon the same basis. I believe it is an unjust principle. I believe the practical working of it is bad. I shall go for the proposition of the gentleman from Wells, because I believe it to be a wholesome provision. I believe the people of the county never intended that the State should pay the debt—I have no doubt they intend to stand up to it—and as a representative of that county I for one, at least, will never ask the State to pay it, but I am altogether averse to any such course of proceeding.

Mr. SHOUP demanded the previous question.

The previous question was seconded and the main question ordered to be now put.

The question being on the re-commitment of the section with the instructions proposed by the gentleman from Switzerland, it was decided in the negative.

The question then being on the amendment of the gentleman from Wells,

The amendment was rejected.

The section was then ordered to be engrossed for a third reading.

The section which provides that the judicial power of this State shall be vested in one Supreme Court, in Circuit Courts, and in such other inferior courts as the General Assembly may establish, was taken up on its second reading.



The section was ordered to be engrossed for a third reading.

The section which provides that the Supreme Court shall consist of five judges, three of whom shall form a quorum, who shall hold their offices six years, if they shall so long behave well; that the State shall be divided into five Supreme Court Districts, of contiguous territory, as nearly equal in population as may be; but no county shall be divided in the formation of said district, and a judge shall reside in and be elected by the electors of each district, was taken up on its second reading.

Mr. PETTIT moved to amend, so that one judge shall reside in each district, but the whole five shall be elected by a joint vote of the people of the whole State—all the judges to be elected at the same time.

Mr. PETTIT. The amendment which I offer as a substitute, was reported by a minority of the committee, and the only difference between it and the section reported by the majority of the committee is this, and I beg the attention of the Convention to it for a moment: The section as reported by a majority of the committee, requires that there shall be five judges who shall hold their offices for six years, if they shall so long behave well; and, of course, you know, Supreme Judges will not fail to behave well for six years. The section reported by the majority also provides that the State shall be divided into five Supreme Court Districts, and that a judge shall be elected in each by the legal voters thereof, and shall be a resident of the district in which he is so elected. The substitute which I propose, has all these provisions, with the exception of having the vote for each judge extend all over the State. It provides that the State shall be divided into five Supreme Court Districts, and that a judge shall reside in each; but it allows him to be elected by the vote of the whole State. Now, one word in regard to this: If these Supreme judges had only jurisdiction within their respective Supreme Court Districts, then it would be proper, in my judgment, to confine their action to the district in which they reside; but inasmuch as their jurisdiction is as broad as the whole State, their constituency, I hold, should be as broad as the authority or jurisdiction over which they are to take cognizance. They should be elected by the whole people as they are answerable to and serve the whole people. Hence, I have moved this amendment requiring that they shall be elected by a vote of the whole State, although they shall live each in his own district. One word as to the propriety of the judges living in their respective districts. I have heard a few men, who have not reflected upon the subject, say you might as well have all the judges elected from one place. You might take them all from Madison, or Indianapolis, or from Laporte. I say not. The administration of the law is subject to modification and change, and it

is important that the different parts of the State should have each its representative on the supreme bench, so that the practice as well as the spirit of the law of the whole State shall be made up from the different portions of the State. For say what you will about the certainty of the law, the glorious certainty or uncertainty, there is a very considerable difference in its spirit and practice—in the civil and criminal jurisprudence of the State, as administered in the different portions of the State. And if you bring up judges from the south-east and south-west, and from the north and from the centre, they will mingle together the spirit and feelings of the bar all over the State. Hence, I think, they ought to live in different districts. Then as to their being elected by the whole people, I say that when we make their jurisdiction as broad as the whole State, there is the very best of reasons why they should be elected by the voice of the people of the whole State. No man ought to administer laws to a people to whom he is not responsible. A Supreme Judge or an inferior judge should be responsible to those over whom he holds authority. But, sir, there is another advantage, let me say to the Convention, in this course. If you say that five districts shall be formed and a judge elected in each district, you have this difficulty on your hands forever. You are constantly gerrymandering the State, or jerrymandering, as I maintain the word should be pronounced, the g being soft. Well, sir, I say this would be the difficulty. Unless you run the vote all over the State, the Legislature will be constantly endeavoring to make districts to suit political purposes, to divide up the district by crooked lines, in order to get a whig judge here or a democratic judge there. That would be the result. But, if you provide that they shall be elected by the whole people, this difficulty will be obviated, and they will be responsible to the whole people and administer the law accordingly. I am, therefore, in favor of inserting a provision such as I have moved, differing from the section reported by a majority of the committee only in one particular, that is, that the vote shall run throughout the whole State, though the judge shall live in a particular district.

Mr. TAYLOR moved to amend the amendment of the gentleman from Tippecanoe, by striking out "six" and inserting "four."

The PRESIDENT. There is no such word in the amendment of the gentleman from Tippecanoe.

Mr. TAYLOR. I move, then, to amend the original section. I believe the amendment of the gentleman from Tippecanoe is right. I believe it is wise and proper. I have no objection to his amendment, except as to the time for which the judges are to be elected.

The PRESIDENT. The Chair would remark that the only part of the section that is proposed to be changed by the amendment of

the gentleman from Tippecanoe, is the last line, so that, in place of the judges being elected by districts, they shall be elected by the votes of the whole State.

Mr. PETTIT. After my amendment is adopted, the gentleman can move his.

Mr. NAVE. Would it be in order to move to strike out!

The PRESIDENT. The gentleman can make such a motion, but the question must be put in the order in which the motions are made.

The question being on the amendment of the gentleman from Tippecanoe,

Mr. NEWMAN. Before the question is taken, I desire to say a word or two in relation to the views taken by a majority of the committee who reported the article as it now stands. The opinion of the majority of the committee was, that, inasmuch as there would probably be an increase in the number of judges—and that increase was provided for in the article as reported, it would afford an opportunity to the electors, in separate districts throughout the State, to have some knowledge of the qualifications of the candidate for judge, who might be selected for a particular district, and in that view it was supposed better that they should be elected in separate districts. It cannot be presumed but that the voters of a particular district will exercise as much discrimination in making a choice as the people of the whole State would do in the selection of a supreme judge. And their opportunities of knowing the qualifications of the candidate, would be greater, and the tone that would be given to the administration of the laws by this mode of election, would be more advantageous than if the judges were to be elected by the people of the whole State. The individual elected by the district, would be known by a considerable portion of the people within the district, and if not known personally to all the voters, his reputation would extend over the district, while it might not extend over the entire State. This would unquestionably be an advantage, and while he would thus be known to the electors, he would be as well qualified, certainly, to represent the practice and the local feelings of the district and of the people, in his particular district. If you take away this inducement, if you take away the powers of the electors in the district to select a judge to represent them in this manner, there can be but very little advantage from the fact of his mere acquaintance with the local practice of the district. If you expect five judges to be elected by the whole people of the State, as a matter of convenience, perhaps it might be just as well for them all to reside at one place; at the capital, if you please. If you have got abler men in the country, there is no very practical reason why they should be confined to the district. But the object should be to give the people who are to select their officers, an opportunity to have a knowledge of, and an acquaintance with the persons thus to be

selected by them. And it does seem to me that the report of the majority of the committee is preferable to the proposition of the gentleman from Tippecanoe. There seemed to be no disparity of views in this respect, on the part of a large portion of the committee. I do not recollect the number, but I have the impression, although it has been some time since the subject was considered, that there was a very considerable majority of the committee in favor of the article that was reported.

Mr. PETTIT. The committee was not full.

Mr. NEWMAN. Perhaps it was not; but no doubt it was a pretty decided expression of the opinion of the committee. If I am rightly informed, there were but three members of the committee who united in making the minority report, which is now proposed as an amendment. The majority of the committee, at all events, acquiesced in the majority report.

Mr. BASCOM moved to amend the amendment of the gentleman from Tippecanoe by striking out the words "all at the same time," so that the Judges should not all be elected at the same time.

Mr. KELSO. There is certainly no necessity for the amendment proposed by the gentleman from Wells (Mr. Bascom). If there be any propriety in it, it should be provided for in a future section. And I cannot concur with my friend from Tippecanoe (Mr. Pettit) in the amendment he has proposed. At the first election we should elect all five of the judges, and there should then be a classification by draft or otherwise, so that thereafter the term of office of all the judges should not be the same—so that the election of all should not take place at the same time.

Now, sir, I shall vote against the amendment of the gentleman from Tippecanoe, and in favor of electing the judges by districts. There is, to say the least, a very respectable portion of the people of Indiana, who are opposed to the election of the judges by the people at all; and that opposition proceeds from the fear that it may be made a matter of political consideration, and the candidates favorable to this branch of reform denied that anything of the sort was in contemplation.

If you make this election a political question the Supreme and Circuit Judges, those who are to decide upon questions of life and liberty, reputation and property, will be composed of better politicians than lawyers, your judicial benches will be filled with a set of babbling politicians who are not fit for judges, and never will be, yet I believe a majority of the people are in favor of the election of judges by the people. Now if we ourselves commence by throwing out the strongest possible hints that we want to put it in the power of any political party to fill the judicial bench, I ask if the people may not take their cue from that hint, and act upon it in the selection of judges. I ask



you also, is there any propriety in making the election of the judges of the State depend upon party politics? I say there is not. I say the judge who is competent to discharge the duties of his office will know enough not to meddle with the politics of the country at all. It is not the business of a judge. I am in favor of each district electing its Supreme Judge for several reasons; some of which have been sufficiently urged by the gentleman from Wayne (Mr. Newman.) But in case the judge of the district should die, resign, or remove from the State, I ask if it should become necessary that the whole people of the State of Indiana should be called on to fill the vacancy, when the people of a district can do it as well or better.

A VOICE. A good deal better.

Mr. KELSO. Now we want to take on ourselves the districting the State for political purposes.

A VOICE. Not at all.

Mr. KELSO. Well, I guess I shall vote for districting the State for judicial purposes. We are for striking out the existing judiciary, and forming a judiciary upon a different plan. Then we should take the responsibility, and not throw it on others. If anything is to be done in that line, let it fall upon our shoulders. Let us form the districts in such a way that even-handed justice shall be done to all parties. Let there be no division of counties—let there be no gerrymandering; nor do I think we shall ever be troubled in that way. I am myself fully satisfied with the section as reported by the committee; and I do not think the amendment would make it any better. I fear it would make it worse. It would certainly make it more unpopular. The people of this State if they elect their judges, choose to elect them by districts, and so you will find when you come to submit your new Constitution to the people for their confirmation.

Mr. WOLFE. I cannot support the amendment of the gentleman from Tippecanoe, nor am I in favor of the original section, because I do not wish to increase the number of judges. My constituents do not wish that the number shall be increased. I have conversed with the Judges of the Supreme Court here at Indianapolis, and they say that if we give them a Reporter, they do not wish that there shall be an additional number of judges. For this reason I shall go against both the original section and the amendment. I cannot vote for either.

Mr. BORDEN. I wish to say a single word in relation to this matter. I thought at first that I should go in favor of the amendment of the gentleman from Tippecanoe, but I think the judges should not all be elected at one time; not only at the first election, but at all future elections. I would prefer that they should come in alternately. If the amendment of the gentleman from Tippecanoe, how-

ever, be not adopted, I shall not insist upon the amendment that I have proposed. I think the judges should be elected alternately, so that the whole bench may not be renewed at the same time.

Mr. PETTIT. A few words in answer to the gentleman from Sullivan. I perceive that he is opposed to an increase in the number of the judges. Well, sir, if I did not deem that it was absolutely necessary, I should advocate the increase.

Perhaps the gentleman has not examined the report that came to us from the Supreme Court showing the amount of business that has accumulated in that Court since we commenced our session. The cases have increased in number from eighty-five to an hundred and twenty. Some of them have been lying over for four years, although in those cases, the Court has nothing more to do with parties or with counsel. The judges have only to go to their room and consult and decide upon the case, yet they have not time to do even this. Now what is our situation? Thirty-four years ago, when a convention for the organization of the State Government was held—when we had but about fifty thousand people in the State—that Convention provided for three Supreme Judges. These went upon the bench then, and they have been there ever since; and according to my judgment, the extension of the organization of the Supreme Court was a greater inducement for calling this Convention than any other thing. What is the fact? You have cases lying over from five to seven years before that Court for decision. A man in the meridian of life brings a case into Court and it lies there until he goes down hoary headed to the grave, leaving their children to inherit a lawsuit.

Mr. READ of Clark. Will the gentleman allow me to ask him—and it will perhaps save the making of a speech—whether if a reporter for the Supreme Court, be elected, it would not expedite the business?

Mr. PETTIT. I think it would. The committee directed me to report in favor of appointing a reporter to save the judges from the necessity of preparing reports of cases. The section which contains this provision we have not yet reached, and let me say to you that I am convinced that no three men in Indiana, of the most rugged, the most iron constitution men, who are able to work sixteen hours out of the twenty-four, and confine themselves to their room until labor and toil and weariness shall wear them out, in my judgment, would be able to decide all the cases that, under the present organization of the court, would be thrown upon them. I mean to decide them properly, after investigation, intelligently, and according to law, in any reasonable time. That it is utterly impossible, I am fully satisfied. What are you to do? While we have been in session, four or five

hundred new cases have been sent up from the various courts in all parts of the State. And if this be the condition of the Supreme Court at the present time, what will it be before another age rolls round? We do not expect, within our lives, again to re-model our Constitution. We leave that work to our sons, and before that time shall come, we shall have two millions and a half of people, perhaps, in Indiana. And will three judges be able to transact the business of the court, until that time? We should act like prudent men, and though we may place a little more force upon the Supreme Bench than may be necessary at present, yet it will be necessary before our era is out. I am satisfied that five judges are necessary. I say that any people do themselves a flagrant wrong who say they will not have officers enough to discharge the duties required by the public. Why, how much better is it that the State should pay five judges, in order to have a proper administration of the laws—that a sire may not bequeath a litigious case to his son. It is better that a man should pay a little more for judges' salaries than that such an inheritance should be bequeathed to his children. Sir, the people are egregiously mistaken when they say they will not have officers enough to transact their business, that they will submit to procrastination and delay rather than pay a sufficient sum to enable the public business to be properly transacted. I am clearly of opinion that the section ought to pass as I have proposed to amend it. I do not believe we can in justice to ourselves, or in justice to the trade and commerce of the country, constitute a Supreme Court with less than five judges.

Well, sir, in reference to electing the judges by the vote of the whole State. It is conceded that we are to elect all our judges. You say that the circuit judge shall be elected in his circuit by the electors of his circuit—and why? Because his jurisdiction is as broad as the circuit. By a parity of reasoning you might as well say that a circuit judge shall be elected by one county in his circuit, as to say that a Supreme Judge, whose authority extends all over the State, shall be elected by one portion of the State. He is a conservator of peace for the whole State. He is to administer laws for the whole State, therefore, he should be elected by the whole State. His jurisdiction is co-extensive with the State, and so, in my judgment, should be his accountability.

Mr. NILES. I suppose, sir, that the principal reason that will operate with the Convention, in favor of three judges of the Supreme Court, rather than five, will be the difference in expense. Now, there is such a thing as making a small saving at the cost of large sacrifices, and it would be well for us to inquire whether this would not be of that charter. It may be the misfortune of every man, at some time in his life, to be involved in a law suit. It

is an evil which no man can say that he will certainly be able always to avoid. Then all men are directly interested in having a judicial system under which justice can be speedily administered. And in nine cases out of ten, all parties are benefited by having law suits decided promptly, even if decided wrong. It is a maxim old as the Roman law, that it is important to the public that there be an end of litigation. One great cause of complaint against the court of chancery in England, has always been the interminable delay attending its decisions. The Chancellors have been always able men, but the tribunal of ultimate appeal has been composed of a single judge. Hence, the impossibility of dispatch and the accumulation of causes which have descended as legacies from father to son. Now, sir, if we weigh the expense of supporting a court against the accruing costs of protracted law suits, it is but a farthing in the scale, and we lose sight of it altogether. The only question should be, how can the business be done well and done most promptly? From official reports before this Convention, and from other reliable sources of information, we know that the Supreme Court is now, and has been for years past, largely in arrears in its decisions. A judgeship upon that bench, is probably the most laborious occupation in the State. My only inquiry in determining the number, would be, can five judges do more business and do it well, than three? There is no doubt that they can. It is true that cases must be determined by a majority of all the judges, but a large portion of their time, gentlemen are aware, must be occupied in examining cases, in the first instance—in weighing briefs and arguments, and collating authorities. This must always be done chiefly by one man, who will afterwards submit the case to his associates. After the case has been decided by all the judges, one man alone writes out the opinion. That is a work requiring great labor and care, as the opinions of the judges become in effect, a part of the law of the land. It is evident that this labor divided among five men, could be performed more promptly than it can be by three. And I have no hesitation in saying that I would rather err on the side of having too many judges, than too few.

One word as to the election of judges in single districts. It is argued that the State should be divided into judicial districts, and that a judge should be elected from and reside in each. It is argued very justly, that under such an arrangement, we will be more likely to avoid the influence of cliques and of local prejudices. The judges will come together from the bar of the different portions of the State, representing the different modes of practice upon the circuits and the legal opinions and talent of the whole State. Now, as one means of securing these very objects, I would have them elected by the voters of the several districts. If elected by the State at large, they will be nominated by party cau-



cusses convened at the capital. The caucus may be under the influence of some prevailing error, prejudice, or passion, and will select candidates who may be its tools. Let them be elected in the districts, and though a perverted sentiment may prevail in one portion of the State, which might exert a controlling influence in a party caucus, some of your judges may be free from its contamination.

Again, sir, if the judges are elected by the State at large, or rather by a party caucus sitting in conclave, in the city, they will always be entirely of one or the other political party. If elected by single districts, they will be divided between the parties, and who can say that that would not be better for the interests and safety of all? Such a court would better command the public confidence and more truly represent the local courts and the bar. I will not allow myself to believe that gentlemen wish to make the Supreme Judicial Tribunal of the State, a mere party machine. The election of the judges in single districts, would be the only means of avoiding such a calamity. The gentleman from Tippecanoe, (Mr. Pettit,) tells us that the districts will be arranged by the Legislature, with a view to party schemes. But what great harm, if a county should be added to or taken from a district for such a purpose? The effect would be little more than to expose the baseness of the men who would be guilty of it. But, this is a strange argument against single districts, to come from a gentleman who would turn the whole matter into the hands of a party caucus. I would rather risk the danger of a gerrymandering of the State, by the public and responsible representatives of the people, than to commit to irresponsible party leaders, the selection of judges to decide upon my rights.

I am in favor not in word only, but in sober earnest, of the election of judges by the people. Let the voters have an opportunity to know the candidates, and though they may sometimes err, they will generally select the men who are best entitled to their confidence, and best qualified for the office. Your calm, judicious, legal minds are not politicians. Their reputation is circumscribed to the region where they reside. It is your noisy politician whose name is familiar to every man in the State, and he is generally the last man who ought to fill a high judicial station. Put up in a single district, as opposing candidates, a noisy politician and a sound lawyer, and, under all ordinary circumstances, the lawyer will be elected. When voters are called upon to elect a man to decide questions affecting their own rights, if they have an opportunity to know the candidates, they will generally select the best man, without much reference to his party associations or services. The truth of this proposition has been illustrated in New York: Four of the judges of their court of appeals, are elected in districts. In one strong democratic district, a whig has been twice elec-

ted by large majorities. And in the strongest whig district of the State, a man of opposite politics was chosen. When a lawyer residing at the south-westerly extremity of the State is nominated as a candidate, what can the voters living in the north, know of his qualifications? In order that the doctrine of popular elections be carried out, they should be brought home to the people, that they may vote upon their own knowledge and judgment, otherwise the election is a farce. A Governor may be safely voted for on the recommendation of a caucus and from a knowledge of his political course and opinions, but it is far otherwise with a judge. There could be an argument of some force urged in favor of selecting the judges indiscriminately from the State at large, in order that the highest order of talent might be secured, but I can conceive of no argument unless it be of a party character against their election by the districts in which they are required to reside. I desire to see the judiciary raised above party, and as the only means of securing that object, I desire to see this Convention adopt the principle of election by single districts.

Mr. PRATHER moved that the amendment and the amendment to the amendment be laid upon the table.

Mr. RITCHEY asked for a division of the question.

The question being first on laying the amendment to the amendment on the table, it was decided in the affirmative.

The question then being on laying the amendment of the gentleman from Tippecanoe on the table,

Mr. PETTIT demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 75, noes 47—as follows:

YEAS.—Messrs. Allen, Anthony, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Blythe, Bourne, Bowers, Brookbank, Bryant, Butler, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Farrow, Fisher, Frisbie, Gootee, Gordon, Gregg, Hall, Hamilton, Hawkins, Helm, Hitt, Hugin, Hovey, Huff, Jones, Kelso, Kendall of White, Kilgore, Kinley, Logan, Maguire, Mather, Mathis, May, Mooney, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Sims, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Watts, Wheeler, Wolfe, Work, Wunderlich, Yocum, Zenor and Mr. President—75.

NAYS.—Messrs. Berry, Borden, Carter, Chapman, Coats, Duzan, Edmonston, Foley, Foster, Garvin, Gibson, Graham of Miami, Graham of Warrick, Haddon, Helmer, Hendricks, Holman, Howe, Johnson, Kent, March, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Marion, Owen, Pettit,

Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Tannehill, Taylor, Trimble, Wallace, and Wiley—47.

Mr. NAVE moved to amend the section so that the number of judges shall not be less than three nor more than five, a majority of whom shall be a quorum, to be elected by districts, and to hold their offices six years, &c.

I offer this proposition, said Mr. N., to supercede several objections that have been urged against the section. It is said that we need five judges on the Supreme bench. This may be true. It is a matter which I will not at present controvert. It is certain that five judges will do more than three in the manner in which they transact business. I will not occupy the time of the Convention by explaining the manner in which the business of the court is transacted. I propose to leave it to the Legislature to determine the number of judges.

It is a matter which should be left to the people's representative, whether they will increase the number of Supreme Judges to five, or whether they will continue the present number.

Mr. PETTIT. My own judgment is, that the whole desirable object of the judicial system that is proposed for the State has been lost. I do not think that there is anything in either section that is worth retaining, when you deny the power or the right to elect the judges by the people all over the State, to make their constituency as broad as their authority. I look upon it as utterly worthless. I say it would disgrace the head of a mouse to establish such a proposition; to talk about people electing their officers, and then to say that the people shall have no power in the matter at all. I look upon the whole symmetry of the system as being lost; and I move to lay the whole article upon the table.

The motion was not agreed to.

Mr. KELSO. I shall certainly be compelled to vote against the amendment of the gentleman from Hendricks. The gentleman from Tippecanoe, who, he believed, is as well informed on this subject as any member of the Convention, has stated very correctly that there is a large accumulation of business before the Supreme Court in an unfinished condition. This being the case, it does appear to me that the number of judges should be increased. There is no necessity for leaving two distinct points to be settled hereafter, when we ought ourselves to take the responsibility of deciding. The first is, how many judges there shall be; and the second is, how they shall be elected. If it be left for the Legislature to determine, it may remain unsettled for a long time.

Mr. NEWMAN said he was opposed to the proposition, not because he did not think there should be five judges. His impression was that

five was the proper number; and if he were a member of the Legislature, he would vote for five. But he thought it was a matter that should be left to the Legislature.

While upon this subject, he would admonish gentlemen that they should at least allow some legislative discretion in relation to matters of this kind. Whenever there is a question, continued Mr. N., which may be confided to legislative discretion, we ought not to consume the time of this Convention in debating it; but should refer it at once to the direct representatives of the people, who are elected for the purpose of looking to their general interests.

Mr. READ of Clark said he thought it was better that the Convention should endeavor to do what was right in regard to the matter, and not, for the sake of saving a few dollars, omit to make such constitutional provision in reference to all such subjects as this as would be most beneficial to the interests of the country. He had a great objection to its being referred to the Legislature to determine and provide for the election of the number of judges that would hereafter be requisite to transact the business of the State; but he was quite satisfied that, at present, three were sufficient. He had been informed by the Judges of the Supreme Court that, if provision were made for the appointment of a Reporter to the Court, three judges were all that would be necessary to transact the business. The time might come when three would not be sufficient. Indiana was growing rapidly; she was going to be a gigantic State, and he trusted there would be no necessity for making another Constitution for a hundred years to come. ["Consent!"] They ought not, therefore, to tie up the Legislature, but leave them to increase the number of judges when it should become requisite to do so.

Mr. FOSTER said he did not profess to know much about this business, but he could at least give an opinion in relation to it. The gentleman last up had declared his expectation that the Constitution they were forming would last an hundred years, and intimated that Indiana was destined to become a gigantic State. He agreed with him entirely in what he had said, and he thought it somewhat extraordinary, in view of this fact, that gentlemen should wish to curtail the powers of the Legislature in regard to matters of this kind. He thought it would be a very proper compromise to leave it to the Legislature to fix the number, with the limitation that the number should not exceed five or be less than three. He regretted very much that the amendment of the gentlemen from Tippecanoe had not been adopted. It was similar to the case of the election of county commissioners, who were to be elected by the whole county, and not by the particular district in which they resided. He thought there was very manifest propriety in having



the Judges of the Supreme Court elected by the people of the whole State. If they were to be elected by districts, it would be pursuing the same plan upon which the Circuit Judges are elected. His own opinion was, that the people of the whole State ought to elect the Supreme Judges, and the people of the districts the Circuit Judges. He hoped the Convention would at least make a compromise upon the subject, and leave it to the legislature to decide the number, the same to be not more than five nor less than three.

Mr. KELSO said he wanted to say a word in reply to his friend from Clark. He had had occasionally the honor of a seat in the Legislature, and there had always been some proposition before that body in regard to the Supreme Court. And the question was never started, but there were plenty of members who had been expressly informed by the Supreme Court, that nothing more was necessary than to make provision for a reporter. Now I do not know (continued Mr. Kelso) from what member of the Supreme Court this information comes, that if a reporter be provided for, everything will go on smoothly—everything will be done in proper time; but let me remark, that the Supreme Judges are not the only men who know something about the business of the Supreme Court. Now suppose it would take the entire labor of one man to do the reporting of the Supreme Court, would his labor facilitate the business of that Court so much as to enable them to bring up the business that is in arrear? I say it is out of the question. It cannot be done. I agree with the gentleman from Tippecanoe, that the people want a Court that can transact the business belonging to it, each year, without throwing it over from one year to another.

Mr. TAYLOR. If the Convention will indulge me, I will say a single word in regard to this matter. Practical experience is better than theory, and I have had some experience in regard to the business of the Supreme Court. I have a great regard for that Court. I have no doubt they have labored, in the discharge of their duties as assiduously as any body of men, not even excepting this Convention. But I have had a case before that Court, involving some ten thousand dollars, for two years or more. It is true, it covers a great deal of ground, and requires the consulting of a great many authorities, I have no doubt. I gained the case in the Court below, and it has been here for upwards of two years. I do not complain of the Court for this delay; but I say that the Court cannot perform the duties devolving upon it, within a reasonable time. It would be unfortunate for a man who had his whole fortune tied up in a law suit, to be so long delayed in obtaining a decision; and it is a poor government, in my opinion, that will not pay a sufficient number of officers to keep the wheels of the government in active operation. What is the

use of courts of justice, if parties are to be delayed for years, before justice can be obtained? I am satisfied that if this Convention desire to do justice to their constituents in this matter they will increase the number of Judges.

Mr. STEVENSON demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on the amendment of the gentleman from Hendricks,

Mr. RITCHEY remarked that it was too near the usual hour of adjournment to take the vote upon so important a question as this. He would therefore move that the Convention adjourn.

The motion was, on a division, yeas 51, noes 30, agreed to.

The Convention adjourned.

FRIDAY, JAN. 17, 1850

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

The PRESIDENT. The question pending when the Convention adjourned, was on the amendment proposed by the gentleman from Hendricks (Mr. Nave).

The yeas and nays were demanded and ordered on the amendment.

Mr. PETTIT. I hope the amendment will be adopted. It appears to me to be important.

The question being taken, there were for the amendment, yeas 67, against it, nays 40—as follows:

YEAS.—Messrs. Badger, Ballingall, Barbour, Bascom, Beach, Beeson, Bowers, Brookbank, Butler, Chenoweth, Clark of Hamilton, Colfax, Crawford, Davis of Parke, Dunn of Jefferson, Elliott, Farrow, Fisher, Foster, Frisbie, Gootee, Gordon, Gregg, Hall, Hamilton, Hardin, Hawkins, Hendricks, Hitt, Hogin, Huff, Jones, Kinley, Logan, March, Mather, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Pepper of Crawford, Pettit, Prather, Shannon, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Trimby, Watts, Wheeler, Wunderlich, Yocum, Zenor, and Mr. President—67.

NAYS.—Messrs. Biddle, Blythe, Borden, Bourne, Bracken, Bryant, Chapman, Clark of Tippecanoe, Clements, Coats, Dunn of Perry, Duzan, Foley, Garvin, Graham of Miami, Haddon, Harbolt, Helm, Helmer, Holman, Hovey, Johnson, Kent, Kendall of White, Maguire, May, Mathis, McClelland, McLean, Miller of Clinton, Miller of Fulton, Ritchey, Sherrod,

Smith of Scott, Taylor, Wallace, Wiley, Wolfe, and Work—40.

So the amendment was adopted.

The PRESIDENT. The question now is, Shall the section as amended be engrossed for a third reading?

Mr. McCLELLAND. I ask for the yeas and nays on the question of engrossment.

The yeas and nays were not ordered, and the question being taken, there were, ayes 67, noes not counted.

And the section was ordered to be engrossed for a third reading.

#### JURISDICTION OF THE SUPREME COURT.

The following section was then read and ordered to be engrossed for a third reading, by consent:

"The Supreme Court shall have jurisdiction in appeals from and writs of error to the Circuit and other courts, in such manner as shall be prescribed by law, and such original jurisdiction as the Legislature may confer upon it."

The PRESIDENT. The next business in the orders of the day, is the fourth section of the same article.

The section was read, as follows:

"The Supreme Court shall appoint its own clerk, who shall hold his office for six years, if he shall so long behave well; and whose duty shall be prescribed by law."

Mr. PETTIT. I move to strike out that section, and insert the following:

"There shall be a clerk of the Supreme Court elected by the electors of the whole State, who shall hold his office for six years, if he shall so long behave well; and whose duties shall be prescribed by law."

The only difference between the two sections is this—that the original section provides that the clerk shall be appointed by the Court, whereas I propose that such clerk shall be elected by the people of the whole State. Now, sir, we have taken a start in the right direction—and I hope we will carry it out as far as possible—that the people shall elect all officers. The office of clerk of the Supreme Court is a very important and lucrative one, and I hope that the clerk, like the judges, may be put before the people to be elected.

Mr. McCLELLAND. I move to amend the amendment of the gentleman from Tippecanoe, by striking out the word "six" and inserting the word "four." I think four years is a period long-enough for any man to fill an office.

[Cries of "no, no, no," and "consent, consent."

Mr. NILES. I desire simply to say, that as a member of the committee on the organization of the courts, I was in favor of the proposition that the clerk of the Supreme Court should be elected by the people. I can see no reason in the world against it.

Mr. DUNN of Jefferson said, that he supposed nothing he could say would prevent the adoption of the amendment. Nevertheless he desired to say that it appeared to him very unnecessary to trouble the people with the election of the Clerk of the Supreme Court. All the people desire is, that a competent man should be selected to fill that office. The Judges of the court know what qualifications are necessary to make a good Clerk, and they are personally interested in securing the services of such an officer. I can see no reason why we may not with as much propriety declare that the Speaker and Clerks of the House of Representatives, and the Secretaries of the Senate, shall be elected by the people, as that the Clerk of the Supreme Court shall be so elected. We are making so many officers elected by the voters of the whole State, that the ballots at some of our general elections will be near a yard long. If you require that the Clerk of the Supreme Court shall be elected by the people, the result will be that a party caucus in this city will select the officer. The people will take no interest in the matter, and will generally vote for the nominee of their respective parties.

Mr. KENT. That is the very reason why I would advocate the principle contended for by the gentleman from Tippecanoe. I say that the people are better qualified to elect all the officers for every purpose of government than any legislature, or any other select body which the people may send to Indianapolis,

Mr. BORDEN. Sir, there is another reason why I think this officer should be elected by the people. I think the judges should have no power of appointment whatever—nothing to do but to attend to their judicial duties.

Mr. LOCKHART. I wish to state, as a member of the committee from which this report emanated, that I was opposed to the report in favor of the proposition of the Chairman of that committee (Mr. Pettit).

Mr. BARBOUR. I was a member of that committee, and in favor of the report as it is. If this were an office in which the great mass of the people were interested, it might be well enough to vest the election in them. But the duty to be performed is simply a clerical duty, and I am satisfied that the people do not require that they should be called upon to make the election. This office is not one which requires any great amount of talent to perform the duties attached to it; and even if it did, I think the judges of the court are better qualified to determine who is adapted to perform those duties than the mass of the people can be. I hope, therefore, that the amendment will not be adopted.

Mr. BASCOM. I move the previous question.

The call for the previous question was sus-



tained, and the main question was ordered to be now put.

The PRESIDENT. The question will be first on the amendment of the gentleman from Randolph, to strike out "six" and insert "four."

Mr. BORDEN demanded the yeas and nays.

The yeas and nays were not ordered, and a division being called for on the question, there were yeas 53, nays 50.

So the amendment was adopted.

The question was then taken on the amendment as amended, and it was adopted.

The section, as amended, was then ordered to be engrossed for a third reading.

#### REPORTER OF DECISIONS.

The PRESIDENT. The next business in the orders of the day is the fifth section.

The Secretary read the section, as follows :

"There shall be a reporter of the decisions of the Supreme Court appointed by the same, and removable at its will; but no judge shall be allowed to report the decisions of the Supreme Court."

Mr. McCLELLAND. I move to amend the section by striking out the words "appointed by the same and removable at its will," and inserting the words "elected by the electors of this State."

Mr. KILGORE (in his seat). Oh no! That is a little too democratic. A little democracy is well enough, but that is going too far. It is buncombe up to the very hubs. [A laugh.]

Mr. McCLELLAND. Buncombe or no buncombe, all I have to say on that point is that, in all probability, the gentleman may have occasion, in the course of a week or ten days, to explain to his constituents the reason of his vote against, and he will then probably discover whether they entertain the same opinions that he does. If the amendment I have offered should be adopted, the section will then read—

"There shall be a reporter of the decisions of the Supreme Court elected by the electors of this State; but no judge shall be allowed to report the decisions of the Supreme Court."

It seems to me that the only question is, whether the people shall elect this officer, or whether the Supreme Court shall appoint him. Every individual in the State is interested in this matter, and I think that every voter in the State should have the right to vote upon the question. The question has been asked, what is the use of having officers of this kind elected by the people? That is a question which it is perhaps hard to answer in any other way than by the Yankee mode of answering a question, by asking another; and in reply to that inquiry, I might ask what is the use of electing any officer by the people at all? [Applause.]

Mr. COLFAX. The effect of this amendment, if adopted as now proposed, would be to elect the officer for life, there being no limit-

ation as to his term. I move to lay the amendment on the table.

Mr. McCLELLAND. I ask the yeas and nays on that motion.

Mr. PETTIT. I hope the gentleman from St. Joseph will withdraw the motion for a moment.

Mr. COLFAX. Certainly I will withdraw it, if the gentleman from Tippecanoe desires to speak.

Mr. PETTIT. Only a single word.

The motion to lay the amendment on the table was withdrawn.

Mr. PETTIT. I am in favor of electing all officers by the people, as far as practicable. But there are some offices to be filled, in which there would not only be no propriety in submitting the election to the people, but great impropriety in it. Let me say here, that as regards the reports of decisions, the judges of the Supreme Court are more interested than any body else. The reporter of these decisions may make the judges look supremely ridiculous by misreporting their decisions, or by leaving out their notes, and in many other ways; and I hold that that officer should be immediately responsible to the judges. It is certainly not an office in which the people take any kind of interest. The duties of it will be to collate and prepare, and draw off the decisions of the Supreme Court, as they are made, and in this the judges are undoubtedly more interested than all other people of the State besides. Let them, then, not only have the power to appoint the reporter, but also to remove him at their will, in case he should not truly and impartially report them, or take sides with this judge or with that, or make any one of them ridiculous.

Mr. SPANN. I do not rise for the purpose of making a speech upon this subject, for it is one the merits of which perhaps I do not much understand. The Convention is about to create an office which has to be filled. Now I am not sufficiently informed in regard to this matter to justify me in saying that this office is unnecessary, or at all events whether it is necessary that the Convention should create the office. I doubt much whether it is not a fit subject for legislation. I therefore move to lay the section on the table.

Mr. BORDEN. The difficulty of leaving the matter to the legislature is this—that it will detain the court itself, and prevent them from doing their business. That is the reason why we say that the reporter should not be a member of the court. It is to prevent delay in business by the court having to report its own decisions.

Mr. THORNTON. I seldom trouble the Convention with any remarks, but this is a subject to which I have paid a good deal of attention, and I must trespass for a short time upon the patience of the Convention while I say a word or two.

Mr. President, I am disposed to move to strike out this section altogether, for I do not think that there is any necessity for such an officer. If, however, I have to vote for creating such an office, I should most certainly be opposed to the Supreme Court having the power to appoint the incumbent. I believe that hitherto it has been a matter of complaint that the reports of the decisions of the Supreme Court have not been exactly what they should be, and, sir, although I do not mean to implicate the judges of that court in any way, but I undertake to say that opinions and decisions have been reported which have never been pronounced. I repeat it, that I say this without derogation to the character of the judges. If, then, Mr. President, we are to have an officer of this kind, I want to have one who is independent of the court, and who will report faithfully whatever the decision may be.

But, sir, I say again that I do not want such an officer at all. We contemplate, I believe, creating the office of Attorney General, and should we create such an office I must say that I think the man who may be elected to fill it is the fittest person to report the decisions of the Supreme Court, and I should most certainly vote for his filling such office. He of course may be presumed to be an intelligent officer, and I think that he ought to be the reporter. He will be elected by the people, and in that case, if he be required to perform the duty of reporting the decisions, the object of my friend from Randolph will be accomplished in desiring that his election should be by the people. This, I believe, is the course pursued in several of the States of the Union. In Missouri and other States the Attorney General is the reporting officer of the decisions of the Supreme Court.

Now I repeat again, that although I have great confidence in the worthy gentlemen who are the judges of the Supreme Court, yet I do say that the decisions exhibited on paper or in print are not always the decisions that have been pronounced, nor do I say whether they have been bettered or made worse. I cannot avoid referring here to one case in particular, which will be found in 3d Blackford—the case of *Parker versus Smith*—a very important case in relation to tax titles. Although that decision was given at great length, and the strongest reasons assigned in support of it, there is in the reports a mere legal note of it; and I have no doubt whatever that it was owing to the interest which some gentlemen felt in tax titles that that decision was cut down and reduced almost to a nullity.

If, then, we are to have a reporter at all, let us conter that office upon the Attorney General. There is no doubt in my mind that the office of Attorney General is necessary for the attainment of the ends of justice. We contemplate giving the Supreme Court original jurisdiction, and we may have occasion to find fault with of-

ficers, and perhaps to try them for offences before that court.

I will call attention for a moment to a section which will be found in report No. 30 from the same committee. It is as follows:

“There shall be elected by the qualified electors of the State an Attorney General, whose powers and duties shall be prescribed by law, and who shall hold his office for four years, and until his successor be elected and qualified.”

I believe that we are likewise about to make provision for suits to be brought against the State. Now if we do this, it will be indispensable to have some one to make defenses for the State. It will be less expense to have an officer at all times ready to perform this duty, than on each occasion to have to make a special appointment. I have seen cases in which the executive has appointed officers to perform this duty, for which the most extravagant fees have been charged and paid. In one case two gentlemen received each five hundred dollars for simply saying that the suit should be dismissed. Now it would be much better in my opinion always to have a respectable officer always ready to defend a suit, than to pay these extravagant fees and depend upon whoever can be obtained for the occasion.

We shall undoubtedly have criminal cases brought before the Supreme Court, and who is the proper person to defend the State but the Attorney General? Sir, much has been said on the floor of this Convention about economy. I will go as far as any gentleman can go in endeavoring to economize the people's money; but it appears to me that thus far we have been guilty of a great omission in not having an Attorney General.

Some years ago the office was created by the Legislature, and a gentleman was appointed who served out his term, and after that the law was repealed.

I am opposed, then, to the Supreme Court appointing their own reporter, and still more opposed to having a man directly elected by the people to fulfil the duties of such an office. If we are to have such an officer, I want to have a man who will stand aloof from the Supreme Court.

Now, while I have the ear of the Convention, I will state that I go against a Supreme Court altogether. I view it as a thing which is entirely useless. We are about to engage in an extensive system of law reform; we are about to repudiate legal technicalities, and to make a new order of things; and I hold that a Supreme Court under such a state of things would be wholly without use or benefit. I want to see a good circuit system adopted, or a good county system; and out of that system let us organize a Supreme Court to try questions as a dernier resort. That is the system adopted by the Constitution of the United States.



When a man has been on the bench of the Supreme Court for a number of years he becomes, as it were, dried up. He learns nothing but dry law technicalities, and superfine distinctions and splitting of hairs. I want that the man who is to try cases on their final issue to be one who mingles among the people, who becomes acquainted with their habits and their wishes and their judgment. I do not say that he should be so much under their influence as to be awed into decisions, but merely that he should understand their will. If you examine the decisions of Supreme Courts, you will find that four-fifths of them are made upon mere technicalities, and not upon their merits at all. Although I have the misfortune to belong to the profession of the law, I have no hesitation in expressing my earnest hope that we may have a thorough reformation in practice, so that men may not be deprived of their rights through mere informalities, or by the application of mere dry technicalities.

Mr. WATTS. I would ask the gentleman from Floyd whether he was one of the counsel who received a fee of \$500, for merely saying that a suit should be dismissed?

Mr. THORNTON. No, sir; I was not. I received a mere fifty dollar fee, and the record will show it. Sir, I want to see a man able to come into court and file his complaint without any guard that he shall do it according to a certain form. I am the last man in the world to play the demagogue; but I wish to see the principle adopted. I believe it to be a sound and correct one. A reform of this kind has been adopted in several of the States; and even in England itself, it is progressing. And if this reform be brought about, what use shall we then have for a Supreme Court? Sir, I hold that all cases should be decided simply upon their merits. I wish to see the time when a man shall not be thrown in his suit, because he has brought an action of assumpsit instead of an action of debt. Yes, sir, I hope to see the day when all these absurd and useless distinctions will be thrown to the winds. I say, then, let us have a good circuit system, and, when necessary, hold a court *in banc*, composed of judges of the circuits.

But, sir, I find I have wandered from the question immediately under consideration. I shall vote against the Supreme Court appointing their own reporter, and I shall do so for the reasons which I have already stated.

Mr. HOVEY. Will it be in order to move to strike out the seventeenth and part of the eighteenth line?

The PRESIDENT. Not while the present amendment is pending.

Mr. HOVEY. I suppose that all we desire is to prevent the Supreme Court from reporting its own decisions. That is the whole drift of the section; and, by striking out the 17th, and part of the 18th line, down to the word "no," the section will probably meet the wishes of the

people. That will leave the appointment of the reporter to the law-making power. I think it is an office of not sufficient importance to be embraced in the organic law of the State.

Mr. McCLELLAND. I do not believe in making speeches, if they can be avoided, but the ground has been assumed that the decisions of the Supreme Court need not be reported at all. I think that that is a great mistake. I believe it to be as necessary that the people should be informed of the decisions of the Supreme Court, as that they should know what statutes have been passed by the Legislature. You might just as well say that the statutes should not be published, as to say that the decisions of the Supreme Court should not be reported. I regard the one as equally important with the other, because the decisions of the Supreme Court are in one sense, the law of the land, and become obligatory upon inferior courts, where like cases are involved.

Now, I understand my friend from Floyd, on the right (Mr. Thornton)—and here let me say that there is no man I more highly respect, either as a man or a lawyer, than I respect him—I understood him to say that it was a supremely ridiculous idea, to think of the people electing a reporter, to report the decisions of the Supreme Court. Sir, with the same propriety might we not say that it was supremely ridiculous to propose that the people should elect a judge of the Supreme Court, or a justice of the peace, or a constable? He desires that the Attorney General, should we create such an office, should be the reporter of the decisions of the Supreme Court. Now, with all due deference to the experience of the gentleman, as a lawyer, I think that the office of Attorney General and that of reporter of the decisions of the Supreme Court, should be kept separate and distinct. If I am correctly informed, the reporting of these decisions is worth from \$1500 to \$2000 per annum. And is that such a trifling matter that the people shall not have anything to say about it? Sir, I think it is too important an office to be filled by any other mode than by a vote of the people. One gentleman argues that the reporter should not be under the control of the Court, and the gentleman from Tippecanoe (Mr. Pettit) takes the opposite ground, and insists that he should be so much under the control of that Court, and not only to receive his appointment from their hands, but to be subject to dismissal at their pleasure. Sir, I do not think that either the judges or the reporter of the Supreme Court, should have any person under their control; and very certainly the man who reports the decisions of the judges of the Supreme Court, ought not to be under the control of those who make those decisions.

In regard to the inquiry of what is the use of electing such an officer by the people, I have only to remark what I remarked before, and that is that on the same ground, we might ask

the question, "what is the use of electing any officer by the people?" Now, sir, I am through; for it appears that speeches do not go down very well.

Mr. PEPPER of Crawford moved the previous question.

The previous question was sustained—ayes 47, nays 33—and the main question was ordered to be now put.

The PRESIDENT. The question is first on the amendment of the gentleman from Randolph.

Mr. McCLELLAND demanded the yeas and nays.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Anthony, Ballingall, Barbour, Bascom, Berry, Bourne, Bowers, Bracken, Chapman, Clark of Hamilton, Davis of Vermillion, Dunn of Perry, Duzan, Foley, Garvin, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hugin, Holman, Johnson, Jones, Kent, Logan, Maguire, March, Mathis, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Murray, Prather, Read of Clark, Ristine, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Taylor, Thornton, Wheeler, Wiley, Work, Yocum, and Zenor—56.

NAYS.—Messrs. Badger, Beach, Beard, Beeson, Biddle, Blythe, Borden, Bright, Brookbank, Bryant, Butler, Chenowith, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Davis of Parke, Dick, Dunn of Jefferson, Elliott, Farrow, Fisher, Foster, Frisbie, Gootee, Gordon, Gregg, Harbolt, Hendricks, Hitt, Hovey, Howe, Huff, Kendall of White, Kilgore, Kinley, Lockhart, Mather, Miller of Gibson, Morgan, Morrison of Marion, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ritchey, Shannon, Sims, Snook, Spann, Steele, Stevenson, Tannehill, Thomas, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Wunderlich, and Mr. President—66.

So the amendment was not adopted.

The PRESIDENT. The question now is, Shall the section be engrossed for a third reading?

The question being taken, it was decided in the negative.

#### SHERIFF OF THE SUPREME COURT.

The PRESIDENT. The next business in the orders of the day, is section 6, on its second reading.

The Section was read by the Secretary, as follows:

"The Supreme Court shall appoint its own Sheriff, who shall perform such duties as may be required by law."

Mr. McCLELLAND. I move to amend the section in the following manner: Strike out the words, "the Supreme Court shall appoint," and

insert in lieu thereof, the words, "the electors of this State shall elect."

Mr. KENT. I move to lay the section and pending amendment on the table.

The question being taken, the motion was agreed to.

#### CIRCUITS.

The PRESIDENT. The next business in the order of the day, is section No. 7, on its second reading.

The section was read as follows:

"The State shall be divided into at least twenty circuits, and a circuit judge shall be elected by the electors in each circuit, and shall reside therein, and shall hold his office six years, if he shall so long behave well."

Mr. SMITH of Ripley. I move to strike out the section, and insert the following:

"The State shall be divided into a suitable number of judicial circuits, and one circuit judge shall be elected by the electors in each, and shall reside therein. He shall hold his office four years, if he shall so long behave well, but he shall not hold office more than eight years in any term of twelve years." ["Consent."]

Mr. HOLMAN. I move to amend the original section as follows: Strike out the words "at least twenty," and insert the words "twenty four." [Cries of "No, no, no. "]

I would be glad to obtain the attention of the Convention a few moments for the purpose of explaining the motive which induces me to offer this amendment. The committee on the organization of the Courts of Justice, in their report, propose that there shall be a Supreme Court with five judges, and also Circuit Courts, dividing the State into at least twenty circuits. The amendment offered by the gentleman from Ripley would leave the new Constitution in this respect the same as the old. I have moved to strike out twenty and insert twenty-four, and I wish to present a reason or two why I am in favor of this policy.

One great and perhaps the only radical defect in our system of Courts has not been remedied by the committee, of which the gentleman from Tippecanoe (Mr. PETTIT) is chairman.

Mr. PETTIT (in his seat). Well, I could not get them to agree with me.

Mr. HOLMAN. One great and radical defect, and which I believe as much as any other cause led to the calling of this Convention, has been entirely overlooked by that committee. It will be observed that the committee have provided only for a Supreme Court and for Circuit Courts, and then for the organization of such *Inferior Courts* as the Legislature may from time to time create. If it is understood that after a period of thirty-four years has elapsed under the supremely objectionable system, for the transaction of probate business, this Convention is to adjourn without furnishing any reme-



dy for this evil, then I believe, and that sincerely, that the Convention will have performed its labors in a great respect, in vain; for if there be one thing above all others that has been a crying evil in our judicial system, it is the defects in our modes of transacting probate business.

Mr. President, I wish to call attention for a moment to the system as it now exists, and to consider the number of Judges employed in the transaction of the business of the judiciary, and then to point out a simple plan for its improvement. When I mentioned the words "twenty-four," as indicating the number of circuits into which I would divide the State, I heard a whisper of objection all over the house. And why is it objected to? Sir, no man, I presume, will object to it except under the idea of its involving additional expense to the State by increasing the number of judges. Sir, I am as much opposed to increasing the number of judges as any man can be, and so far from seeking to increase that number, I am anxious to diminish it. By the plan which we are now living under, we have ninety probate judges. Besides these we have a hundred and eighty associate judges, thirteen circuit judges, and three judges of the Supreme Court, at an annual expense of about thirty-three thousand dollars. We have, in all, two hundred and eighty-six judges for the transaction of our business, many of whom are incapable of performing the duties required at their hands. And this is more especially the case so far as the probate judges are concerned.

So far as the Constitution of 1816 has defined the judicial system, it is unquestionably a good one. I believe that one appellate court, and a system of Circuit Courts is, of all systems, best calculated, not only to promote the ends of justice, but to secure uniformity of decisions throughout the State. Then, so far as the Circuit and Supreme Courts are concerned, there can be no material alteration of the old system. It is good enough. It has answered the purpose heretofore, and will answer in the future. But I now ask every member of this Convention what scheme they have in contemplation for remedying this other evil—the manner in which probate business is transacted!

Now, supposing the State is divided into twenty-four circuits, it will require about eight thousand voters to a circuit. Three such counties as Johnson, Shelby, and Marion, would be embraced in a circuit. Require, then, that the President Judge of the circuit shall hold two terms of circuit court in each county, and also that he should hold at least three terms of probate court in each county. What would be the effect of such an arrangement? In the first place, it would give character to the probate court. In the second place, it would avoid the expense of appeals to the Circuit Courts, from the decisions of the probate judge, which, in

many parts of the State, involves a very serious expense. In the third place it would secure uniformity of decisions, and in the fourth place, it would secure competent judges for the transaction of probate business. Will gentlemen, then, say "Leave this matter to the Legislature?" Can they say it? Let them look back upon the operation of the system for the last thirty-four years, and the ineffectual efforts that have been made to amend it, before they determine that it shall be left to legislation. Every successive winter during those thirty-four years, with only five or six exceptions, efforts have been made to change the probate system. The circuit system, and the county court system, and the surrogate system, have all been proposed, and have all utterly failed. And why have they failed? Simply because the Legislature was not willing to assume the responsibility of creating a probate court, possessed of a character commensurate with the jurisdiction imposed upon it, because the expense of the judiciary would thus be increased. Now, sir, the plan which I propose, instead of increasing the expense will diminish it. If we provide for even five Supreme Judges at a salary of \$1,200 each, making - - - \$6,000  
Twenty-four circuit judges at \$1,000 each - - - - - 24,000

We have an aggregate expense of - \$30,000

For the entire judiciary of the State; or at present salaries, and with the present number of Supreme Judges, it would stand thus:

|                                 |   |         |
|---------------------------------|---|---------|
| Three Supreme Judges at \$1,200 | - | \$3,600 |
| Twenty-four Circuit Judges 800  | - | 19,200  |

|                                            |   |   |   |          |
|--------------------------------------------|---|---|---|----------|
| Making the entire expense of the judiciary | - | - | - | \$22,800 |
|--------------------------------------------|---|---|---|----------|

Now, sir, compare that expense with the expense of the present system, including amounts paid out by the county treasurer for extra terms, &c., I think the following will be found very nearly correct:

|                                         |   |         |   |        |
|-----------------------------------------|---|---------|---|--------|
| Three Supreme Judges at \$1,200         | - | \$3,600 |   |        |
| Thirteen Circuit " " 800                | - | 10,400  |   |        |
| Ninety Probate " " -                    | - | 8,000   |   |        |
| One hundred and eighty associate Judges | - | -       | - | 11,000 |

|                                                      |   |   |          |
|------------------------------------------------------|---|---|----------|
| Making 286 Judges at the aggregate annual expense of | - | - | \$33,000 |
|------------------------------------------------------|---|---|----------|

So that even with the increase of eleven Circuit Judges, as I propose, and dispensing with Probate and Associate Judges, you will effect a saving of at least three thousand dollars a year, even if you increase the salaries to \$1000. But supposing that we fix the salaries of the twenty-four Judges at the amount now paid—namely, \$800 a year each—you will then have effected an annual saving of \$10,200, and you will have diminished the number of Judges two hundred and fifty-seven—a number which has

had a tendency rather to retard than to advance the ends of justice.

And here I would remark, Mr. President, that if we adopt the surrogate system—although I believe that there are few gentlemen in the Convention willing to adopt it—instead of diminishing the expense of the judiciary under such a system, we must necessarily increase it. Or, again, if we adopt a system of County Courts, instead of diminishing the expense, you will only increase it; and you cannot adopt either system without creating a court of inferior character—a mere pettifogging court, and that, too, for the transaction of the most important business. It will be nothing more, sir.

Sir, I know of no business connected with the administration of justice, which is of more importance to the people than the probate business; and many urgent reasons might be assigned, why we should have competent judges to preside over it. The fact that its proceedings are mainly *ex parte*—business in which the widow and the orphan are principally interested—is enough to satisfy any right thinking and right feeling man, that the judges before whom it is to be settled should be not only competent in all that appertains to the judicial character, but also that they should be men of such personal integrity and legal attainments as to give them the entire confidence of the people; for nothing is of more importance than confidence, in your courts of justice. Sir, I have had some experience in connection with the administration of business in Probate Courts, and am, to some extent, familiar with the manner in which that business is conducted; and I here venture the assertion, that the *widows and orphans* of the State of Indiana could better have afforded to pay out of the estates left them by deceased husbands and fathers, the pittance which would have paid the salary of a competent judge, than to have had the wretched substitute for judges which they have had to decide upon their rights. Mr. President, we are to secure to a man charged with crime a man of competent talents to preside when the question of guilt or innocence is pending. When man meets man in open court, you are willing to provide a competent judge, for the determination of their legal rights; but when the widow and the orphan appear, friendless and unprotected as they are, you do not hesitate to put them off with a man of such competency as can be obtained for some \$75 a year.

Some years since, Mr. President, an administrator of an estate, and a sleek, well-fed man, went into a Probate Court, with an attorney. The judge was undoubtedly a worthy, honest man, but certainly not too well qualified for his post. The attorney addressing him, said: "Here is a gentleman who has a claim against a certain estate, and the administrator is not willing to assume the responsibility of allowing it; but the court can hear the testimony, and

if satisfied the claim is right, can allow it." The witness was accordingly examined; and, sir, let me say, that I was informed that any lawyer, by a single question of cross-examination, would have said in a moment that the testimony was entirely fallacious, and did not begin to sustain the claim, which amounted to some four thousand dollars. It is a difficult and delicate thing to interfere in a matter of this kind, when you are not employed; but I am told that it was suggested to the judge, that the amount involved was a large one, and that it would be better in such a case to let a suit be regularly brought. To this suggestion the judge replied, that *this gentleman would certainly not present an unfair claim against the estate*—that it was undoubtedly a just one—that the estate should not be exhausted in costs, and that it was proper it should be allowed. Yes, sir; and that claim was allowed, in the absence of any person interested in the defense. And what was the consequence? Why, sir, within the last six months, the widow and her orphan child, whose rights were thus promptly disposed of, were begging bread in the streets of one of your towns. And, sir, this is not a solitary case. All over the State, acts of high-handed injustice have been done by these courts. The judges are men of honesty, undoubtedly; but they are not men of sufficient intelligence and discrimination. I will admit, that perhaps the most of these judges are honest; but, sir, honesty is not the only qualification that is required here. You want competency as well as honesty; and you cannot secure the services of judges of that kind, unless you give them a competent salary; for, in this State, most men are poor, and have to live by their labor. ["Consent, consent."]

Mr. President, I wish to present two or three other sections, in connection with the amendment I have offered. The section which I propose to amend, if it be so amended, would read as follows:

"SECTION —. The State shall be divided into twenty-four Circuits, and a Circuit Judge shall be elected by the electors in each Circuit, and shall reside therein; and shall hold his office six years, if he shall so long behave well.

I propose, in the next place, the following sections:

"SEC. — The Judge of each Circuit shall hold in each year at least two terms of Circuit Court, and at least three terms of Probate Court, in each County of his Circuit.

"SEC. — The General Assembly may increase or diminish the number of Circuits, as the business of the State may require."

And then, in connection with the same plan, I propose as follows:

"SEC. — There shall be elected by the qualified voters of each County, a clerk of the Circuit Court and a clerk of the Probate Court,



who shall hold their respective offices for four years, and shall not be eligible more than eight years, in any term of twelve years.

"*Provided*, That in Counties containing less than two thousand voters, the same person may be eligible to both offices."

My idea on that subject is this: In large counties it may be necessary to confer limited surrogate powers upon the clerks of Probate Courts. There are a thousand things connected with probate business which might be transacted by the clerk, without the intervention of judicial power. In the early part of the session, I offered a series of resolutions embodying the surrogate system. On conversing, however, with the gentlemen of the committee, and with members of the Convention, I am not only satisfied that the surrogate system connected with judicial powers, is defective and ought not to be adopted, but that it would lead to almost necessary corruptions, and that few officers exercising surrogate powers could maintain that dignity and character requisite in a judicial officer.

I would further observe that in the State of New York, where this system prevailed for a long series of years, in the amended Constitution of the State it is expressly provided that no judicial officer shall receive fees for his judicial services, but that he shall be paid for these services by a fixed salary.

And let me say here that in looking over the debates of the Convention of New York, you will not find a single argument on the subject of the surrogate system, but would show the utter impracticability of that system working well, if you confer upon the Surrogate judicial powers. Every argument which you will there find shows that fact beyond question. If the Surrogate be honest, and at the same time competent, the system may do tolerably well; but if he be deficient in either of these qualifications, his court will necessarily become extremely odious and oppressive to the country.

Now I would like to call attention to the course of legislation on the subject of Probate Courts since the commencement of our administration as a Government. In the year 1817, the year after the adoption of the Constitution, by an act of the Legislature, the associate judges held Probate Courts at an expense of four dollars per day to the State; but in the year 1824 the probate business was transferred to the Circuit Court, and I would like to have it remarked as a remarkable instance of the anxiety of the Legislature to get rid of this important business without expense to the State, that although they threw the probate business into the Circuit Courts, they did not increase the salary of one of the judges, nor did they increase the terms of the courts in any one circuit. Every man must see that you cannot throw *ex parte* business into a Circuit Court under these circumstances without its being

neglected. Where men have litigated cases in courts, each having rights, they will force this business back. And, sir, it is not the executor, or the administrator, or the guardian, that usually wishes to press this business forward. They are too often anxious only for delay.

By the act of 1829 our present probate system was adopted, and for the last twenty-one years all the iniquities of that system have been borne by—not exactly the people of Indiana—but by the widows and orphans o those who have gone to their graves, and, sir, let me say that a more odious system never was so long fastened upon an intelligent and enterprising people. And why is this so? Because the Court has no character. Nobody has any confidence in its decisions. The ministerial officers of the Court are all connected with it by virtue of some higher office, and the whole Court itself, although its jurisdiction is so important, presents just such an appearance as this system of legislation is calculated to produce—a court without character and without standing; a court whose decisions are five times wrong where they are once right. And it is very important to be considered that some of the duties devolving upon a Probate Court are not only important as connected with those who cannot defend their own rights, but important as connected with questions of law. All the questions that are involved in Chancery cases are involved in the jurisdiction of these Probate Courts—the construction of wills, the enforcement of trusts and powers—and yet the people of the State of Indiana have said for thirty-four years that although they will furnish competent courts and judges to try men accused of crime, although they will give to men a competent tribunal for the settlement of all questions of law and of fact that may arise between them, yet when it comes to those who cannot protect themselves, the widow and the orphan, they must have assigned to them an inferior court, not only in point of character, but also in point of ability, to decide upon and protect their rights.

I hope that gentlemen will not object to the passing of the amendment I have proposed unless some better plan is presented. I trust that they will not pass over this business as *unimportant*, because the tears of the widow are not streaming in our sight, and the cries of the orphan are not ringing in our ears.

I will, then, explain again what I propose. I propose that the number of circuits shall be increased to twenty-four, that the judges shall hold two terms of Circuit Court and three terms of Probate Court every year in each county; thus placing the Probate Court upon the same footing, and giving to it the same character as you give to your Circuit Court. In the thirteenth judicial circuit, I have the number of days consumed by the Circuit Courts, and also

by the Probate Courts, during the year ending with the last fall terms, and I find that under the old system the judge was employed twenty-eight weeks, holding two terms of Circuit Court in each of the four counties. By the system which I propose he would be employed thirty weeks, giving him twenty-two weeks' time to examine cases which ought to be examined out of court, and also to attend to other necessary business connected with his jurisdiction. If a change is not demanded by the people in our Probate system, then let my proposition, and any other proposed reform, be defeated. If, however, experience has proved our present system to be unjust and defective, and the people ask for reform, then let no gentleman shrink from responsibility by leaving this matter where it has stood for thirty-four years, the sport of capricious legislation.

Mr. BORDEN next addressed the Convention, and gave his views on the proper organization of the judiciary system, in which he proposed, first, that the judges of the circuit court should hold the supreme court.

He alluded to the advantages of the English *Nisi Prius* system, and also to the same system which he said existed in New York.

He objected to the power being vested in the Legislature to create and abolish courts;

And announced his uncompromising opposition to the present probate system;

And that the same system of courts should prevail throughout the State.

His speech will appear hereafter.

Mr. LOCKHART. For the purpose of giving the gentleman from Dearborn an opportunity of offering his amendment in the right place, I move to lay the section and pending amendment now before the Convention on the table.

The motion was agreed to.

#### CONSTITUTION OF CIRCUIT COURTS.

The PRESIDENT. The next business in order is section 8, on its second reading.

The section was read as follows:

"The circuit court shall be composed of one judge only, who shall hold at least three terms every year in each county in his circuit, and shall have such civil and criminal jurisdiction as may be prescribed by law."

Mr. HOLMAN. I move to amend by striking out the section and inserting as follows:

"The circuit court shall be composed of one judge only, who shall hold every year at least two terms of circuit court, and at least three terms circuit court in each county of his circuit."

Mr. NAVE. If the Convention will give me their attention for a short time, I think they will learn that they will have to do one of two things, if they desire to have any improvement in the system of doing the probate business of the State. If I could have the attention of the

Convention for a very few moments, I wish to say a word in reply to the argument advanced by the gentleman from Dearborn (Mr. Holman).

From the manner in which he has discussed this question there can be no doubt that he has had as much experience as any gentleman on this floor, in relation to this kind of business, having himself been a probate judge in the county from which he hails; and his argument would doubtless, on that ground, have much weight with the Convention. But, sir, let us examine the argument. He passes through the county of Dearborn, and one or two other counties, and he there shows a system from which it is evident that it would be much better to adopt the plan which he proposes, than to continue the arrangement which now exists. But let us look at the State of Indiana as she is as a whole, and not merely as she is found in the county of Dearborn, and one or two other adjoining counties.

Now as to the plan which he proposes: no doubt in some counties it might answer well enough, where there are only two or three counties in a circuit; but when you require that one judge shall hold two terms of circuit and three of probate court in each county every year, I would like to know how it is to be done in those circuits which take seven or eight counties to form them? Sir, it is impossible. No matter how talented and experienced a judge may be, it would be impossible for him in these large circuits to attend so often.

The proposition, therefore, appears to me to be one that should not be adopted by this Convention. I admit frankly that the present system of doing probate business is in many instances absolutely ruinous to widows and orphans, and that it is a curse to the country rather than a blessing; but let us be careful that we do not entail a worse system upon the country; for we might occasionally have a circuit judge who knows but little of law; and in such case the people of his circuit would suffer equally as much in regard to their probate business as they suffer under the present system.

Sir, I have a proposition to offer, by which I design to create a system which, in my opinion, will work well. I will read it for the information of the Convention:

"There shall be elected in each of the organized counties of the State by the electors, at the time and place of holding their general elections, one county judge, who shall hold his office for 4 years, if he shall so long behave well, who shall perform the duties of surrogate and probate judge; and who, with the aid of two justices of the peace, shall hold courts of session with such civil and criminal jurisdiction as shall be given by law."

Now let us examine this proposition for a moment. If we organize an independent court in each county in the State, and elect a judge



who is to take cognizance of all matters of probate, it will be the duty of the Legislature to pay such compensation as will secure men of sufficient talent to discharge the duty; and by associating with him two justices of the peace, you can give him jurisdiction in all actions of debt or assumpsit under the sum of \$1,000; and in minor offenses such as misdemeanors, which detain the circuit courts so long. With such an arrangement you would not need more than eight or ten circuit judges, and you would thereby greatly reduce the expense which will be inevitably entailed upon the people if the system proposed by the gentleman from Dearborn should be adopted. I am, therefore, opposed to it, and in favor of a different system; and I will even go so far as to say that I would prefer the present system rather than resort to such an experiment as that proposed by the gentleman from Dearborn. I will offer my proposition at the proper time.

**Mr. BASCOM.** I offer the following amendment:

Strike out the word "one" in the twenty-fifth line, and insert the words, "circuit and two associate judges."

**The PRESIDENT.** The Chair would observe that the amendment of the gentleman from Wells does not apply to the gentleman's amendment. There are but four lines in it [a laugh].

**Mr. HOVEY.** I offer the following amendment to the amendment of the gentleman from Dearborn: add

"Provided that the circuit and probate courts shall be held at separate terms, and shall in no case be joined together."

**Mr. HOLMAN.** That I understand to be the language of my amendment. If the language is not sufficiently explicit, I will accept the amendment of the gentleman from Posey.

**Mr. HOVEY.** I wish to offer a few remarks in regard to these amendments. I must say that I am very favorably impressed with the system proposed by the gentleman from Dearborn. It is almost impossible to devise any plan that can be worse than the present probate system. The judicial history of the world cannot present a more imbecile judicature of that kind than has existed in this State since 1816. The men who preside in these courts are generally honest and upright, and are raised to the bench on that account, but there are but few of them who make any pretensions to legal acquirements, and yet the probate courts may be said to be the most important, in a practical point of view, of any courts within the State. These courts have the control and management of all the property that is left by decedents, and consequently the whole wealth of the country may be said to pass through them once in twenty-five years, or every generation. Their weakness does not arise from the want of natural capacity on the part of the judges. The State has refused to pay

them anything like a fair compensation for the labor necessary to prepare them for their duties, and the consequence has been what would be naturally expected, that they have, as a general rule, neglected to qualify themselves at all. I find no fault with the judges, as men—they, no doubt, do what they think is right. But every lawyer knows that there is more fraud and rascality, and more wrong done in these courts to the helpless, the widow, and the orphan, than has been perpetrated in all other courts put together. I would not be understood as saying that these wrongs originate from the corruption of the judges. There are no officers more pure in intention; but, sir, they are compelled to adjudicate the most intricate and lengthy cases that are presented to any court—they are compelled to construe new, fluctuating, and complicated laws, without guides, and when we remember that all these duties are generally performed on a hearing of but one side of the case, we should not be surprised at the results. I can point to the records of a probate court in this State, where, in one single account current, not less than FIFTY THOUSAND DOLLARS was unjustly allowed. Among the vouchers, strange as it may seem, will be found the *champaign and cigar bills of the executor, with his traveling expenses in different parts of the United States, and the cost of building himself a house.* Of course such an account current would not be sworn to even though the law were ten times more positive than it is. Even in this gross case, I have no idea that the judge acted from impure motives—it was his honesty, and his confidence in the honesty of others, that induced him to make the allowance without investigation. This is but a specimen of the workings of our probate courts, and I hope this Convention will have nerve enough to correct the evils which we have been subjected to for the last thirty-four years. Unless some better plan is offered, I shall vote for the system offered by the gentleman from Dearborn; and, as the labor of the judges will be much more arduous than at present, I think their salaries should be increased. The idea of getting judges who are capable of administering justice, to work for nothing, is a farce that I hope will not be again acted in this State. The judges of your circuit courts are, and the judges of the courts contemplated by the amendments, will be, placed in more trying situations than even the judges of the Supreme Court. The judges of these courts have points and cases presented to them, which they are compelled to determine without time for reflection, and without the means of references, while in the cases tried in the Supreme Court, the judges have written briefs, which they can examine by the day, or the week, or the month, or the year, if they choose; and with such facilities, any judge of that Court, who has a half a head upon his shoulders, will, in a very large majority of cases, come to correct conclusions.

**Mr. WOLFE.** In reflecting upon the proceedings of the Convention for the last few days, and with the anxiety which appears to prevail, to get through our business, I do not think that the Convention is prepared to go into a full change of system in reference to our courts. It will take at least two weeks to do anything like justice to the subject. My own opinion is, that we had better go on in the beaten track, and leave this matter open to the Legislature. I believe that we will hereafter have Legislatures embracing nearly as much intelligence and talent as there is in this body ["consent, consent"], and they will be in a better situation to deliberate upon these matters than we are. As we have taken away from them, or will take away from them, the power of passing special and local legislation, they will have comparatively but little business to do, and I therefore think we had better travel on to some other subject, and get along the best way we can.

**Mr. OWEN.** I do not propose to go into this discussion, but will only say here, in reply to the remarks of the gentleman from Sullivan, that, so far as my section of country is concerned, there was hardly a single subject which attracted more attention, or which was thought more worthy of our deliberate consideration here, than the question of re-organizing the probate system. I hope that gentlemen will not pass hastily over it, but that they will give it the consideration so important a subject deserves.

**Mr. BASCOM.** I am entirely opposed to the probate system going into the hands of the Circuit Courts. The gentleman from Posey says that, if this is done, one thing will be necessary, namely: that the judges should have large salaries.

**Mr. HOVEY** (interposing). The gentleman is entirely mistaken. He will not find such a remark in my speech.

**Mr. BASCOM.** That was what I thought I heard the gentleman say, and I am glad to learn that I am mistaken. I hope the Convention, if it adopt any system at all, will adopt a plain practical system. We do not want a system of probate business to be settled by the Circuit Court at all. Your Circuit system is a kind of high tribunal, and none but he who wears a fine coat and a new hat can appear before that tribunal. [Applause and cries of "No! no!"] It is so in your Circuit Courts; and not only that, but when you enter the Court, you will find a couple of men with long sticks to stir up the out-siders. [Laughter and applause.] I am aware that I shall excite the ire of the lawyers here; but when they get tired of knocking and thumping, I will begin speaking. I conceive that the people do not require this change at our hands, nor indeed any change in the probate system to the extent to which some gentlemen seem anxious to go here. I am willing

to admit that it needs reformation and simplifying, so as to afford a ready and speedy mode of settlement of decedents' estates; but by no means such a system as that proposed by the gentleman from Dearborn. I hope the section will not be adopted.

**Mr. KILGORE.** I think there has not been before this Convention since we have met a subject more important than that which is now under consideration. There is no gentleman of the legal profession whose experience has not taught him that there are many defects in our present probate system; and, as has been well remarked by one gentleman on this floor, it has been a source of legislation for the last thirty years; and notwithstanding this, we still have a system that is calculated not only to unsettle land titles, but to tolerate frauds of the most abominable character.

Sir, a Probate Court is one of the most important courts of the State. Every particle of property in the State, both real and personal, must pass through the adjudication of that court, either directly or indirectly, once in every twenty-five years. The loose and unguarded manner in which the business of the Probate Court has been transacted heretofore, will ultimately have a tendency to produce as much uncertainty with regard to our land titles, as ever existed in the State of Kentucky. Sir, if any member of the legal profession was disposed to bid farewell to his ordinary practice, and resolved to make money at the hazard of everything like character, he need not desire a better occupation to accomplish that object than to enter into an investigation of the titles of the country. Well pleased as gentlemen may be with the present system—and I know that there are many gentlemen, from different counties, who think that the system is just what it ought to be—yet I will go into the counties of these gentlemen, and I will venture to assert that there is not one out of ten of the titles settled by these Probate Courts but could be set aside at once. An individual, to discharge properly the duties which devolve upon a Probate Judge, should not only be a common law lawyer, but he should also be a good chancery lawyer. The most important chancery questions frequently present themselves for his decision and adjudication, and these, too, in which the rights of parties who are unable to defend themselves, or to guard their own interests, are deeply and seriously involved. The rights of the orphan and the widow, and not theirs only, but the rights of those who become purchasers of property, are affected. They become purchasers of the property of decedents, sold under order of these Probate Courts, and before they are aware of it, the title is swept from under them by the owners, who have investigated the proceedings and discovered the errors that have been committed.



Now, how are these Probate Courts organized? Why, sir, we take up a common justice of the peace of the county, and we make him a Probate Judge. We place him upon the bench, and he becomes general administrator of all the interests of the county. The people counsel with him who is thus regarded as the guardian of all interests of every kind, but who, in many instances, has never read a page of law in his life. They believe that he is competent to direct them in the discharge of these all important duties; and it just becomes the case of "the blind leading the blind," and "both fall into the ditch."

Now what system we should adopt I am not prepared to say. I have been revolving a system in my mind. The circuit system, as presented by the gentleman from Dearborn is perhaps one of the best. The chancery system has also been suggested, but I find that there is a disposition here to destroy all distinction between common law and chancery courts. If that is done, it at once supercedes chancery jurisdiction, and so far as that is concerned, does away with it. We must then inquire what is the next best system. We presume that the circuit judges will be competent men, and we rationally infer that they are more competent to discharge the duties of probate judges than country justices of the peace, however honest they may be. Objection has been made against blending the two courts together; that, however, may be easily obviated. If the number of circuits, as proposed by the gentleman from Dearborn, should be adopted, we may be enabled, or at least the Legislature may, to authorize the holding of four sessions every year. I would have no objection to setting two of these terms apart for issue business, and for attending to the probate business of the county. Let it be the duty of the judges to make up issues for trial in the common law business of the county, and attend to the settlement of decedents' estates during the residue of the term, when the mind of the judge can be directed to it; and that you pay him such a compensation as will warrant him in giving his whole attention to the discharge of these duties, and then you will undoubtedly get them discharged. But until you pay them sufficient, you will neither be able to secure the talent necessary for the discharge of these duties, nor to secure the attention and application of the individual who is called upon to discharge them. If you pay him such a compensation as is hardly sufficient to keep soul and body together, he will not give that attention which is necessary to the proper discharge of the duties of the bench. Sir, this is not a matter in which we should stop to count dollars and cents. It is of vastly more importance to the community that a good compensation should be paid to the judges of these courts than that millions of money should be wasted, through ignorance or design.

Sir, you will find that in a majority of cases where an estate has passed through the probate court, it is found to be insolvent. Everybody, perhaps, entertained the opinion that the deceased left sufficient property to pay all his debts and to leave something for his widow and children; but the estate has passed through the probate court, and by the time it has passed through that mill, it is consumed in officers' fees, lawyers' fees, and unjust claims made for the purpose of wronging those who are unable to defend their own rights. Then, sir, I repeat, that, let the expense be what it may, I want to do away with the present system, because it is an abomination and a curse to the country, and to all concerned in it.

I am not particular about the plan offered by the gentleman from Dearborn, or any other which is equally good. Any good system will receive my approbation. I want to do away with the present system, and to have this business supervised by a judge of sufficient talent.

I am well aware that the moment a lawyer rises in his place here, to advocate a measure, it is almost a fatal blow to it, and it is regarded with the strongest suspicion. This is unfortunate, but I suppose cannot be remedied. Were I, however, disposed to consider my own interest as a lawyer, I would say, "leave the system as it is;" and I would practice upon the titles as a means of making a fortune, or purchase the rights of heirs who supposed they had no title. I can assure gentlemen that more money might be made by an operation of that sort than by filling the office of judge either of a probate or a circuit court.

One advantage that will be gained by placing a competent man upon the bench will be that you at once dispense with the necessity of coming into court backed by a lawyer. If an administrator is disposed to do right and not willing to take his own judgment, he is bound to employ an attorney. But if you place a competent man upon the bench, he will require everything to be done in conformity with the law. It is his duty to do so, and he will see that it is done, and that justice is done, too. I have now done with the subject, and must apologize for having trespassed so long upon the attention of the Convention.

The PRESIDING OFFICER (Mr. HALL). The question is on the amendment proposed by the gentleman from Dearborn.

Mr. WALLACE. I am not in the habit of making motions, but I declare that the question which is before us is one of so much importance, and there are so many suggestions made, all requiring consideration, that we cannot, in this off-hand manner, and upon the spur of the moment, settle this question as it ought to be settled; and I therefore move to lay the section and the amendment on the table. [Cries of "no, no, no!"]

The question was then taken on the motion of Mr. Wallace, and it was decided in the affirmative.

#### CHANGE OF CIRCUITS.

The PRESIDENT. The next question is on section 9, on its second reading.

The section was read as follows:

"The Legislature may provide by law that the judge of one circuit may hold the courts of another circuit, in cases of necessity or convenience."

The question being on ordering the section to be engrossed for a third reading, it was decided in the affirmative.

#### DECISIONS OF THE SUPREME COURT.

Mr. HOVEY offered the following as an additional section:

"No judge shall be allowed to report the decision of the Supreme Court."

The section was adopted and ordered to be engrossed for a third reading.

#### COUNTY COURTS.

Mr. HOWE offered the following as an additional section:

"There shall be in each county a county court, to be composed of one judge, who shall have original jurisdiction in cases of probate, and such other jurisdiction as shall be conferred by law, and whose salary shall be five hundred dollars, to be paid out of the county treasury, and such fees as may be prescribed by law."

On motion, the section was laid upon the table.

#### CLERK OF THE CIRCUIT COURT.

The PRESIDENT. The next business in the orders of the day is section 10, on its second reading.

The section is as follows:

"There shall be a clerk of the Circuit Court elected by the electors in each county, who shall hold his office six years, if he shall so long behave well, and who shall perform such duties as may be prescribed by law."

Mr. HOLMAN. I move to amend by striking out the section and inserting the following:

"There shall be elected, in each county, by the electors thereof, a clerk of the circuit court, and a clerk of the probate court, who shall each continue in office four years, and until his successor is elected and qualified, each of whom shall perform such duties as may be prescribed by law; provided that in counties having less than two thousand voters, the same offices may be performed by one person."

I hope that gentlemen will not dispose of this section without reflection. It will be remembered that we have already adopted a section providing for the election of a clerk of the Supreme Court; and I think we ought to provide also for the circuit and probate courts.

Now, as the business of the counties increases, I think it would be desirable that it should separate the business of the two courts entirely; not only with reference to the judges and their terms, but also in reference to the clerks, for this reason: It will be necessary to confer upon the clerk of the circuit court some limited surrogate powers, as for instance that of making out an order or application in cases of insolvency, and other proceedings which are entirely *ex parte*. Now, I have no objection, if gentlemen think it necessary, to fix upon a higher number of voters than that proposed. But there certainly will be a time when it will be desirable to separate the two offices entirely. The business is entirely distinct. There is as much a line of demarcation between these two classes of business, as there is between that of auditors of counties, and that of clerks of circuit courts. I think it is highly desirable to separate the business, especially if it be found necessary to increase the power of clerks of the circuit courts. Every one knows that the clerks of circuit courts are *quasi surrogates* for certain purposes. And if the surrogate powers are increased, the clerk of the probate court should be a separate officer from the clerk of the circuit court.

Mr. WOLFE. The gentleman from Dearborn (Mr. Holman) should remember that he lives in a large county, while I live in a small one. Why not, then, have both these offices in one, for the present, because in the small counties it may be difficult to find competent men to discharge the duties of them, if they are separate. Besides, some ten or twenty years hence we may want to separate these offices, when our counties become more populous. And cannot the Legislature do this? ["Consent."] I should think so. I can see no necessity for creating new offices in the Constitution. We have already created a number of new offices, and I shall most seriously object to this additional one; and further, in order to test the sense of the Convention on the matter, I move to lay the amendment on the table.

Mr. PETTIT. I hope the gentleman from Sullivan will withdraw that motion for a moment.

Mr. WOLFE. Certainly, if the gentleman from Tippecanoe desires it.

The motion was withdrawn.

Mr. PETTIT. I am opposed to the amendment of the gentleman from Dearborn. We have adopted, or at least ordered to be engrossed, a section that reads as follows:

"The judicial power of this State shall be vested in one Supreme Court, in Circuit Courts, and in such other inferior Courts as the General Assembly may establish."

Now, if it should be found necessary to divide these Courts, and to make two or three in a county, the General Assembly will have the



power to appoint all the officers that may be necessary.

But, sir, I agree, for once, with my friend from Sullivan, and I am glad of it. ["Consent, consent."]

Mr. WOLFE. And I am glad of it, too.

Mr. PETTIT. I will not say but that I know something more about the organization of courts than that gentleman; but, sir, I contend that there is no propriety in dividing the clerkships, in regard to the judicial business of any county. If this is done, it will be necessary in the first place, to have two buildings. This will be inconvenient, especially to persons coming to your county seats from the country. If they want to see any particular record, they will not know to which office to go, if you have two offices; whereas if you have only one, they can go to it directly and find what they want. If these records are all kept by one man using the proper seal for each court, then each man, in the county will know to what building to go when he wants to examine a record, and considerable expense will thus be saved. I think it is unreasonable so seek to divide these offices.

Mr. HOVEY. I think the gentleman from Sullivan, is right. [Applause and thumping on the benches.] The section can be so amended as to answer both his purpose and that of the gentleman from Dearborn. With that view, I propose to amend the section so as to make it three thousand voters instead of two thousand—the number proposed by the gentleman from Dearborn.

Mr. KENT. I move to lay the section and pending amendments on the table.

Mr. PETTIT. I call for a division of the question.

The question was then taken, first on the motion to lay the amendment of Mr. Hovey on the table, and it was decided in the affirmative.

The question then recurred on the motion to lay the amendment of Mr. Holman on the table, which was agreed to.

The question was then taken on the motion to lay the section on the table, and it was decided in the affirmative.

Mr. HOLMAN. I offer the following as an additional section:

"The probate court shall have such civil jurisdiction, and the circuit court such civil and criminal jurisdiction as shall be prescribed by law."

Mr. BASCOM. I move to lay the section on the table.

The motion was agreed to.

#### JUSTICES OF THE PEACE.

The PRESIDING OFFICER. The next business is the following section, which will be read by the Secretary.

The Secretary read the section as follows:

"There shall be a competent number of Justices of the Peace elected by the electors in each

township in the several counties, and who shall continue in office five years if they shall so long behave well: whose powers and duties shall be regulated and defined by law."

Mr. THORNTON. I move to lay the section on the table.

The motion was agreed to.

#### CONSERVATORS OF THE PEACE.

The PRESIDING OFFICER. The next business is the twelfth section, which the Secretary will read.

The Secretary read the section as follows:

"All judicial officers of this State shall be conservators of the peace in their respective jurisdictions."

The section was adopted and ordered to be engrossed for a third reading, when,

On motion,

The Convention adjourned.

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SATURDAY, JAN. 18, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. NEW.

The journal of yesterday was read and approved.

Mr. HOVEY presented the petition of one hundred and thirty citizens of Posey county, remonstrating against several restrictions adopted by the Convention, and praying that some liberal provision be made in regard to banking.

Mr. H. said, I have recently been compelled, by sickness in my family, to visit that portion of the State from which the petition just read emanated, and I can bear testimony so far as I could learn, that the people there, without distinction of party, concur in the general, with the sentiments contained in that petition.

I can say that throughout that whole region of country, there is a decided feeling in favor of some banking system—one that may be safe, and at the same time offer more general accommodations than the present State Bank. Nor is that feeling confined to the county of the petitioners. For three hundred and fifty miles along the Ohio river, which I traveled in going to and returning from home, I heard the sentiments contained in that petition reiterated from every quarter. It would be wrong for me to conceal from the Convention, the fact that the people through the southern part of this State, think we are placing too many restrictions upon them.

Why, sir, with one hand we are giving them more than they want—we are casting upon them the power of electing persons to fill little pitiful offices, such as State Librarian, Clerk of the Supreme Court, Sheriff of the Supreme Court, &c.; officers in which the people at large have, and take but little interest; while, on the other hand, we are tying them down through

the Legislature, and embarking in experiments, unknown to the political world. Such a course, sir, looks to me like gorging the lion with meat, which his appetite does not crave, and chaining his limbs to destroy his action. I warn the Convention not to place too many restrictions upon the rights of the people, for there is a "voice behind the throne," which can and will be heard, that is more powerful than the throne itself, and unless we adopt a more liberal policy, it may be heard in opposition to the Constitution we are making. Some gentlemen talk about reforms that are in advance of the present age, and expect to reap many laurels for their great political discoveries. Let me say to such, that those who are up with the age, and understand the wants, feelings, and character of those for whom they legislate are generally wise enough for all practical purposes, and will demonstrate their wisdom by moulding their reforms to suit the people as they are, and not as they may be.

The causes which chiefly conduced to the calling of this Convention, were few. The election of the important State officers by the people—changing the sessions of the Legislature from annual to biennial sessions—a change of the seminary fund to the use of common schools—the prohibition of the immigration of negroes and mulattoes to the State—the prevention of local legislation, &c. These were nearly all the changes demanded, and might have been accomplished long, long before this. But what have we done? Why, sir, the few amendments the people demanded, will sink into insignificance when they come to examine the "revised code," which we will soon submit to them as a Constitution.

I have detained the Convention longer than I intended, and have only been induced to do so from the reflection that that petition is not the production of unreflecting and thoughtless men, but that it presents the embodied opinions of those fully capable of understanding the full meaning of their requests. As there is no committee to whom the petition, at this late day, can be properly referred, I move to lay it upon the table.

The petition was accordingly laid upon the table.

RESOLUTIONS.

Mr. RISTINE offered a resolution in relation to a sale of the stock in the State Bank of Indiana, and the application of the proceeds to the support of common schools.

The resolution lies over.

Mr. FRISBIE offered a resolution instructing the committee on law and law reform to report a section permitting every free white male citizen over the age of twenty-one years, of good moral character, to practice law in any and all of the courts of the State.

Mr. BORDEN suggested that the resolution should go to the committee on courts of justice. SEVERAL VOICES. "No, no." "The subject belongs to law reform."

The resolution was adopted.

ADJOURNMENT.

Mr. FOSTER. It will be recollected, sir, that some time since, a resolution was offered fixing a time for the final adjournment of the Convention. That resolution was indefinitely postponed. I now wish to inquire of the Chair whether it is necessary to re-consider that vote, in order to fix a day for adjournment, *sine die*?

The PRESIDENT. The Chair would remark that it is not in order to introduce a resolution on the subject. [Cries of "consent."]

Mr. FOSTER. Is it in order to move to re-consider! because, if so, I will make that motion.

The PRESIDENT. The Chair would inquire of the gentleman, if he voted with the majority?

Mr. FOSTER. I am under the impression that I did, sir.

Mr. KILGORE. I offer the following resolution:

Resolved, That this Convention will close its labors, and that the members thereof will return to their constituents on the tenth day of February next.

The PRESIDENT. The resolution is not in order.

Mr. MILROY offered a resolution as to the expediency of fixing a minimum of salaries.

The resolution was adopted.

Mr. SHERROD offered the following:

Resolved, That the Convention now take up the orders of the day.

The resolution was adopted by unanimous consent.

ORDERS OF THE DAY.

The first thing in order being the section which declares that all prosecutions shall be carried on in the name of the State,

It was read a third time and passed.

COUNTY DEBTS.

The section prohibiting county debts, and the assumption of such debts by the State, was read a third time.

Mr. HELM moved to re-commit the section with instructions to amend by declaring that further restrictions on the rights of the people are unnecessary.

I am opposed to the section now under consideration, and to the amendment that is pending to that section. I believe that we have already placed too many restrictions upon the rights of the people. I apprehend, sir, that if we go on in the way which we have been going, the Constitution which we are about making will fail to be approved by our constituents.

It would be better if we were to follow the example of those who framed the present Constitution, and exercise similar moderation. We have heretofore declared the power of the people for self government. And we have also adopted a provision prohibiting the credit of the State from being loaned for the purpose of carrying on works of internal improvement, and have directly said that we would not consult their will on that subject. If we continue to carry out restrictions of this kind, perhaps before we close our labors we may propose to restrict individuals in reference to credits. We, in the first place, commence by restricting the Legislature. Now we are restricting counties, and if we continue we shall end by placing restrictions upon the actions of individuals in regard to going into debt.

We might just as well pass a section declaring that men shall not contract debts; that we shall not be allowed to use the credit system in individual transactions, as to say that we shall not, in a corporate capacity, or that counties shall not. I am opposed, I say, to every restriction of this kind, and I am well assured that such is the case with the people of Indiana generally.

We have, on more than one occasion, taken it upon ourselves to act the part of guardians of the people of Indiana. This, I presume, is the effect of the internal improvement system of which so much has been said on a former occasion. It is a necessary consequence for people to run from one extreme to another; and I presume there are many in this Convention who participated in running the State into that extreme, and now they are willing to run into the other extreme. I say we should pause before we act in a matter of this kind any further than we have already acted. We have had a voice from the people, and that very recently, too, on this subject. They have spoken to us through the Legislature which is now in session, and that voice is directly from the people. They have shown us that there should not be so many restrictions imposed. A restriction of this kind has been attempted to be imposed upon the people by the interposition of the veto power, and they have declared that this was an usurpation of power, and we have had this morning the voice of the people speaking again through a memorial upon this subject, and that, too, from the old democratic county of Posey, and they speak like democrats and free men on the subject. They do not feel like having their hands tied.

I hope that this section and the amendment will be re-committed, and that we will have a report according to what the people have expressed through their representatives and memorials.

Mr. GORDON moved to amend the instructions so as to direct the committee to strike out

the first four lines of the section and add the following:

"No county shall subscribe to stock in any incorporated company without the consent of a majority of all the voters of said county being first obtained."

Mr. HELM accepted the amendment as a modification of the instructions he had moved.

Mr. MILLER of Gibson demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being on the re-commitment of the section with the instructions proposed by the gentleman from Rush,

Mr. PETTIT demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 47, nays 74—as follows:

YEAS.—Messrs. Ballingall, Beard, Blythe, Bourne, Bowers, Bryant, Butler, Clark of Hamilton, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Fisher, Frisbie, Garvin, Gootee, Gordon, Gregg, Hall, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Kelso, Kilgore, Lockhart, Maguire, March, Mather, Mooney, Morgan, Murray, Pepper of Crawford, Prather, Sims, Steele, Stevenson, Thomas, Todd, and Wolfe—47.

NAYS.—Messrs. Anthony, Bascom, Beach, Beeson, Bicknell, Borden, Bracken, Brookbank, Carter, Chapman, Chenowith, Clark of Tippecanoe, Clements, Coats, Cookerly, Davis of Vermillion, Dick, Dobson Dunn of P., Duzan, Edmonston, Elliott, Foley, Foster, Gibson, Graham of Miami, Hamilton, Hendricks, Huff, Johnson, Jones, Kent, Kendall of White, Kinley, Logan, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Washington, Nave, Newman, Niles, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tannehill, Taylor, Thornton, Trimble, Watts, Wheeler, Wiley, Wunderlich, Yocum, Zenor, and Mr. President—74.

So the section was not re-committed.

The question then being, Shall the section pass?

The yeas and nays were taken with the following result—yeas 93, nays 22—as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Borden, Bracken, Brookbank, Butler, Carter, Chapman, Chenowith, Clark of Tippecanoe, Clements, Coats, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Frisbie, Gibson, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hawkins, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kent, Kendall of White, Kinley,

Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Washington, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tannehill, Taylor, Thornton, Trimby, Watts, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—93.

NAYS.—Messrs. Ballingall, Blythe, Bourne, Bowers, Bryant, Davis of Madison, Farrow, Garvin, Gordon, Helm, Helmer, Hitt, Hogin, Howe, Kilgore, Mooney, Morgan, Murray, Sherrod, Steele, Thomas, and Todd—22.

So the section passed, and was referred to the committee on revision.

THE JUDICIARY.

The first section of the article reported from the committee on the organization of courts of justice was read a third time.

The section is as follows:

“The judicial power of this State shall be vested in one supreme court, in circuit courts, and in such other inferior courts as the General Assembly may establish.”

The question being, Shall the section pass?

Mr. THORNTON. I discover, on looking over the article reported from the committee on the organization of courts of justice, that we ordered, I believe, as many as five sections to a third reading yesterday, and passed over some sections, and some of the most important of the number. At the instance of some of the friends of a somewhat different judiciary system, I have drawn up an amendment, which I design to offer as a substitute for the article reported by the committee. With the indulgence of the Convention—though it is with great reluctance that I trouble them at this late period, when time is so precious—I will advert for a moment to the plan of the gentleman over the way, from Dearborn (Mr. Holman). I was, at the first blush, inclined to support the plan that he proposed; but after giving it some consideration, I have become so well satisfied that it will not meet the expectations of the people, that I should greatly prefer the adoption of the one which I propose to submit. I am satisfied that the people expect a tribunal to be provided for each county; and though the plan proposed by the gentleman from Dearborn may furnish a good Circuit Court system, and to some extent supply the place of a Court of Probate, and remedy, to some extent, the evils complained of; yet it will not meet the exigencies of the country, either at this time, or in the future. Now, if you create twenty-four circuits, there being ninety-one counties in the State, it will leave more than two-thirds of the counties without any county tribunal. I ask you if the people

are to depend for the transaction of their probate business upon a Circuit Judge perhaps fifty miles off? No, sir, it will not answer; and we shall be driven back to the old probate system that we have all agreed to dispense with. If we adopt the plan proposed by the gentleman, the people will be dissatisfied, and the Legislature will be compelled to make provision for each county. The people will not be satisfied without having a judge within the county, to grant letters of administration and letters testamentary, writs of habeas corpus, and attend to matters that will necessarily arise constantly in the several counties. Let me put the question: If this principle be adopted, it is probable that the counties of Floyd, Harrison, and Washington will form one judicial circuit, the residence of the judge to be at New Albany. Will the people of Washington and Harrison counties be satisfied to have their business transacted at so great a distance from them? No, sir. We *must* make provision for doing probate business, and business appertaining to criminal law—business which arises every day within the counties, and which demands a prompt and ready administration of the law through the medium of some domestic tribunal in each county.

I go with the friends of reform in respect to the Grand Jury, to a certain extent. I think the Grand Jury may be safely dispensed with, except in penitentiary offenses. Let all other business which has heretofore received the consideration of the Grand Jury be withdrawn, and jurisdiction over such be conferred on justices of the peace, and on a county tribunal, to be created and styled a County Court. This course has been adopted in several of the States recently, and it is one which has been found to work well, and one which I think it is very proper we should adopt. We must recollect that our population is rapidly increasing, numbering at this time about a million of inhabitants. We are about becoming a great commercial State, and it is indispensable that we should have a court at each county seat; and especially a court to do probate business. We must have a judicial officer there who will keep his office *always* open. If this is not done, I predict the people will express such dissatisfaction that we shall be driven back to the old system that we have, without scarcely a dissenting voice, agreed to dispense with hereafter. I heartily agree with the gentleman from Dearborn, that this system has done nothing but furnish facilities for robbing the widow and the orphan, as well as for doing injustice to the creditors of the estates of decedents—that the proceedings of those courts are such as to lay a foundation whereby all our land titles will be shaken and rendered doubtful.

It may be said that my proposition will not afford a sufficient remedy, by supplying a competent tribunal. But let me say to gentlemen,

that, if we establish a suitable court in each county, it will soon have sufficient business to make it an object, with gentlemen who are qualified for the transaction of such business, to accept the office of judge of said court.

I have no wish to occupy the attention of the Convention unnecessarily, or to consume time to no purpose; but I will read my proposition, and if it fail to meet the approbation of the Convention, and it should prefer the plan of the gentleman from Dearborn, I shall be satisfied to abandon mine; for, as I have said on a former occasion, I never make a proposition that I am so wedded to, that I have not some scruples that I may be wrong, when objections are seriously raised and pressed against its adoption.

I said yesterday that I was opposed to having a separate tribunal for the transaction of probate business alone. The plan of my friend from Dearborn must assume that character, and for that reason I object to it. It will be impossible to sustain such a system and carry it into successful operation. The proposition which I am about to submit will, I hope, obviate some of the objections to the gentleman's plan, and may meet the expectation of those who stand between the two parties.

While on this subject, if I meet with the indulgence of the Convention, I will add another remark. I am aware that all propositions for radical reforms meet with opposition from the fraternity to which I have—perhaps, I might say—the misfortune to belong. They are always conservative, and ever opposed to anything like innovation upon the old, long-settled land-marks of the law.

I do not wish to intimate anything that might be construed into an attempt to throw disparagement on the honorable profession of which I am an humble member. Nothing is more disreputable than this, and I shall not do so; but I must be permitted to do justice to truth so far as to say, that all efforts at reform in the practice of the law have ever met with the most decided opposition from the members of that profession generally, although it is equally true, that among those who have taken the lead in the great business of reform, we find the names of some of the most distinguished of the legal fraternity. In England, we find the names of Romilly, Brougham, and others; and in our own country, some of the most distinguished and experienced members of the bench and bar are at this moment using their most active efforts to carry out reforms of this character. Let me, among a host of others, point to Judge Lumpkin, of Georgia, Judge Wells, of Missouri, Judge Nicholas, of Kentucky, and especially, to the Hon. Timothy Walker, of Cincinnati, Ohio, late Judge of one of the Courts, and a distinguished Professor of Law in a law school of that city. This gentleman is the author of a work on American Law, one

of the best elementary treatises extant on that subject, and one which has received the approbation of the first and ablest jurists of the present age, as well on this as the other side of the Atlantic. He has also been the principal conductor of the Western Law Journal, a law periodical of established reputation, having reached a seventh volume. In his work on American Law, as well as in his Law Journal, he has most ably advocated and clearly demonstrated the indispensable necessity of a radical reform of our law, and especially of law procedure. The Hon. John C. Wright, the able and efficient editor and conductor of the Cincinnati Gazette, and formerly a distinguished member of the Supreme Bench of the great Buckeye State, is, and has for some time, thrown his weight into the scale in favor of law reform. Other distinguished names might be mentioned, but these are sufficient to show that a great revolution is in progress.

If gentlemen will look around, they will see that reform must take place. I am satisfied it must and will come, and we may as well meet it at once.

My proposition is as follows:

SECTION. 1. The judicial power of this State shall be vested in a Supreme Court, Circuit Courts, County Courts, Justices of the Peace, and such other inferior courts as the Legislature may enact and establish.

SEC. 2. The State shall be divided into not less than ten districts, which may be increased from time to time, as the exigencies of the State may require, to be composed of compact and contiguous territory, in each of which a Circuit Judge shall be elected by the qualified voters therein, at the time fixed for holding general elections for State officers, to serve for four years, and until their successors are elected and qualified.

SEC. 3. The said Circuit Courts shall have such jurisdiction within their circuits respectively, and sit at such times and places as may be prescribed by law.

SEC. 4. There shall be elected by the qualified voters of each Judicial Circuit a Prosecuting Attorney, who shall hold his office two years, and until his successor be elected and qualified: *Provided, however,* That in the event of the regular Prosecuting Attorney being unable or disqualified to act, or from other contingency, it should become necessary, the Circuit Court shall appoint a Prosecuting Attorney for the time being.

SEC. 5. There shall be enacted and established in each county within this State a court of record to be styled "The County Court," to be composed of a single judge, to be elected by the qualified voters of the counties respectively, to serve for four years, and until his successor be elected and qualified; who shall have jurisdiction of all probate matters, together with

such civil and criminal jurisdiction as may be prescribed by law.

SEC. 6. The said County Court shall be always open for the transaction of business, and may sit at such times as may be directed by law.

SEC. 7. The Judge of the County Court shall be his own clerk, but may be authorized at his own expense to employ a person to act as his clerk for the performance of clerical duties merely; said judge, except in such cases as may be specified by law, shall not receive fees for his services, by the way of compensation therefor, but the same shall be taxed by him and collected by the proper officer, and paid into the county treasury.

SEC. 8. The Judges of the County Court shall receive such compensation for their services as may be prescribed by law, to be paid out of the county treasury.

SEC. 9. There shall be elected by the qualified voters of the State a Chief Judge, who, with the several Judges of the Circuit Courts, shall constitute the Supreme Court, a majority of whom shall be a quorum, and shall have appellate jurisdiction and a supervisory control over all inferior judicial tribunals; and said Court collectively, and the Chief Judge alone, may be vested with such original jurisdiction as may be prescribed by law. The Chief Judge shall be the President of the Supreme Court, who, as well as the several Circuit Judges, shall receive an annual salary out of the State Treasury which shall not be diminished during the period for which they may have been elected.

SEC. 10. An Attorney General shall be elected by the qualified voters of the State, to serve two years and until his successor be elected and qualified. He shall by virtue of his office, be reporter of the decisions of the Supreme Court, which he shall cause to have published semi-annually, and shall moreover perform such other duties and receive such compensation as may be fixed by law.

SEC. 11. The General Assembly shall provide by law that the judge of one circuit may hold the court of another circuit, in cases of necessity or convenience; or may provide for the appointment of special judges for like purposes.

SEC. 12. Provision also may be made by law for the creation of Courts of Conciliation, for the adjustment of all matters of controversy, the course of proceeding of which shall be regulated by law.

SEC. 13. The exercise of jurisdiction by the several courts in this State in matters of a civil nature shall be without regard to any distinction between law and equity or the different kinds of actions at law, except so far as the same are distinguishable into cases founded on contract from those arising out of torts and all fictions of law, are hereby abolished.

SEC. 14. The General Assembly, if it should be found more expedient, in lieu of the Supreme Court herein provided for, may create a Supreme Court to be composed of the said Chief Judge, and not less than two, or more than four associates, which court shall be vested with such jurisdiction as may be defined by law.

I have had the misfortune, if I may be allowed the expression, to wear the ear marks of the whig party, but so far as my humble influence is concerned, I shall go as far as any democrat in making the terms of office short; and I say to my esteemed friend over the way from Ripley, that there are features in his proposition, that I cannot submit to. I not only want to make the tenure of office short, but I wish to let the people elect the same man to office as often as they please. I take the ground that the people always aim to do right. It was a favorite saying of the celebrated Charles Scott of Kentucky, who was distinguished for the point and roughness of his mode of expression, that the people always intended to do right, and, though sometimes they *might* go wrong, yet whenever they got wrong they were sure to get right again. Now I have made the tenure of office of these officers four years, and to be re-eligible without any restriction or disqualification, which I firmly believe to be the true democratic rule.

There is a feature of the proposition to which I ask the particular attention of the Convention.

[Here Mr. T. read, commented upon, and explained the sections numbered 5, 6, 7, and 8.]

Were I permitted to legislate for the country, I would give to this court jurisdiction over all criminal matters not cognizable before justices of the peace, and which would not subject the offender to confinement in the State Prison, and dispense with the Grand Jury in such cases. In this I would agree with my friend from Tippecanoe, so far, at least, who has eminently signalized himself for his efforts to abolish the use of a Grand Jury entirely. I would require this judge to keep his court always open. He should have jurisdiction to the extent of five hundred dollars in actions founded on contract, and those on tort to the extent of one hundred dollars, and down as low as twenty in either case. That would throw so much business into that court as to make it respectable, and I undertake to say that it would call upon the bench men of reputable legal qualifications as lawyers; because in the larger towns it would command business enough to warrant a salary of a thousand dollars per annum.

While upon this subject I would state that with a view to provide the means of paying the judge of the contemplated court, I would have what might be termed a docket fee taxed on each civil suit, to be paid by the unsuccessful party, because, in accordance with an old

hackneyed saying, I hold that the man who dances should pay the fiddler—in other words, persons who litigate should bear the burden of paying court costs—also let reasonable per centum be charged on the amount of estates settled in probate cases—and as to criminal matters, I undertake to say that if we limit the inquiry of the Grand Jury to cases wherein the punishment is imprisonment in the Penitentiary, and withdraw the cognizance of all lesser penal offenses from the Circuit Court, as heretofore suggested, I have no doubt but that three out of four of the cases under the present system of proceeding would be transferred to the court which is contemplated to be hereby created.

The PRESIDENT. The gentleman's fifteen minutes are out.

Mr. MILROY moved that the rule be suspended.

The motion was unanimously agreed to.

Mr. THORNTON. I thank the Convention for the indulgence they have extended to me.

These, as I have stated, are the sources to which I would resort to create a fund by which the salary of the judge which I propose to create should be paid, and if they will not produce enough, I have no hesitation in saying that the county will cheerfully pay the remainder, rather than not have his services.

Now, sir, I come to a provision that has some degree of novelty about it.

[Here Mr. T. read section 13 of his proposition.]

By this section is proposed to abolish all distinctions between equity and law, also all distinctions between common law actions and fictions of law, and in lieu of such unmeaning and senseless absurdities to substitute a plain, direct, rational, and common sense system of procedure. ["Consent."] I want to see something put into the Constitution that will enable Indiana to march in the line of progress which is indicated by several of our sister States. I am pained to see that she is now so much behind other States in this respect. The great Empire State of New York has set the example by abrogating the old technical system that has so long clogged and rendered the administration of justice odious in that State.

Even England, from whom we have derived the greater part of our technical forms in law proceedings, has determined to get ahead of us in the way of reform. This proposition will dispense with those distinctions between actions which have heretofore been so troublesome, as well as the distinction between the equity forum and the common law forum. If there be anything that has deservedly met with the decided disapprobation of the people of this country, it is that the Court shall not decide the equity as well as the law of the case.

I ask that the article be re-committed with instructions to substitute the proposition that I have read. Or if that form of proceeding could be dispensed with, I should much prefer that the matter should be discussed and determined now.

I repeat, I cannot vote for the plan proposed by my friend over the way, for the reason that I know the people will not be satisfied with it. I have no desire to be troublesome, or to press my opinions with unyielding tenacity—I am always willing to defer to the judgment of others; but in this case I claim to have enjoyed the opportunity of acquiring some experience. I have been upwards of thirty years at the bar, and a good part of that period actively engaged in the business of my profession. So far as the practice of law is concerned, I may say, as Enneas to Queen Dido, "All of which I saw, and part of which I was."

One word further. After we reform the Judiciary, as we propose, we shall not have so much necessity for revising the cases determined by the inferior courts.

I ask gentlemen to consider how many cases are brought up for revision, upon mere technicality. Such a system, I say, the people disapprove of, and will inevitably be wholly repudiated by them.

With the indulgence of the Convention I will relate an anecdote which occurs to my mind, in connection with this subject. A certain gentleman, who is now no more, and who, while he lived, was an ornament to the State and to the legal profession, of which he was a distinguished member, whilst practicing at the bar, brought an action upon a promissory note, in favor of a tight, hard-fisted old Gripus, and happened to bring a wrong action. A demur was interposed, and the case was lost. His client afterwards met him. "Why, Colonel," says he, "it appears that judgment has gone against us, and I have lost my debt and have the costs to pay. I thought we had a good case; it was a plain note of hand." "Why," says the Colonel, "the confounded note did not fit the declaration." Such cases often happen. I wish to see no more of them. I do most sincerely hope that we shall adopt such a system of reform that all the revising court will have to do then will be to decide the merits of the case, free from technicalities. If so, there will be very few cases sent up for revision.

It may be said that the judge who decides the case in the first instance, ought not to sit upon the Supreme Bench. Let the Legislature manage that. But it appears to me that there is an advantage in it, because when the case goes up for revision, the judge before whom the case was tried is acquainted with the facts of the case, with the parties, witnesses, and all the circumstances attending it.

I presume that no man will act corruptly; especially a judge, and a judge elected by the

people, too. My plan will give eleven judges, six of whom shall constitute a quorum. It will meet the objection that has been made here to the old Supreme Court, on account of there being too few judges. When the business is divided out, it can readily be performed.

If the Convention think that my proposition should not go to the committee, I am content; but I will remind the Convention—but will not undertake to say to it, like my young friend from Posey, over the way, that I *warn* them—I will not undertake to lecture the Convention, but I must remind them, that unless we adopt a proper system in reference to the Judiciary, the Constitution that we are making will either be rejected, or the Legislature will create a tribunal in order to meet the wants of the people, and we shall be compelled to go back to the same miserably defective old system with which the country has been cursed for years, against which such loud complaints have been uttered by everybody, and which we have so generally decided against, and unanimously agreed to discard in committee. I admit the subject is incumbered with difficulty. The only thing that seemed difficult to me, was to provide the means to pay the judges' salaries. But I think the matter that I have submitted will be sufficient to meet the object.

My desire is to promote economy, as well as to insure the establishment of good and competent tribunals to administer justice at the very doors of the people, as nearly as such a thing is practicable. I do not want to compel people to travel fifty or sixty miles to have their cases decided, which they must do, unless we adopt some such system as this. I thank the Convention for their indulgence.

The PRESIDENT. What is the gentleman's motion?

Mr. THORNTON. I move to re-commit the article, with instructions to substitute the proposition that I have read.

The PRESIDENT. The Convention has determined to consider the sections separately.

Mr. THORNTON. Then I will withdraw my proposition for the present.

Mr. McCLELLAND moved to re-commit the section with instructions to amend by adding that there shall be a register elected in each county, to hold his office for three years, who shall transact probate business, &c.

I conceive, sir, (said Mr. McCLELLAND,) that this proposition will obviate the objections that have been made to Probate Judges. The objection that at present exists is in regard to the incompetency of the officers; and the compensation which is paid will not justify competent men in accepting them. Now it is admitted that the business is principally arithmetical work. To be sure, there are other duties which devolve upon Probate Judges, but the greater portion of the present business is altogether arithmetical. Now by adopting such a section

as this, and electing a register to grant letters testamentary and of administration, and give him the fees that are now given to the clerk of the Probate Court, it will make a respectable office, so far as pay is concerned; so much so as to induce men who are qualified to discharge the duties thereof to accept of the appointment.

Let issues at law and chancery be tried by the Circuit Court. By this means we shall take the important cases from the jurisdiction of the Probate Courts, and bring them before competent tribunals, and at the same time it will be less expense to the suitors and a great saving to the estates, for these cases can be settled during vacation. I think this will obviate the objection that appears to be made against the existing system of Probate Courts.

Mr. KILGORE. As the amendment proposed by the gentleman from Randolph seems to be connected with probate business, I move to lay the instructions on the table.

A VOICE. "That will carry the section with it."

Mr. KILGORE. No matter; let it carry the section then.

The Convention refused to lay the instructions on the table.

The question was then taken on the motion of the gentleman from Randolph, to re-commit with instructions, and it was decided in the negative.

The question then being, Shall the section pass?

Mr. THORNTON. On reflection, if I suffer this matter to pass, I shall perhaps be precluded from proposing my substitute, unless upon a reconsideration, in order to get at the section. I now move that the section be re-committed, with instructions to substitute what I have proposed; and this will test the question. If the Convention are disposed to sustain the views which I have had the honor to submit, they will substitute my plan for the article proposed by the committee.

The question was taken on the motion of the gentleman from Floyd to re-commit with instructions; and it was, upon a division—ayes 46, noes 40—decided in the affirmative.

So the section was re-committed.

The section which provides that the Supreme Court shall consist of not less than three nor more than five judges, &c., was read a third time.

Mr. PETTIT moved to re-commit the section, with instructions to amend, so that the Supreme Judges shall be elected by the people of the whole State.

Mr. KELSO. Mr. President—

The PRESIDENT. The gentleman from Tippecanoe has the floor.

Mr. PETTIT. I have moved to re-commit this section to the committee from which it came, with instructions to amend it so that the judges shall be elected by the electors of the

whole State. I do not design to detain the Convention but a moment; I must, however, take leave to say, that the vote which was taken yesterday upon this section indicated a retrograde march of more than a hundred years. Sir, each judge of your Supreme Court represents the whole people of the State. Now they are appointed in this way under the old Constitution—the Governor, who is the direct representative of the whole people of the State, nominates a judge, and the Senate, which represents the whole people of the State, confirms the nomination. Hence the whole people of the State are the constituents of each judge. And yesterday, the Convention indicated that they were determined that a portion of the people of the State should elect a man to preside over the destinies of the whole people. Sir, it is a retrograde march. I am sorry to see any such measure adopted. A gentleman, the other day, told us that the judges should be elected in their own neighborhoods, where the people would best know them, where their abilities would be known to the electors. Sir, the same remark will apply to the election of Governor. You might as well make provision that he should be elected only by the voters of the neighborhood in which he lives, because the people in many other portions of the State may be ignorant of the fitness of the candidate for the office. Sir, the candidate for a judgeship should go before the people as other candidates do. Let him traverse the State; let him not declare on the stump how a judge should decide this case or that. But I earnestly desire to see the time when there shall be competing candidates all over the State. Nothing would tend more to elevate the moral sentiment of the whole people than such a course. Tell me it is degrading for a man who seeks office at the hands of the people to go out amongst the people, and canvass for that office! Sir, he should go and discuss before the people the general principles of jurisprudence, and he will impart more information to the community, as to their rights, their duties, and obligations, than could be imparted by any other means that can be adopted.

Sir, a man who may be very popular in one neighborhood, and who may be very desirous of getting on the supreme bench, may be very objectionable in other portions of the State; and as the judge is to rule over all, he should have the sanction and approbation of all.

If you adopt the provision contained in the section, you go back more than a hundred years. You make your Constitution more anti-republican and more objectionable than the principles that we have met to reform. It is a mockery to tell me that you will elect a man in one district who is to administer laws for the whole State. As well might you elect a Governor by the votes of one district. As well might you elect a Circuit Judge, not by the votes of

this circuit, but of the county in which he lives. Who would tolerate the idea? You do not elect a Judge of the Supreme Court for one district, but for the whole State; and he should be elected by the votes of the whole State.

Sir, the object is, and it is an insidious one, to give an opportunity to the Legislature to gerrymander the State, so as to put upon the supreme bench men of one particular class, to control the feelings of the whole State. Let the whole people of the State come up, *en masse*, and let them choose their judges, as they choose their Governor, by the votes of the whole people. I ask that the section be re-committed, with the instructions that I have offered.

Mr. KELSO. When I rose, at first, I did not know that the gentleman from Tippecanoe intended to make any remarks. It was my purpose to propose a slight amendment to his instructions, and then to vote with him. But his argument has convinced me that he is wrong. I shall therefore move my amendment separately, and shall be compelled to go against the gentleman's proposition. Now I undertake to say that if a judge of the Supreme Court is elected for the whole State, every representative in the General Assembly is just as much elected for the whole State. The judges of that court assemble and consult upon the cases submitted to them, from whatever part of the State those cases may come.

Mr. PETTIT. They will do precisely what the members of the Legislature do; but they will decide sectionally.

Mr. KELSO. Sir, there is no reason to suppose that, unless you pre-suppose them to be a pack of infernal scoundrels, which I am not prepared to do at present. I hope, sir, that the judges will be elected by districts, and I hope there will be five judges of the Supreme Court, although I do not know yet whether the Convention will decide upon that number. When the judges meet to interchange opinions in regard to decisions made in different portions of the State, I maintain that those who live out of the district where such case arose, and such decision was given, will be more disinterested, and consequently better qualified to decide upon the case, and to determine whether error has been committed in the decision or not. Now, members of the Legislature are elected in different counties, and no one votes at the election but those who reside within the limits of the county; but when they get here, the representative of Scott or Jackson county may cast a vote that will impose upon the people of Tippecanoe county a law that they abominate. His action applies to the interest of the whole State. Just so will it be with the judges of the Supreme Court. Their action will be for the whole State; but let each district elect a judge, and they will be elected by men who are better acquainted with the qualifications of the candidate than could be the case if he were

elected by the voters of the whole State; if we pursue this course, we shall be certain to have the Supreme Bench filled with politician, instead of sound lawyers.

Again, the gentleman says he hopes to see the time when candidates for the Supreme bench will go out before the people and discuss before them—what? He says, not how this case or that case shall be decided! What will they discuss?

Mr. PETTIT. The general principles of jurisprudence.

Mr. KELSO. Well, what in thunder do the people know about the principles of jurisprudence? What do they care about them? After he has preached about Coke on Lyttleton, and Blackstone, and Swift, and Story, and Kent, the people will go off grinning, and saying they did not know what the man meant—they could not understand one-half he said, and finally come to the conclusion that the man was a fool or crazy.

In all law suits you form an idea which is the right side, and when you have heard the evidence and arguments you are either convinced that you were right or find out that you are wrong. If you feel that you are right you appeal to the Supreme Court. Then you care nothing about the general principles of jurisprudence. You want to elect a man whose reputation stands high in the county or circuit where he lives, as a lawyer. You do not expect to elect either a doctor or a farmer. You do not expect the candidate to go out on the stump and deliver lectures on law. No good can grow out of such a practice. The people do not want to hear such lectures—they will not listen to them. Let the judges, then, be elected in their districts where their reputation and standing are known—where men can be elected in whom the people have confidence—men whom the people can trust. There is no reason that I have heard yet—though I admit the argument of the gentleman is an ingenious one for the wrong side of the question—there is no reason why the whole people of Indiana should be disturbed upon the occasion of filling a vacancy arising from the death or resignation of a member of the Supreme Court. Shall the whole State be convulsed with the election of a judge to serve out the balance of the term? Shall the candidate be compelled to traverse the State to make the people acquainted with him for the balance of a term, perhaps two years? There is no reason for it. The proposition that came from the committee is a correct one. It was destroyed yesterday by the gentleman from Hendricks. I hope it will be restored. We certainly should so arrange the matter that we may get lawyers for Supreme Judges instead of mere politicians.

Mr. NILES. I would not rise to make another remark upon this subject, but for the allusion of the gentleman from Tippecanoe, which was ev-

idently intended for me. It is true I did contend on yesterday, that the judges of the Supreme Court should be elected in the several judicial districts. My object was to remove the judiciary as far as possible, from the corrupting influence of party politics. I believed then, and still believe that that would be best done by giving the election of judges to the men who would know them. Why not permit the voters in the Pocket, to elect the judge who is required to reside there, and the people of the north to elect another instead of permitting men in the north, who know nothing of the candidate in the Pocket, and who must act blindly, under the influence of party leaders, to overrule the judgment of the men who know the candidate? The plan of election by single districts, will be better for all purposes except those of a mere political and partisan character. If you desire to make the Supreme Court a political machine, then the gentleman from Tippecanoe proposes the true plan, and he will accomplish his object. He says that the judges are officers of the whole State, and therefore, should be elected by the State at large. So the members of the Legislature are legislators for the whole State, but you elect them in the smallest practicable districts, and even in that case the single district plan is the true one. When the gentleman admitted that the judges should reside in the several districts, he yielded his whole ground.

But the gentlemen uttered one sentiment against which I enter my earnest protest—that we should have a stumping judiciary. It is an old fashioned idea that your judges should be calm, dispassionate, impartial men—that your judicial tribunals should be as passionless as the marble monument of justice itself, and hold the scales with even hand. Does he spurn these notions of our fathers as hostile to the spirit of the age? Would he have your judges to stump the State and mingle in the vile strife of party politics—to pledge their opinions in advance, on grave, judicial questions, in order to secure the votes of an excited popular assembly? Would he drag the judicial robes through dirty gutters, and defile the ermine with the slime and filth of party politics? God forbid that this Convention or the people should ever sanction such a sentiment. Let politicians stump it through the State, and secure votes by popular harangues, but let your judges be selected for their independence, their learning, and integrity. I trust this Convention will not descend so low as to sacrifice to party the independence of the judiciary and the highest interests of the people. Party feeling may always exist. I have no wish to compel the people to subside into cold indifference upon political questions. Of that there is no danger. But I do protest with all the earnestness of which I am capable, against the scheme of the gentleman, as tending towards the condition of things which he seems to desire.

Mr. BORDEN. I rise merely for the purpose of correcting the gentleman as to the mode of creating the Courts of Appeals in the State of New York. Four out of eight of the judges are elected by the State at large, and I believe that no one has ever considered that those who are elected by districts are, as a general thing, to be compared in point of ability and fitness for the station, with those who are elected by the people at large. Yesterday, I was about to suggest a plan by which we might elect our judges in a mode similar to that pursued in New York. But since the question has come up in regard to the election of the judges for the Supreme Bench, exclusively, it seems to me they should be elected by the people of the whole State. Is there not great danger, if they are elected by the districts, that they will degenerate into mere local offices? Should not a judge of the Supreme Court have a reputation as wide as the State itself. It is only by having them elected by the whole State, that you will have suitable men placed upon the bench of your Supreme Court. I had designed to make a few remarks in reference to this question; but I have taken a severe cold, and it is with difficulty that I can articulate; but it is an important matter, and I shall take an early occasion to express my views in regard to it. I trust, in the mean time, that we shall hear the opinions of gentlemen fully expressed.

Mr. DOBSON. Understanding that this vote was to be taken, I came here, although scarcely able in consequence of the state of my health, to do so. I was astonished when I heard of the vote that was given yesterday. It is, as I consider, a departure from those principles which should govern us, and I am satisfied that the decision of the Convention, in regard to this matter, will be changed when gentlemen take time to reflect upon it.

The gentleman from Switzerland is frequently correct, though sometimes wrong. He seems to be wrong on this occasion. Now, in regard to the election of representatives, the example that he puts is not fair. I ask the gentlemen if one county sends two or three representatives, whether they are not elected by the whole county? Although commissioners are elected in different districts of the county, the whole county votes for them. Mr. President, I hold that no man shall exercise powers for me, without my having an opportunity to vote for conferring those powers upon him. When a man wants power, he shall take off his hat and ask for it. I am satisfied the Convention, when it comes to the final vote, will rectify the mistake they have made.

Again, the gentleman denounces the idea of making pledges all over the State. I ask how many people there will be in favor of the retail system. They will be just as likely to make pledges upon one plan as the other, in one only to a district, in the other to the people of

the whole State. They wish to have it on the quarter horse principle. I want a four-mile heat. The man who is not able to come it all over the State, should not decide cases all over the State.

The gentleman from Allen says, that the candidate should have a reputation as broad as the State, and that he who has not, should not have a seat on the Supreme Bench. I agree with him, and it was expressly for the purpose of giving a vote upon this question that I come here to-day. I hope the vote of yesterday will be reversed. Where county commissioners are elected, they are elected by the whole county, and I hope we shall not make an exception with regard to Supreme Judges.

Mr. WOLFE. I desire merely to give a reason for the vote I gave yesterday. Gentlemen seem to suppose that we are going to do a great deal of harm. I can see no difficulty that can possibly arise. But I voted against the proposition of the gentleman from Tippecanoe yesterday because it fixed the number of judges at five. The number is now left an open question, as I desire it should be. And I know that my friends around me were actuated by the same motive in the vote they gave yesterday.

Mr. MOORE demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being on the motion of the gentleman from Tippecanoe to re-commit the section with instructions,

The yeas and nays were demanded and they were ordered, and being taken they were—yeas 66, nays 57:

YEAS.—Messrs. Baseom, Borden, Bracken, Butler, Carter, Chapman, Coats, Cookerly, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliot, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Harbelt, Helm, Hendricks, Hovey, Johnson, Kent, Lockhart, Logan, March Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Tannehill, Trimby, Wallace, Walpole, Wheeler, Wiley, Wolfe, Wunderlich, and Mr. President—66.

NAYS.—Messrs. Allen, Anthony, Ballingall, Barbour, Beach Beard, Beeson, Bicknell, Biddle, Blythe, Bourne, Bowers, Brookbank, Bryant, Chenowith, Clark of Tippecanoe, Clements, Colfax, Davis of Madison, Dunn of Jefferson, Farrow, Frisbie, Gregg, Hall, Hamilton, Hawkins, Helmer, Hitt, Hogin, Holman, Huff, Jones, Kelso, Kendall of White, Kilgore, Kinley, Maguire, Mather,

May, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Sims, Steele, Spann, Stevenson, Thomas, Thornton, Todd, Watts, and Yocum—57.

So the section was re-committed.

Mr. NAVE moved to re-commit the section with instructions to amend by striking out so much as gives the Legislature power to confer on the Supreme Court original jurisdiction.

Mr. NAVE. My object is to strip the Supreme Court of all original jurisdiction. That court has as much business before it as it can dispose of without taking original jurisdiction. It has been complained of before the Convention, that that court is unable to get through with business that is properly before them. It is wholly unnecessary, therefore, to confer upon it original jurisdiction. Yesterday this matter escaped my notice. I hope that the proposition I have offered will be adopted, and that the court will be confined in its action to cases of appeal upon writs of error.

Mr. PETTIT. There was some difference of opinion in the Convention in reference to this latter clause of the section. The gentleman from Hendricks opposed it. But the majority of the Convention were of a different opinion. I believe that it can do no possible injury. The gentleman moved to strike out only these words: "And such jurisdiction as the Legislature may confer upon it." It has no original jurisdiction now, but the Legislature may find it necessary hereafter to confer original jurisdiction in some cases, as where authority is given to save the State. Or it may be necessary to give it original jurisdiction in some particular locality. They are not compelled to do so, but it may be done if it should be found to be necessary. In my opinion, the section is right as it stands. I think it ought not to be re-committed.

Mr. BIDDLE. I conceive the amendment of the gentleman from Hendricks to be a very important one, and I am sorry to differ with the chairman of the committee on this point. He is aware, however, of the opinion I entertain upon the subject, as I am a member of the committee, and as my views were expressed in the committee room. There are two points in a judicial system that I regard as being so important, that they should remain inviolate forever. This is one. The moment you give the Supreme Court original jurisdiction, you make it in no wise superior to the circuit courts. I do not mean to say that the Supreme Judges are not superior to the circuit judges. On an average they are; but you have to take average men to fill the Supreme Bench. The Almighty does not send men for particular purposes, greatly superior to all other men. No human government can stand long unless it can be worked by men of average ability. True, we have occasionally very great men; but in the life time of a State we cannot expect to always have

them. We must so organize our government that common men, of common ability, can carry it on in all its departments. The true cause of the superiority of the Supreme Court, I believe to be in the organization of the system, not in the ability of the judges.

I trust the amendment will prevail. We should keep the Supreme Court for a court of errors, and for no other purpose. There is no system that will work well except upon this basis.

Now, I undertake to say that the Supreme Court of Indiana presents a better record than any other court of its age in the United States.

Mr. PETTIT. It has original jurisdiction.

Mr. BIDDLE. It has never exercised original jurisdiction to any considerable extent.

Mr. PETTIT. It does, and always has.

Mr. BIDDLE. I attribute this superiority to its organization. That court does not consist of judges, whose equals, as respectable as they certainly are, could not have been found in any period of the State. Let any Supreme Judge undertake to hold a circuit court for several consecutive months, and be called upon to decide unpremeditatedly point after point, as fast as learned and ingenious lawyers can raise them, and you will then have an opportunity to test their capability. I have a great respect for that court, and so long as you keep it organized as it is at present, it will be greatly superior to the Circuit Courts. Young as the State is, there are but two States in the Union that have presented a record of superior judicial decisions. Let us then keep this court free from all disturbing causes. Let us give them time to mature their decisions carefully. It is upon this court that the Circuit Courts must rely for their decisions. If you compel the Circuit Judge to make rules as points may arise when a trial is in progress, with a jury in the box, with council contending before him, and often surrounded with all the disturbing causes that agitate men, you will introduce confusion. Give to the Supreme Court original jurisdiction to try questions of fact, and they will be placed in the same condition with the Circuit Court, and there will be no superiority. The judges are generally able men, but you cannot hope that this will always be the case. Their superiority over all of the courts west of the Alleghenies is attributable to the constitution of the court. Give them no original jurisdiction; give original jurisdiction to the Circuit Courts. Let us keep the superior court exclusively a court of error.

This is one of my fundamental ideas with regard to a judicial system. The other idea is that the Supreme Court should never be made itinerant. This applies to courts *à nisi prius*, but it should not apply to a court which gives the law to all the others. I do assure gentlemen that if they give to the Judges of the Supreme Court original jurisdiction and drag them

all over the State, they will be but little if at all superior to the average of Circuit Judges. Keep away all collisions from your Supreme Courts. I hope the Convention will not impair this fundamental rule.

Mr. HOWE. A majority of the Committee were in favor of the section as it now stands. It is true the Supreme Court ought to have what is called original jurisdiction in some cases, in order to secure perfect justice, to parties litigant. I will put one case, that is the case of mandamus. Every lawyer knows that cases are occurring every day where the order of a judge is required to be issued. It is sufficient to suggest one or two necessities. I think, therefore, it is best to let the section remain as it is.

Mr. BIDDLE. I would simply ask the gentleman whether the granting a writ of mandamus is original jurisdiction? It may possibly be so, but it is inherent in the Supreme Court to compel obedience to its mandates by *mandamus*, or other process, and you need not specifically grant them this power. The power to fine is an original jurisdiction, but it belongs inherently to all courts. The Circuit Courts are sufficient for all cases where the writ of *mandamus* may become necessary.

Mr. HOWE. There may be cases of *mandamus* as original cases.

Mr. NEWMAN. I do hope the Convention will suffer the section to pass. I am satisfied that no injury can arise from it. If gentlemen can point out any danger that is to be apprehended from the operation of this provision I will yield the point. I shall vote for the section, and I do hope the Convention will come to a vote and dispose of the matter at once.

The question was taken on the motion of the gentleman from Hendricks, to re-commit with instructions, and it was decided in the negative.

The section was then passed and referred to the committee on revision.

On motion, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY,

The question being on the final passage of the fourth section of report 29.

Mr. BASCOM moved to suspend the rule requiring the yeas and nays to be taken on the final passage of a section.

The motion was agreed to, and the section was read a third time and passed.

The question was then taken on the final passage of sections nine and twelve, and the rule requiring the yeas and nays being suspended,

The sections were passed.

REPORT OF DECISIONS OF THE SUPREME COURT.

The PRESIDENT. The next business in the orders of the day is section thirteen, on its third reading.

The section was read as follows:

"No judge shall be allowed to report the decisions of the Supreme Court."

Mr. BORDEN. It is a well known fact that much inconvenience is frequently experienced by delay in the publication of these decisions. I move therefore to re-commit the section with the following instructions:

"The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court."

My object is to remedy this defect. We all have felt the difficulty in not having these decisions furnished in proper time.

Mr. PETTIT. It seems to me that we can easily consent to the amendment without the necessity of referring it to the committee. The proposition is right enough, and I presume no member of the Convention will object to it. It can be adopted by unanimous consent without the necessity of a reference.

The amendment was agreed to by unanimous consent.

The section, as amended, was then read as follows:

"The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court; but no judge shall be allowed to report the decisions of the Supreme Court."

The rule requiring the yeas and nays being suspended,

The section, as amended, was passed.

COUNTY COURTS.

Mr. HOWE. I move to take up from the table an additional section which I offered on yesterday in relation to County Courts.

The motion to take up the section was agreed to.

The section was read as follows:

"There shall be in each county, a county court to be composed of one judge who shall have original jurisdiction in cases of probate, and such other jurisdiction as may be conferred by law, whose salary shall be \$500 per annum, to be paid out of the county treasury together with such fees as may be prescribed by law."

Mr. HOWE. It must be obvious to the Convention that we must either have a county court system or an extension of the circuit system. So far as my action in regard to this matter is concerned, the course which I have laid down for myself is this: If we can have a respectable county court, which shall have probate jurisdiction, and certain other civil jurisdiction—say to the amount of three, four, or five hundred dollars—and also criminal jurisdiction, in small offenses, and if you give such

judge a sufficient salary, and provide for it in the Constitution, I will go for the county court system, and let the circuit courts remain as they are. But unless we set forth in the Constitution what the salary shall be—and I would not go for less than five hundred dollars, and such fees as may be prescribed by law—then I shall go against it; for unless you make it a respectable court, and give the judge a competent salary, you will have nothing more nor less than the present probate system. Gentlemen may say "Leave this matter to the Legislature." Sir, I cannot agree to that. I contend that experience in this, as in other matters, is worth a thousand abstractions; and experience has shown, in the most ample manner, that there is no dependence, whatever, to be placed in the Legislature in regard to sustaining judicial dignity. I am for putting this matter entirely beyond the power of the demagogues in the Legislature—and let me say, when I use that word, that I mean no disrespect to the General Assembly, but we all know that men of that character are too apt to obtain seats there, and to seek their own popularity and aggrandizement are dearer to them than the best interests of the people. I would, then, go for the county court system, giving to each judge a fixed salary of \$500, with such fees as would make the situation worth about \$800; and with a such salary, I have no doubt, whatever, that you could obtain the services of competent men. Without it, you certainly will not.

Mr. THORNTON. The gentleman from Lagrange and myself have the same object in view. The only difference between us is, that I do not wish to prescribe what the salaries shall be, because the services will be so dissimilar in the different counties, that I doubt whether any general provision can be prescribed by us. In such a county as Floyd, a judge would have business enough to make the office worth at least a thousand dollars a year, while in other counties it might not be worth one fifth of that sum. I insist upon it, therefore, that it would be establishing a disproportionate rule to say that the man who is performing services every day in the year, shall receive no more pay for those services than the man who is occupied only some three or four months in the year. I desire that we should leave something for the Legislature to do. I do not, so far as I am concerned, wish to see it indicated on our part that we have all the wisdom of the State of Indiana, as well now as for all time to come. I would, therefore, have the salaries of the judges fixed at a rate proportionate to the services to be rendered; and it strikes me, therefore, as we agree in the main, that the question of salary should be left to the Legislature and to the people, to be determined upon hereafter, and to be adapted to the duties to be performed. In the first place, I assume, without fear of contradiction, that we *must* have

such a tribunal as the one here suggested, and, whatever may be the salary of the judge, if the business is sufficient the situation will become respectable. Throw into that court the probate business, and give to it civil jurisdiction in all cases not exceeding \$500, and criminal jurisdiction in all cases that would be above that of the justices of the peace, and below that of the circuit court, and you would have a court that would be most of the year employed, at least in the more populous counties of the State, and, although it may not, in the first instance, call men of high legal qualifications to the bench, it will eventually do so. The proposition which I offer as a substitute for that of the gentleman from Lagrange, is this:

There shall be created and established in each county in the State, a court of record, to be styled "*The County Court*," to be composed of a single judge, to be elected by the qualified voters of the counties respectively, to serve four years, and until his successor be elected and qualified; who shall have jurisdiction of all probate matters, together with such civil and criminal jurisdiction as may be prescribed by law.

The county court shall be always open for the transaction of business therein, and shall sit at such time and place as may be directed by law.

The judge of the county court shall be his own clerk, but may be authorized, at his own expense, to employ a person to act as his clerk, for the performance of clerical duties merely; said judge, except in such cases as may be specified by law, shall not receive fees for his services by way of compensation therefor, but the same shall be taxed by him and, collected by the proper officer, and paid into the county treasury.

The judges of the county courts shall receive such compensation for their services as shall be prescribed by law to be paid out of the county treasury.

The plan which I have had the honor to submit, contains a provision which contemplates keeping the proposed court always open, so the the greatest facilities may be afforded to persons having business to transact therein, to make their applications for the purpose, and more especially to such as may wish to procure letters of administration, writs of habeas corpus, ne exeat, &c. As regards the salary or compensation of the judge of this court, I admit it is difficult to devise a suitable plan. I feel confident, however, that the plan proposed by my friend from Lagrange will not answer the purpose. No general mode of compensation is practicable. The only way, it seems to me, is to leave the matter to be settled by the tribunal doing business for the counties, to adjust and fix the amount of compensation the judge is to receive.

Mr. COOKERLY. It will not do.

Mr. THORNTON. Well, I am aware that at the first blush such a plan is obnoxious to every plausible objections, but what are we to do? I take it that we *must* provide for such a convenient, and as I may term it, domestic tribunal as the one proposed. I conscientiously believe it is eminently demanded by the wants and wishes of our people. If we fail to provide such a one here, the public voice will call so loudly for it that the Legislature will have to make provision and the result will be that we will be remitted back to the old wretched probate system, which we have so unanimously agreed to repudiate.

I therefore move the proposition I have read as a substitute for the one submitted by the gentleman from Lagrange. I wish to present the question to the Convention whether or no the members are disposed to favor the plan of a county court.

Mr. KENT. I am in favor of the County Court system, with one judge; but I am also in favor of leaving it entirely with the Legislature to prescribe the duties of such courts. It is quite evident, Mr. President, that there is a great variety of sentiment in this Convention with regard to this question; and if we undertake to settle all the details of this matter here, it will necessarily prolong the session one or two weeks.

Now, with regard to the expense of these judges, I am inclined to the belief that the expense incurred by the counties of this State for the present probate system, associate judges, and the large sums paid sheriffs and a host of appointed officers, under the present onerous mode of doing county business, will more than meet the expense of the establishment of the County Court system. By the report of the Auditor of State, I find that in nineteen counties, the expense of the present system is twenty-nine thousand two hundred and forty-six dollars and forty-five cents. I am inclined to the belief that, in these nineteen counties, we can save not less than \$17,000, to be appropriated to the expense of keeping up these County Courts. I will take, for example, the county of Allen. There the expenses are \$2,577 62. Now deduct the amount paid to the probate judge, which is \$40; the amount paid the associate judges, which is \$237; and one-third of the amount paid to grand and petit jurors, bailiffs, &c., and you have the enormous sum of \$1,577, which might go to the payment of a judge of a County Court. If gentlemen will look at the report, they will find that they pay \$1,046 for bailiffs alone; petit jurors, \$875; Grand Jurors, \$216; making a total sum of over \$2,100 in round numbers. Now, sir, if it be in order, and no gentleman desires to discuss the subject, I will move its indefinite postponement, so that the matter may be left to the Legislature. [Cries of "No! no! no!"]

Mr. KELSO. I am pretty sure, Mr. President, of one—

The PRESIDENT. The question is on the motion to indefinitely postpone.

Mr. KENT. I will withdraw the motion if the gentleman from Switzerland wishes to speak.

The PRESIDENT. The motion to indefinitely postpone is withdrawn.

Mr. KELSO. I am pretty sure, Mr. President, of one of two things—either that this proposition is radically wrong, or that the manner in which it has been got up is wrong. I confess I do not understand the remarks of my friend from Floyd (Mr. Kent); for I would like to know if his proposition is not only to dispense with Grand Juries, but also with petit juries, and with sheriffs, and bailiffs, and other county officers?

Mr. KENT (interposing). No, sir; I divide the expense, and cut off a large portion of the expense of these officers.

Mr. KELSO. I believe that, so far as a sheriff is concerned, his fees are fixed and regulated by law until it comes to such allowances as the court may give him; and I would like to know how the gentleman is going to provide for that. The court makes provision for extra services, and they have a right to do so. But why not at once make the Probate Court a court whose duty it shall be to discharge all matters relative to the probate of wills, and the administration of decedents' estates? We have another court without it; and, supposing it is a good one, I ask, why commence a County Court in the manner proposed?

Now, in reference to the remark of the gentleman from Floyd, I am not for hurrying over the little matter that remains, nor am I for passing over that which legitimately belongs to this body, and handing it over to another body.

Sir, we have had a probate system since 1829, and the great difficulty of that system is—for the law is good enough—that you do not pay money enough to secure the services of a man on that bench competent to decide what ought to be decided. Now, if we leave this matter to the Legislature, what guarantee have we that they will not fix it as they have allowed it to remain ever since 1829—the most deplorable system of any State in the universe, except Illinois, where the justices and the administrator invariably use up the estate? Sir, the fault is, that we do not pay money enough for services of this kind to secure competent men to perform them. I hold that, whatever court takes charge of this probate business, you ought to give the judge a competent salary, in order that you may secure the services of a man learned in the law; for if we leave it to the Legislature we have no sort of guarantee that they will ever make it one whit better than it is at present; and it is known that the proceedings which are had in these Probate

Courts are among the most fruitful sources of litigation. And has the Legislature made any effort to check it? No, sir. Thousands of dollars have been spent upon it, and yet in no respect will they change it. In some particular counties they may have changed it, and given a man another dollar a day out of the county treasury; and notwithstanding all the testimony staring us in the face of the iniquities perpetrated in these Probate Courts since 1829, we have continued to labor under this difficult system, which has been a curse to the State from one end of it to the other.

Now, I do not care by what name you call this court. It matters but little about the name; only let it have such jurisdiction as it can exercise in civil, criminal, or probate matters, without conflicting with each other; and let us fix such a salary as will secure the services of a competent man. If we do not do that, why then leave it where it is; and if we leave it where it is, I am satisfied that we should be still better off without any Probate Court at all.

MR. PETTIT. I do not design, Mr. President, to talk upon this subject; but I will take the liberty of saying that I had, for the consideration of this Convention, drawn up a full plan for the organization of County Courts, but it did not meet with the approbation of a majority of the committee, and I did not see fit to make a minority report upon the subject.

There is one feature, sir, in the proposition of the gentleman from Floyd (Mr. Thornton) to which I cannot agree, and that is, making a judge his own clerk. It is not compatible with the dignity of a judge that he should enter up his own records. After sitting all day, listening to the ding-dong of lawyers, the testimony of witnesses, and the verdicts of juries, is he fit to sit up all night and make his own records? Certainly not. Besides, it would be eternally charged that he gave judgments in this way, or in that, in order to save his fees; and no man filling such a station ought to be placed in such a position as to be liable to such a charge.

Neither am I prepared to say, Mr. President, that we should fix the salary at five hundred dollars in all the counties of the State. In some counties the services would be worth twice that sum, and in others they would be worth very little. I had a plan by which I provided that there should be a county court; that that court should have appellate jurisdiction from the decisions of justices of the peace in all cases; that there should be a provision that he should be paid no salary, but that in all cases of appeal from the decisions of justices of the peace, the parties appealing should deposit with the clerk one, two, or three dollars—whatever the Legislature might determine upon—as the judge's fee for trying that case; that he should be at liberty at any time to take that fee out of the hands of the clerk, and that whoever lost the

cause should pay that fee among his other costs.

In that case the judge would not be the least interested. His fee is deposited and paid beforehand. I calculated that this court might have limited civil and criminal jurisdiction; in the latter, so far as regards those cases which would not involve a fine of over fifty dollars, or imprisonment for three months, and in the former to such cases as do not exceed the sum of five hundred dollars; and that in these civil cases the plaintiff should deposit a fee of two, three, or four dollars, as the Legislature might determine, and that the judge should take that fee and tax it up against the losing party. He would thus have no interest on either side of the cause at all.

So in criminal cases: that in all cases of conviction the county should collect a fee of four dollars from the convicted party, and that he should receive two dollars out of the county treasury for every case which he examined; so that under this plan you see there would be no salary to be paid at all.

I said further, that into the hands of this court there should be given all matters of probate; and without attaching any salary at all, you might say that the judge should be entitled to one per cent. upon all the invoices settled in the court. If you make this allowance upon the invoices, he has then no interest in making the estate large or small. In this manner each county might pay to a judge a very respectable salary without taxing either the treasury of the State or that of the county. But if the propositions to amend now pending are voted down, I will offer an amendment as a substitute for the proposition of the gentleman from Lagrange, which will leave the Legislature to carry out all these details, leaving them also to fix the jurisdiction between the justices of the peace and the circuit courts. The section which I will offer will be this:

"There shall be a county court in each county of this State, composed of one judge, who shall be elected by the electors of his county, who shall hold his office four years, and whose jurisdiction and duties shall be fixed by law."

Now that will leave it to the Legislature to say how the man shall be paid, and what his duty shall be; and I think the main object both of the gentleman from Floyd and the gentleman from Lagrange will be answered by a section of this sort.

I will offer this as a substitute for the proposition of the gentleman from Lagrange, provided the amendment of the gentleman from Floyd (Mr. Thornton) should be voted down.

MR. THORNTON. I believe that myself and my friend from Tippecanoe (Mr. Pettit) agree pretty well as to the necessity of creating a court of this character. I must, however, correct him in a conclusion at which he seems to arrive, which is by no means warranted by

my proposition. He takes the same ground that I do. No man feels more repugnance than I do to the idea of a judge being his own clerk, and taxing his own fees, and taking them himself. I fully approve of the proposition of my friend from Tippecanoe, and I have risen for the purpose of accepting his proposition. All I wish is for the Convention to determine that the people shall have such courts. I do not wish the proposition to be trammelled by questions of salary or anything else. I withdraw my proposition, and accept the one proposed by the gentleman from Tippecanoe.

Mr. HOWE. I entirely concur with the gentlemen from Tippecanoe and Floyd, as to the necessity of having a county court; but the gentleman from Tippecanoe is for leaving everything in relation to the compensation of the judges to the Legislature. Now do we not all know that the power of establishing these very courts has existed for the last thirty-four years, and that yet the Legislature has never established them, notwithstanding the notorious fact of the insufficiency of the probate system. That fact is enough for me; and I regard it as our duty, while we are about it, to establish a wholesome judicial system, which will be applicable to the wants of the people of the State, and be beyond the reach of the fluctuating legislation of the General Assembly. I say that this is a practical question, that it results in this: "Shall we have a respectable county court with probate jurisdiction, or not?" If we leave the question open, what reason have we to suppose that the Legislature will fix a competent salary to that office? We have no reason to suppose anything of the kind from past experience. It is therefore obvious that we ourselves ought to fix that salary so as to insure the services of a competent man; for if there be anything in a court which needs examination, it is those questions which relate to the disposal of our estates; and unless we have a proper salary fixed for these officers, we shall still have a contemptible court. And, Mr. President, unless I can carry this proposition, or something like it, I shall fall back upon the proposition of the gentleman over the way (Mr. Holman) as the next best proposition that has been made. There is no doubt that the county court system will be the most expensive system; but, sir, the question of expense is not the most important one involved here. The question is, which is the best system? and believing the county court system to be the best, I shall support it with this proviso, that we make provision for the payment of suitable salaries to the judges of these courts so as to secure the services of efficient men.

Mr. SMITH of Ripley. It is with great reluctance, Mr. President, that I rise to say a single word upon this subject. I am quite aware that the gentlemen of the bar are supposed to know much more about these legal questions

than we do, and that they may be regarded as better judges of what will be most conducive to the interests of the people than we can be. But let me refer for a moment to one argument which is made use of here, and on which gentlemen appear to place great reliance. They propose to elect judges in each county, and they go upon the supposition that if they give a high salary they will of necessity obtain men of high legal attainments. But, sir, I very much question the truth of the conclusion. It by no means follows that if these judges are to be elected by the people, you will secure men of acknowledged legal ability, merely because you offer a high salary.

Mr. KELSO (interposing). I suppose the gentleman from Ripley will admit that the people of the several counties have good common sense.

Mr. SMITH (resuming). Yes, sir, they have good common sense I know; and I believe that nine times out of ten they will elect a good common sense man.

Mr. President, in the committee, I differed with gentlemen in regard to the county system, and also in regard to the election of a single judge, and conferring upon him civil, criminal, and probate jurisdiction, for the reason that I see in it an evil—this evil, Mr. President, that we will have a court in perpetual session. It will be a mere pettifogging court, taking the place of the justices of the peace all over the country, in cases in which they are equally well qualified to decide. My idea is that the report made by the committee with one or two slight modifications, is the correct ground for us to act upon.

But, sir, if we go into this judicial system, it will detain us here for two more weeks at least. I am certainly opposed to this plan of carving out twenty-four circuits. I think, too, with regard to salaries, that they should be left to the Legislature. I have nothing farther to say except that I wish it to be understood that this is my opinion on the subject.

Mr. NEWMAN. Originally before the committee, I was in favor of our judicial system being confined to a Supreme Court, to circuit and county courts, and such others as might be provided for by law. The committee were not harmonious on that subject. Although I assented to the report, I much doubt whether we shall be able to harmonize any better in the Convention than gentlemen did in the committee. I would have preferred, however, to have had the designation of a county court, leaving it to legislative action to confer probate jurisdiction upon it if they should think proper to do so. They have a right under the first section of the article to create a county court. If we had made it a mere county court, it would be a question whether other jurisdictions could have been conferred upon it. But when we proceed to define what that county court may do, and what it may not do, it seems to me that we are

descending below what should be a mere constitutional provision. And further, if we undertake to say what the salaries of these judges shall be, we shall be doing that which was not confided to us by the people to do.

We have been told here by gentlemen, that we have lived for the last thirty years under the present probate system without the Legislature having improved the condition of things. Now, I admit that this is true, but at the same, if the country is represented in your General Assembly, and they are not disposed to improve the system, are we not bound to submit to it? Sir, we are bound to take the world as we find it, and if we do not find it as enlightened as we could wish, we are bound to make the best of it we can. It is one of the incidents of society that we cannot agree in our views of these things, and I am willing to confide to society as it is in its present enlightenment, the duty of fixing a proper court, giving to it proper jurisdiction, and determining what compensation shall be awarded for the services to be performed.

With these remarks, I leave the question with the Convention, and for the purpose of testing the sentiments of this body on the subject, I will move that the whole matter be indefinitely postponed. [Loud cries of "no, no, no."] Very well then, if gentlemen wish to discuss the matter still further, I will withdraw the motion.

Mr. HOLMAN. I would not occupy another moment of the time of this Convention, did I not feel a very decided anxiety that the result of our deliberations upon this subject should prove beneficial to the country. Mr. President, there are four plans before this Convention. The first is the report of the committee on the organization of Courts of Justice. The report which that committee has presented to the Convention leaves entirely untouched and unnoticed the mode of transacting probate business.

The second plan is that proposed by the gentleman from Tippecanoe (Mr. Pettit)—proposing simply the organization of County Courts, and nothing more.

The third plan is that proposed by the gentleman from Lagrange, (Mr. Howe,) who proposes in the first place, that there shall be County Courts, and in the second place, that each of the judges of these courts shall have a salary of at least five hundred dollars per annum, with such fees in addition, as may be prescribed by law, &c.

The fourth plan is that submitted by myself, to increase the Circuits from twenty, as proposed by the committee, to twenty-four, and to place the Circuit and Probate Courts on the same footing.

Sir, it has not been asserted by any gentleman upon this floor, that our probate system is not defective; but on the contrary, almost every gentleman who has spoken upon the subject

has added his testimony to the fact, already so notorious, that the mode of transacting probate business is a disgrace to the statute books of Indiana, ["consent, consent,"] although, as in my own county, there are many excellent men on the Probate Bench.

Now the proposition of the gentleman from Tippecanoe is nothing more than the plan under which we have been living for the last twenty-one years. Let me inquire of that gentleman, for whose judgment in all matters pertaining to law and its administration I have the highest respect—where is the difference between calling the system a County Court or a Probate Court, provided the organization is the same and the evils are unremedied? I undertake to say, and the experience of the last thirty-four years prove it beyond all question, that if you say there shall be a County Court, you will retain in, and fasten upon the country the same system of transacting probate business which has been so long a just cause of complaint.

If then you adopt the County Court system without incorporating in it the proposition of the gentleman from Lagrange, securing such a salary to the judges as will command men of competent talents, the board of Commissioners or a cringing Legislature will fix their salaries, and these men will provide a compensation which, while it is onerous to the State, from the number of judges, will be utterly insufficient to secure competent men.

How does it happen, let me ask, that gentlemen are willing to confine the probate business of the country, involving the exposition of wills, the execution of trusts, the settlement of the land titles of the country, together with various other important public duties—how, I say, does it accord with practical wisdom and sound sense to say, as is thus said, in effect, that interests of vital moment, affecting, slowly but surely, the whole property in the State, shall be left to incompetent men, through capricious legislation?

The proposition of the gentleman from Lagrange is manly, to say the least of it. It is a manly, honest proposition; and perhaps the only reason why the Convention will not adopt it will be, that it would necessarily increase the expense of our judicial system. It would increase it at least \$45,000, over and above our present expenses. And even were it adopted, what will we have accomplished by it? We have a Supreme Court and Circuit Courts, and in addition to these, it is proposed that we should have County Courts with salaried officers, to whom we are to pay each \$500 a year, sufficient to secure respectable talents; and yet at least the same end can be attained by Circuit Courts, the cost of which will be annually at least thirty-four thousand dollars less. But, sir, if you are determined that County Courts shall be organized, you should at least secure to the country competent judges to preside over

them, so far as they can be secured by giving them a competent salary. And, sir, let me say to this Convention, that if they intend that this system of Probate Courts or County Courts shall be retained, that is if they do not intend to go any further than that, I would ask them, as a favor to the people, to leave the whole of it out of the Constitution, for I cannot believe that the Legislature of a State containing a million of people can much longer perpetuate a system of this kind.

If, then, we do not adopt the system proposed by the gentleman from Lagrange, and still propose to adopt the County Court system, I do hope, as I have already expressed it, that the whole system will be left out, in order that we may still entertain the expectation that some future Legislature will be willing to do common justice to those who cannot vote with them or legislate with them in the protection of their own interests.

But why—why, let me ask gentlemen, should we consign this probate business to a County Court?—a court of inferior jurisdiction? Why should this be done? Is the business inferior in its character to that which usually comes before your Circuit Courts? Is it of less importance to the parties who are interested? Does it involve less serious results? or are the rights of those whose interests are peculiarly involved in your Probate Courts, of less moment than the rights of other citizens of the State of Indiana, that you must consign them to a court of inferior jurisdiction? [Applause.] Sir, the gentleman from Tippecanoe, in picturing out what the Legislature might do under his plan, proposes to give to *men* the right to bring their cases before a Circuit Court, where the judge is paid a competent salary out of your State Treasury; and that, if any party is not satisfied with the decision of that court, he may appeal from it, and submit his case to the investigation and decision of the Supreme Court, the judges of which are also paid out of the Treasury of the State. But when you come to try the rights of the widow, bereaved, and downcast, and forlorn, who comes to you with tearful eyes and a throbbing heart, whose soul is sunk within her, and whose affections are buried deep beneath the sod that covers all that is left of him who was the pride and solace of her life—and the rights of the orphan who has now no father, save that Father who is in Heaven—you are not only to put them off with an inferior tribunal, but even to take one per cent. from the little pittance left them by a dying husband and father, in the fond and anxious hope that they might not be compelled to rely upon the miserable charity of a cold and unfeeling world? [Great emotion and applause.] Sir, is this the liberality—is this the generosity of manhood? Is this the mode in which the rights of the widow and the orphan are to be disposed of by this Convention? No, sir, not one man in this

body, I will venture to assert, save and except the gentleman from Tippecanoe alone, will ever be found so regardless of the rights of the bereaved, as to put his name to any Constitution containing such a provision as that. [Renewed applause.]

But, sir, the gentleman from Floyd (Mr. Kent) proposes to leave this matter entirely out of the Constitution. It was very appropriately said by a gentleman on this floor on one occasion, that “we should look to the rock from whence we were hewn,” [a voice—“carry out the quotation—and the hole of the pit from whence we were dug,”] and if we look to that rock, if there be one thing more than another that is desired of this Convention by the people, it is a reform in the manner of doing this business; and yet you are proposing not only to extend your Supreme Court, and to retain your Circuit system as hitherto, increasing the number of circuits and the salaries of the judges, while the only real and radical evil you are willing to leave untouched. “Leave it to the Legislature” you say! Sir, look back upon the last thirty-four years and see what the Legislature has done!

In 1825 this business was consigned to the associate judges; but, sir, it was considered an outrage upon the people because they were allowed four dollars per day while they were attending to this business. In 1829 that plan was abandoned; and for what reason? Because it was supposed that some very clever man in each county could be obtained who would perform the business at an expense of three dollars a day; and while they increased the salaries of the Supreme Court Judges to fifteen hundred dollars a year, and that of the Circuit Judges to one thousand dollars, they said to the Probate Judges, “You can attend to the duties of your office for *seventy-five* dollars a year.”

Besides this, sir, every badge of inferiority is imposed upon the Probate Court. Your Probate Judge must go to your Circuit Judge, and ask him for a certificate—a certificate of what? Why, sir, a certificate of his competency to superinend rights which the highest judge in the State cannot be found too competent to protect.

Then, Mr. President, if the county court system must be adopted, I certainly should prefer the plan proposed by the gentleman from Lagrange, because the proposition is manly, at least, though I much question whether the increased benefits will be commensurate with the increased expenses.

Then, sir, let me say again, that were you to increase the number of your Circuit Judges even to thirty, and give them a salary of a thousand dollars a year each, this with your five Supreme Court Judges at twelve hundred dollars a year, would only make the sum of thirty-six thousand dollars. If you adopt the plan of the gentleman from Lagrange, it will cost you

sixty-four thousand dollars. With the plan I propose we would have a competent judge in every court.

I am willing to admit, Mr. President, that perhaps no gentleman on this floor has thought more carefully over this subject than the gentleman from Floyd, (Mr. Thornton,) for whose experience and discrimination I entertain the highest respect; but if that gentleman believes that the surrogate system will do for our State, I must say that I think he has examined this subject to very little purpose. Why, sir, has that system been virtually abandoned in the State of New York? Why has it been abandoned in other States, so that a Superior Judge, or Chancellor is now the Probate Judge, the Surrogate performing only ministerial duties connected with that office?

One argument that has been used against the Circuit Court system, is, that it might be desirable to obtain injunctions, restraining orders, and writs of habeas corpus when the Judge might be in a neighboring county. Supposing this to be so, I ask gentlemen whether there are not in every county, clerks, whose qualifications would enable them to attend to business of this kind, subject to the revision and control of the Circuit Judges? There are, undoubtedly; and I think there is, therefore, no force in the objection, whatever.

I hope, Mr. President, that gentlemen will desire that a direct vote may be taken upon this County Court system, and that they will bear in mind that there are but two plans of County Courts—the one virtually retaining the Probate Courts as they now stand, and the other providing for a salary to be paid to the judges, of five hundred dollars per year—these are the two systems. If you go for the proposition of the gentleman from Lagrange, you will increase the expense of your judiciary to at least sixty-four thousand dollars a year; and if you support the plan of the gentleman from Tippecanoe you will perpetuate the present probate system with all its manifold evils.

Then, on the other hand, if you decline both of these plans, I ask you whether the interests of the community would not be most effectually subserved by increasing the number of circuits as proposed, transferring to them in a separate and distinct court, the supervision of the probate business? I doubt, sir, very much whether, even by the great increase of judges proposed by the advocates of this county system, you can improve the proper administration of justice. If you have a large number of judges, many of them must necessarily be men of inferior qualifications, for you must pay inferior salaries; whereas, if you have but few, you will have the whole country from which to select them, and the best and most competent men will undoubtedly be selected.

Mr. BORDEN. The gentleman from Dearborn is mistaken when he says that the surro-

gate system has been abandoned in the State of New York. They have a County Judge who is his own clerk, and who keeps his court open all the time, as a surrogate.

Mr. HOLMAN. If the gentleman from Allen will allow me, I will read from the amended Constitution of New York:

"The County Judge shall receive an *annual salary*, to be fixed by the board of supervisors," &c., and in the report of the Judiciary Committee, the following language is used: "Surrogates shall be elected for four years—they shall be compensated by *fixed salaries*, and they shall not receive any fees or perquisites of office," and when I have referred to the *surrogate system*, of course I have meant, as is always understood by that system, a body of judicial officers who are clerks of their own courts, *who tax up the fees* of their respective offices, and receive those fees as a *compensation* for their *judicial and ministerial services*.

Mr. BORDEN. I understand he receives his whole fees out of the county treasury. Now it occurs to me, as I stated yesterday, that you have to do one of the two things—either to increase the number of your circuits, or adopt the County Court system; and it becomes the Convention to decide that question; for you may depend upon it the Legislature never will decide it, and the State will continue to be cursed with this probate system as it now exists.

Mr. KILGORE. If I could suppose that any benefit could result to the people by the adoption of the amendment of the gentleman from Tippecanoe, or that we would better our present probate system, I would most cheerfully support that amendment. But, sir, if the section reported by the committee should ultimately pass this body I look upon that amendment as wholly unnecessary. Sir, what is proposed but to organize an inferior court in each county of the State. The section of the new Constitution to which I refer gives the Legislature that power already. The Legislature has power to organize a Supreme Court, or a Circuit Court, or any other inferior courts. They have the power to adopt the present Probate Court as one of the inferior courts contemplated by the section, and to confer upon that court all the jurisdiction which gentlemen insist should be conferred upon a County Court. The Legislature can confer upon the Probate Court jurisdiction in civil cases any moment they may think proper; and not only so, but to whatever extent they may choose. But, sir, will that remedy the inconvenience? Will the fact that they extend to that court additional jurisdiction give us more competent men to preside over it? Will that secure more talent, and integrity, and ability to discharge the duties of that office than we now have upon the Probate Bench? Most certainly not. Not only so, but we place the parties in a very awkward predicament.

We require the administratrix of the deceased husband to come up to your County Courts and to mingle with the worst class of men that can be found in the State—thieves, slanderers, and every other description of bad characters. And, sir, after all will it affect the object intended? I think not.

Some gentlemen have spoken about salaries. There can be no question, sir, whatever, that if you give suitable salaries you will call to the bench talent in proportion. If we are to have these County Courts I should be decidedly in favor of the amendment of the gentleman from Lagrange. But I am opposed to both, because I do not believe that with either of them we can attain the end we desire. I would give to the Circuit Judges competent salaries—such salaries as will secure the best legal talent of the State, and in such case I have no hesitancy in saying that I believe the people will have them there. I am unwilling to leave the question of salaries with the Legislature; I should desire it to be fixed by the Convention. We have trusted to the Legislature long enough; and I trust that the Convention will act upon higher and nobler ground than mere pandering to the feelings of this man or that man. I presume that gentlemen have come here prepared to victimize themselves, if need be, so far as public opinion is concerned, for the good of the people.

How is it, sir, with the Legislature? "Economy, economy," is their constant cry—a cry made only for buncombe, it is true; and all efforts to increase salaries meets with universal disapprobation. I am disposed to fix in the fundamental law such salaries as will secure good and efficient men who will give their attention to the duties of their office. I would not leave it to the Legislature at all. But a few years ago we found them whittling down the salary of the Governor of the State making it entirely too low for such a functionary, and then they brought down the salaries of the Circuit Judges to \$800 a year. Sir, if you wish these duties to be well performed you must give such compensation as will enable men to give their whole time and attention to the business—not a mere pittance that may possibly be enough to keep soul and body together, but enough to supply at least the ordinary wants of life, and to procure something like a library which is as necessary for the Judge on your Bench, as the jack plane and chisel and mallet and guage are to the carpenter. Now look at your Judges of the County Court as now proposed. He is not necessarily to be a lawyer; he may be a layman; but he must have some knowledge of the law in order to enable him to discharge his duties; and how is he to acquire that without the aid of books? And how will he get his books unless you give him a competent salary? Then let us at once fix for these functionaries a good salary. Let

us transfer this probate business to the hands of the Circuit Courts and give them sufficient time for the settlement of all business unconnected with their civil and criminal jurisdiction, and we have nothing to fear.

Sir, although the Legislature have acknowledged the evils of the present system as it has existed for the last twenty years they have not had nerve enough to remedy those evils. I know that a great majority of gentlemen here are anxious to get through with the Constitution. I know that many of them regard the rod of the Legislature as being held over them, lest the Legislature should not make an appropriation for our expenses; but I for one would be willing to stay here without money and without price for ten weeks longer whether the Legislature made any appropriation or not, so that we could have the business done well and in such a manner as will meet with the approbation of the people.

Mr. President, I have stated the reason why I cannot go for the proposition either of the gentleman from Lagrange, or the gentleman from Tippecanoe. If I could go for one, I would go for both; but I cannot go for either.

Mr. THORNTON. The gentleman from Lagrange has offered a proposition giving to the County Judge a salary of not less than \$500. I submitted a proposition which I intended as a substitute for that offered by my friend from Tippecanoe, and at his suggestion I withdrew it, and adopted the one which he proposed, and I shall be disposed to assist him in carrying it through.

Now one word in reply to the honorable gentleman from Delaware. I never see that gentleman rise to his feet but I expect to be gratified by what he says; but on this occasion he does not appear to evince his usual sagacity, because he says that under the County Court system the administratrix of an estate will for the time being be necessarily thrown into the society of criminals and the worst class of characters who are usually to be found about courts, forgetting that under the system which he proposes she will be thrown even into worse society—that of the highest criminals—perhaps murderers; at least if not thrown into their society she will have to appear at the court where they are to be tried.

Mr. KILGORE. Will the gentleman from Floyd allow me to explain?

Mr. THORNTON. Yes, if the gentleman can explain. [A laugh.]

Mr. KILGORE. I stated that my plan was that the circuit court should hold four or five sessions per annum. That at two of the sessions, at least, they should make up issues, and attend to probate business, not trying any criminals at all, or even civil suits; so that the gentleman's sarcasm does not apply, for he must clearly perceive that in such case there could be no criminals there.

Mr. THORNTON. The argument of the gentleman from Delaware was against the proposition of the gentleman from Tippecanoe, of which I am the god-father; but his objection to it was, that it would draw into that court the ladies of the county where felons are to be tried.

Now I want to know how he will account for this—for I am a little fearful that he is looking a little beyond the preservation of the morals or the feelings of the ladies. When I see a gentleman endeavoring to create twenty-nine berths at one time, I must say that I think the gentleman is either trifling with the Convention, or that he is much more of a blockhead than I thought he was.

I say to the Convention, then, that we must adopt some system of the kind proposed by the gentleman from Tippecanoe. I would be glad, if I could do no better, to take a man of good common sense, as a judge of such court; for I do not expect to create an office of that kind, or to affix such a salary to it as will draw upon the bench a man of profound legal attainments. And, sir, permit me to say, that, if gentlemen create such courts as those contemplated by the gentleman from Dearborn, they will not be able to find great men enough in the State to fill the whole of these twenty-nine places. But, sir, let that be as it may, I must say that I cannot endorse such a system. As matters stand now, I am not afraid to meet my constituents, but I certainly should be, if I voted for five Supreme Court judges, and twenty-four circuit judges.

Now the gentleman from Dearborn holds the rod *in terrorem*, over the Convention, by talking about an additional expense of \$45,000, which these county judges are to cost, over and above the amount which it will cost the State, by the plan he proposes. But, sir, by my plan, it will not cost more than \$12,000 altogether. His plan will cost at least \$34,000 a year. There are to be 24 circuit judges, with sheriffs, bailiffs, and a host of other officers, and I am satisfied that, taking that system fairly into consideration, it will be as expensive as any you can adopt. Let me say, too, that the courts which we propose erecting, will open a fair field of ambition to a certain class of young men, who by their own conduct will create respect for the court.

The gentleman from Dearborn says that we might get restraining orders, writs, and injunctions from the clerk of the circuit court, or a justice of the peace; but, sir, when the writs are issued, we want somebody to try them. We do not want to wait half a year, or a year before we can have trial. Now, although a man who may be elected judge of a county court, may not be very well skilled in law, yet he will become acquainted with business and will soon learn.

Mr. President, I cannot say that I can vote for the system as proposed by the gentleman

from Dearborn; I think I would rather fall back upon the old system, odious as it is. If we do not adopt this county court system, the people will create a tribunal to do this probate business. I hope the proposition of the gentleman from Tippecanoe will be adopted; but, if the Convention should vote it down, I trust we shall have some other mode provided by the Legislature.

Mr. KILGORE. I was not aware that I had said anything to excite the ire of my friend from Floyd, and I am sorry that he should have come to the conclusion that I am either a knave or a blockhead. If, however, the gentleman has arrived at that conclusion, by the same process of reasoning by which he appears to have arrived at some others, it is not to me a matter of much surprise. I trust, sir, however, that, whatever I may be now, by the time I have practiced law for forty years, like the gentleman from Floyd, I may have learned something, and that I may be able to aspire to something higher than a county court. I did not suppose that the gentleman misunderstood what I said. I merely spoke of the peculiar jurisdiction to be conferred upon a court. Yesterday, in the presence of the same gentleman, I stated what my views were in relation to the proper division of business in that court. The gentleman from Floyd objects to it, and his reason was, that we would want some court to issue writs of habeas corpus, and injunctions, and other processes. I would ask whether we might not confer such power upon the oldest justice of the peace in the county, or upon the county auditor or county clerk, and whether these persons, in nine cases out of ten, would not be more competent to decide such questions as might be brought before them, than the ordinary run of your probate judges. Such justice, auditor, or clerk, might be able to do everything necessary to be done, save the final settlement of estates; and he certainly would be equally as competent to discharge all these duties, as the present probate judges, or the associate judges of your courts. Why, sir, who are these associate judges? You elect men from the county who are not lawyers at all. You take them from the plow, or the anvil, or the carpenter's bench, and make associate judges of them, and they can issue writs of habeas corpus, and try cases. If, then, these men who know nothing of law, can do this, why not confer these powers upon a clerk, and allow him, if necessary, to issue writs of habeas corpus. Everything the gentleman desires upon that subject, can be attended to without the aid of these county courts. I have no feeling of hostility, sir, either to the gentleman who is the god-father of this proposition, or the gentleman who is the parent proper. They may have all the honor of its paternity. I have nothing whatever to do with the bantling. They may take it and raise it, if they are able.

The question was then taken on the amend-

ment to the amendment, offered by Mr. Howe, and it was rejected.

The PRESIDING OFFICER (Mr. McFarland). The question now is on the amendment of the gentleman from Tippecanoe.

Mr. HOLMAN. I rise simply to say this: that on yesterday, the proposition which I offered, was, at my own instance laid upon the table; and it strikes me, as a matter of business, if the Convention have determined upon rejecting this proposition, it would be some evidence of their intention to do one of two things—either to leave the matter entirely open to the Legislature, or to increase the number of circuits. I ask, therefore, that we may have the yeas and nays on the adoption of this amendment.

Mr. WOLFE. I just want to say that I think our people want some mode of getting into court. The circuit court system, it seems to me, will not suit them. We want such a court as men of common sense, or even women may go into [laughter, and "consent, consent, consent."] and do business. I believe that the proposition of the gentleman from Tippecanoe is the best that has yet been presented, and I shall give it my support.

Mr. KELSO. I cannot but think that, by Monday morning, we shall have a much better plan matured than the one now under consideration; and, in order to give time to think of the matter before we take any decisive action, I move that the Convention adjourn.

The motion was decided in the negative.

The question was then taken on the amendment offered by Mr. Pettit, and the yeas and nays being ordered, they were taken, as follows:

YEAS.—Messrs. Anthony, Beach, Beeson, Berry, Biddle, Bryant, Chapman, Cookerly, Davis of Parke, Dick, Dobson, Edmonston, Gootee, Hawkins, Kinley, Logan, March, Mathis, May, McClelland, McFarland, Miller of Fulton, Millican, Milroy, Mooney, Moore, Morrison of Washington, Pettit, Shoup, Smiley, Smith of Scott, Taylor, Thornton, Trimble, Walpole, Wiley, Wolfe, Yocum, and Zenor—40.

NAYS.—Messrs. Allen, Ballingall, Barbour, Bascom, Beard, Blythe, Borden, Bourne, Bowers, Bracken, Brookbank, Butler, Carter, Chenoweth, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Davis of Madison, Davis of Vermillion, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Farrow, Foley, Foster, Frisbie, Gibson, Gordon, Graham of Miami, Gregg, Had-don, Hall, Hamilton, Harbolt, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson of D., Jones, Kelso, Kent, Kilgore, Lockhart, Maguire, McLean, Miller of Clinton, Miller of Gibson, Morgan, Newman, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Shannon, Sherrod, Snook, Smith of Ripley, Spann, Steele, Ste-

venson, Tannehill, Thomas, Watts, Wunderlich, and Mr. President—75.

So the amendment was not adopted.

The question then recurred on the amendment of Mr. Howe.

Mr. SMITH of Ripley moved to lay the amendment on the table.

The motion was agreed to.

Mr. HOLMAN moved to take from the table section 7, with the pending amendment.

The motion to take up the section was agreed to.

Mr. ——— moved that the Convention adjourn.

The Convention refused to adjourn.

The reading of the section and amendment was called for, and they were read.

On motion,

The Convention then adjourned.

SPEECH OF MR. KELSO,

Delivered in Convention, on the subject of Currency and Banking, on Tuesday, January 14th, in reply to Mr. OWEN.

Mr. KELSO. Mr. PRESIDENT: I beg leave to differ with our very learned teacher of democracy.

Mr. OWEN. Not a teacher of democracy, at all.

Mr. KELSO. By no means, Mr. President, not a teacher at all; he only takes upon himself to pronounce boldly and emphatically, what is and used to be Jackson democracy, not forgetting, at the same time, to tell us that it is he who best recollects the democratic doctrine in the days of the hero of New Orleans. Sir, upon that point I will take issue with the gentleman. And I tell him, and I tell this Convention, that there are men in this body who recollect all about the old doctrine of Jackson democracy, as well as the gentleman from Posey ever did, or ever will recollect it; and, sir, I profess to be one of the men. Sir, it was the birth day of my political life. The first vote I ever gave for any civil office, was for General Jackson for President of the United States. I gave that vote, too, in violation of the law, for I gave that vote in November, 1824, and I was not twenty-one years old until the eighteenth day of the next month. From that time, to say the least of it, I studied, learned, and debated the various political subjects of the day, and I now have a recollection much nearer corresponding to the written history of those times, than has been preached or practiced in this Convention, by either the gentleman from Posey, (Mr. Owen,) or the gentleman from Monroe (Mr. Read).

When the question is presented, bank or no bank, their General Jackson is quoted as against all banks; and so he wrote. But, upon a test

vote, it was, by this Convention, determined that there may be banks in Indiana. No sooner is such a decision announced, than the gentlemen are ready, on the moment, with General Jackson as authority against State Banks.

Now, sir, General Jackson, I presume, was, in reality, opposed to all banks; that he was emphatically a hard money man. But, under existing circumstances, he accommodated his public declarations and course of conduct, in a great measure, to the then tone of public opinion—a great and powerful law, that all public men should treat with becoming respect. He first attacked the United States Bank; and, in 1832, he prostrated that institution, or he gave to it the death blow that did prostrate it. But, before the end of the life of that bank, he removed the public deposits from the vaults of the United States Bank, and caused them to be placed in the vaults of State banks, and other banks; and in his message to the Congress of the United States, upon the subject of such removal, he spoke in high terms of State Banks, and pronounced them much more safe depositories for the public funds than the Bank of the United States was, or ever had been.

But, sir, time taught him his mistake, and he, like an honest man, acknowledged it, although the public funds were deposited in the Bank of the United States, and by the Bank used and banked upon for nineteen years, yet the government never did lose one dollar by that Bank. General Jackson commanned their removal—the mandate was obeyed, and in less than two short years, one million and a half of dollars was wholly lost by the operations of what was then familiarly called, the *pet bank system*.

From that day, General Jackson declared against all banks, and spoke of them as a set of heartless, soulless, swindling corporations, unfit to exist, and not safe to be trusted. He, sir, made no distinction; his opposition was to all banks, and I now challenge gentlemen to show us the denunciations of General Jackson against State Banks, separate and apart from other banks.

General Jackson, in the most unqualified manner, denounced the very idea of foreigners holding or owning stock in the United States Bank, by agent, proxy, or otherwise, howsoever, directly or indirectly. But now, forsooth, the times are changed. Gentlemen wish—and more especially the gentleman from Tippecanoe (Mr. Pettit)—to establish an unlimited host of free banks, and say they would be glad to see foreigners from Europe come in among us and take the stocks in those banks within our own State. And we are told, sir, yes, impudently told, that this is good old Jackson democracy. Sir, not one word of it is true—not the first word.

When we ask that the bare privilege may be left for the State to take stock in the bank, or not, as to the people hereafter may seem right,

they are up in arms, and instantly begin preaching General Jackson democracy—that it is wrong very wrong, for the State to own stock in any bank; and the language of the gentleman from Posey (Mr. Owen), is, “as there is none, and should not be any connection between church and State, neither should there be any connection between bank and State;” and this, he says, was the opinion of General Jackson. When, I ask, did these worthy friends learn all this? Certainly before 1839—certainly more than eleven years ago. Well, sir, in the winter of 1839, both the gentleman from Posey, (Mr. Owen,) and the gentleman from Tippecanoe, (Mr. Pettit,) were members of the General Assembly of this State. That was at a time when our then splendid, but since most odious system of internal improvements, was in full blast—it was before that stupendous fabric of human folly had spread its withering blight over the length and breadth of our State.

Well, sir, at that session of the Legislature Joseph G. Marshall, a staunch and well known friend of the improvement system, and a whig, introduced a bill, the object of which was to borrow a large amount of money upon the credit of the State, to be converted into bank stock. We were told, the other day, by several members, my worthy colleague among the rest, that the State Bank had lost to the State one million of dollars in State bonds. At the time the statement was made, I was not prepared to even contradict it; but now, sir, I am not only prepared to contradict their assertions, but I am prepared to prove the falsity of the charge. It was, sir, to themselves a stumbling block, how the bonds so lost had become chargeable to the State, independent of the bank; but to me the matter is now easily solved, and I shall here take occasion to explain it. I want the people at home to understand this matter, for it was not unfrequently adverted to upon the stump last summer, and much injustice was done the State Bank by that course. As I have already said, Mr. Marshall, on the 17th of January, introduced a bill, numbered 228, to increase the capital of the State Bank, as was declared by the title. On the 6th of February following, a lapse of twenty days, for consideration, the question is put, Shall this bill be engrossed for a third reading? The next, and by no means an unimportant inquiry, is, what was the true character of that bill, and what was the ultimate object of creating it a law?

I here state, the bill was brought forward for the sole use of the *internal improvement system*, and for no other or different purpose. I am authorized to say that it was without the least possible agency on the part of the Bank. The Bank really had no interest in it. She was sought to be made the mere instrument of the State, through which to make money to be applied to internal improvement purposes, and to that alone. To put the matter beyond the pos-

sibility of dispute as to the object and intention of the act, I will, with the permission of the Convention, read the fifth section of the act, which of itself gives a full explanation. It reads as follows:

"The amount of said loans shall be subscribed and paid over by said commissioner of the sinking fund, as bank stock, in the branches of the State Bank, at fifty dollars for each share. The dividends on which, shall be first applied to the payment of interest on said loans; and the overplus is hereby appropriated to internal improvements, to be applied to the payment of interest on State bonds, sold for that purpose, in such manner as the Legislature may direct."

Now, sir, can there be any mistake as to the purpose to which the proceeds of that loan were to be applied? Not one dollar of it was ever intended to benefit the State Bank; nor had the State Bank one dime of interest in the loan. The sum to be loaned was one and a half million of dollars. The Commissioners of the Sinking Fund, through the agency of the President of the State Bank, or the Fund Commissioners, were directed to make the loan. It was to be made for the State, and not for the Bank, as has been heretofore urged, both here and elsewhere.

They sent the President of the State Bank to borrow the money. He was the mere agent of the State. He sold one million of the stocks on a credit, and the State, *not the Bank*, lost some eight or nine hundred thousand dollars of that stock, or State bonds.

Now I ask the question, did this law in any way connect the State with the Bank? Did it not place the funds of the State, thus to be borrowed, (provided they had ever got any,) directly within the vaults of the State Bank, completely at her mercy, without any sort of security, to be banked upon, for the use and benefit of the internal improvement system? Could there be a more complete union of State and Bank? Could there be a greater confidence reposed, than was in this case reposed by the State in the Bank?

Now where, sir, think you, we shall find those early admirers of Jackson democracy—those gentlemen whose very nerves quake at the bare thought of a connection between State and Banks? Sir, the gentleman from Tippecanoe (Mr. Pettit) did not vote upon the bill at any stage, as is shown by the journals. But, sir, the gentleman from Posey (Mr. Owen) did vote upon the question of engrossment, and upon its final passage. And he, at every point, voted for that bill. The law passed—the bonds were sold, and the State sustained the loss. If it was right then to connect the State with the Bank, what makes it wrong now? If the State might then invest one and a half million of dollars in the State Bank, to be banked upon to make money for internal improvement purposes, why may she not

now invest all her trust funds in the same way, and let them be making twelve or fifteen per cent. instead of six, to educate the little children of the State? Jackson's theory had been promulgated to the world, as early as 1832; this happened seven years afterwards. If the Jackson theory of no connection between Bank and State is good and wholesome now, why was it not good then? If we are to receive and obey it as a part of the democratic law of the party now, have you increased its obligation since 1839?—for at that time the gentleman himself who now presses it home upon us, did not regard it as being of any binding force or effect.

It was also the unqualified advice of General Jackson, that foreigners should not be permitted to invest their capital in our banking institutions. That part of his teachings is now to be regarded as valueless. And why? Because, forsooth, it does not exactly suit the convenience of gentlemen to comply with it, upon the present occasion. In other words, it is their interest to do otherwise.

Here, sir, is the language of the old Hero himself. It is that which, but lately, we heard read by the gentleman from Monroe (Mr. Read). "Should the stock of the bank principally pass into the hands of the subjects of a foreign country, and we should unfortunately be involved in a war with that country, what would be our condition? Of the course which would be pursued by a *Bank almost wholly owned by the subjects of a foreign power*, and managed by those whose interest, if not affections, would run in the same direction, there can be no doubt. All its operations *within* would be in aid of the hostile fleets and armies *without*, controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence. It would be more formidable and dangerous than the naval and military power of the enemy. *If we must have a bank with private stockholders, every consideration of sound policy, and every impulse of American feeling, admonishes that it should be purely American.* Instead of sending abroad the stock of the bank, in which the government must deposit its funds, and on which it must rely to sustain its credit in times of emergency, it would rather be expedient to prohibit its sale to *aliens*, under penalty of *absolute forfeiture.*"

The foregoing, sir, are some of the opinions of General Jackson, upon the impropriety of foreigners becoming our bankers.

But, sir, the times have changed. And why have they so changed? We are told that this is the age of progression, and that we are the progressive democracy, and that it is our extraordinary progress that has brought all this about. Well, sir, I have always learned that as a country progresses in knowledge and science, that men and things may, and necessarily do, change; but that great principles are immutable,

and remain always the same. I repeat, sir, there is no good reason can be assigned, why, if one part of our good old Jackson democracy should now be the law of the land, that the other part should not also be regarded as equally sound.

I have no confidence in a set of political creeds that are good one day, better the next, the next day bad, and by the fourth day, ready to be repudiated *in toto*. Such a doctrine will not do me. Sir, I am against the foreigner becoming our banker, and I am in favor of a well-regulated State Bank, with all necessary and proper restrictions—a real State Bank, wherein the State has an absolute interest—not a mere rickety-headed, muling and puking bastard, bearing the name of State Bank, but owned and controlled by a set of foreigners, who have no interest in common with us, and whose only inducement to come among us, is for the purpose of drawing from us all they can of the precious metals, and leave among us a spurious and irredeemable paper circulation in its place.

Hereafter, I trust, when gentlemen undertake to press upon us the teachings of any of our patriotic statesmen who have gone before us, they will themselves be willing to take the admonition as a whole, and to practice upon it, and not seek to garble it to suit present special purposes.

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CONSTITUTIONAL CONVENTION, }  
January 25th, 1851. }

I am erroneously reported by you in a few remarks made on the 13th of this month.

I take this occasion to remark that I have more than once requested the stenographer to hand to me for revision any remarks of mine, before publishing the same. This request has been disregarded, and I have been misrepresented in many instances.

What I said on the 13th of January was as follows:

Mr. HALL. I have had some experience in Legislation—have been present when great excitement prevailed, but never was in a body where there was as much excitement as now exists in this body. It is useless to attempt a compromise of a question of as much magnitude as that now pending under such a state of feeling. If the friends of the free banks propose a measure it is either laid on the table or voted down. The same takes place with a proposition originating with the State Bank party. The better course to pursue, is to refer the whole question to a select committee, and by the time a report shall come in from that committee, this body will be prepared to act with more deliberation on the question. I therefore renew the motion to refer the subject to a select committee of one from each judiciary circuit.

S. HALL.

MONDAY, JAN. 20th, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. WILSON, of Lafayette.

The journal of yesterday was read and approved.

The PRESIDENT announced the first business in order to be the consideration of the special order, being in relation to Grand Juries.

Mr. BASCOM moved to suspend the rules for the purpose of enabling him to introduce a resolution calling on the Auditor of State to furnish the Convention with a statement of the amount of fees paid to attorneys, &c.

The rules were suspended and the resolution was adopted.

GRAND JURY.

The Convention then proceeded to the consideration of the section in relation to Grand Juries, the pending question being on the amendment of the gentleman from Ripley (Mr. Smith) to the amendment proposed by the gentleman from Vanderburgh (Mr. Lockhart). Mr. Pepper of Crawford having also moved to strike out the section and insert a distinct proposition,

Mr. HOVEY remarked, that as there seemed to be a disposition to compromise this matter, he hoped it would be postponed for a day or two. [Cries of "no, no."]

Mr. PETTIT. The Convention can dispose of it in two minutes.

Mr. HOVEY. Very well.

Mr. PETTIT. This question has delayed the Convention some time. I propose to put it upon a basis that no one can object to. I shall, in a moment or two, move that all the amendments be laid upon the table, in order that I may offer a substitute for the section. I abandon the idea of abolishing the Grand Jury, and shall propose to leave the whole question to the Legislature. What I shall offer is a provision to this effect.

The Legislature may continue, abolish, or modify the Grand Jury system. This, I think, will suit those who want it continued as well as those who want it abolished or modified. It will dispose of the entire subject. I therefore move that the pending amendments be laid upon the table, in order that I may offer this as a substitute.

Mr. WOLFE asked for a division of the question.

The question being first on laying the amendment to the amendment on the table, it was decided in the affirmative.

The question then being on laying the amendment of the gentleman from Vanderburgh on the table,



The yeas and nays were demanded, and they were ordered; and, being taken, were—yeas 67, nays 51—as follows:

**YEAS.**—Messrs. Anthony, Bascom, Beach, Beeson, Biddle, Butler, Chapman, Chenowith, Coats, Colfax, Cookerly, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Garvin, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Helm, Hendricks, Holman, Huff, Johnson of O., Jones, Kent, Kendall of White, Kinley, Logan, Mather, Mathis, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Ristie, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Spann, Steele, Tannehill, Thornton, Trimble, Wiley, and Yocum—67.

**NAYS.**—Messrs. Allen, Ballingall, Barbour, Beard, Blythe, Borden, Bourne, Bowers, Brookbank, Bryant, Carter, Clark of H., Clark of Tippecanoe, Clements, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Haddon, Hawkins, Helmer, Hitt, Hovey, Howe, Johnson of D., Kilgore, Lockhart, Maguire, March, May, Morgan, Newman, Read of Monroe, Shannon, Snook, Smith of Ripley, Stevenson, Tague, Thomas, Wallace, Walpole, Watts, Wolfe, Wunderlich, Zenor, and Mr. President—51.

So the amendment was laid on the table.

The question was then taken on laying the amendment of the gentleman from Crawford on the table, and on a division—ayes 54, noes 30—decided in the affirmative.

The question then being, Shall the section be engrossed for a third reading?

Mr. PETTIT. I now move to strike out all after the word “resolved,” and insert the following:

“The Legislature may continue, abolish, or modify the Grand Jury system.”

I offer this, sir, (said Mr. P.) as a compromise, and I hope it may be adopted, and the matter ended. It neither proposes to abolish nor continue the Grand Jury system, but leaves the matter entirely with the Legislature.

Mr. MILLER of Fulton demanded the previous question.

The demand for the previous question was seconded by ayes 60, noes not counted, and the main question ordered to be now put.

Mr. BORDEN. As this is one of the most important questions that can come before this body, we ought to have the yeas and nays.

The yeas and nays were ordered; and, being taken, were—yeas 93, nays 28—as follows:

**YEAS.**—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Blythe, Butler, Carter, Chapman, Chenowith, Coats, Colfax, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Far-

row, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Holman, Huff, Johnson of D., Johnson of O., Jones, Kent, Kendall of White, Kinley, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney Moore, Morrison of Marion, Morrison of Washington, Murray, Niles, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Steele, Tague, Tannehill, Thornton, Trimble, Wallace, Walpole, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—93.

**NAYS.**—Messrs. Ballingall, Barbour, Beard, Bicknell, Biddle, Borden, Bourne, Bowers, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Crawford, Dunn of Jefferson, Fisher, Hogin, Howe, Kilgore, Lockhart, Milligan, Morgan, Newman, Smith of Ripley, Spann, Stevenson, Thomas, and Watts—28.

So the amendment was adopted.

The section was then ordered to be engrossed for a third reading.

#### ATTORNEY GENERAL.

The section which provides for the election of an Attorney General was taken up on its second reading.

Mr. THORNTON suggested that the section had better be laid on the table for the present, until the information asked for by the gentleman from Wells should be obtained.

The section was, for the present, laid upon the table by unanimous consent.

#### CIRCUIT COURTS.

The Convention resumed the consideration of the section which provides that the State shall be divided into twenty circuits;

The pending question being on the motion of the gentleman from Dearborn (Mr. Holman) to strike out “twenty” and insert “twenty-four,” &c.

Mr. HOVEY. In the few remarks which I propose to make, it will be necessary not only to consider the section before the Convention, but also the series of sections heretofore offered by the gentleman from Dearborn. The sections offered by him constitute a system of themselves, and must be considered as a whole. When stripped of their legal phraseology, they amount to this: There shall be a Supreme Court and twenty-four Circuit Courts in the State; the Circuit Courts to consist of one judge, and vested with the jurisdiction possessed by the present Circuit and Probate Courts; to hold two terms of the Circuit, and at least three terms of the Probate Courts in each county in every year. I propose to amend

this plan so that, after the year 1860, the General Assembly shall be empowered to vest the probate jurisdiction in such courts as they may think proper.

It may not be unprofitable to look a little into the history of the jurisdiction now possessed by the Probate Courts of this State. By the laws of England the Ecclesiastical Courts and Courts of Chancery had complete control of all matters now cognizable in our Probate Courts. The Ecclesiastical Courts were composed of the clergy, and no person except one of that order was permitted to be a judge. Our forefathers, at an early date, adopted the common law of England, and formed their courts after the English models, as near as the condition of our institutions and society would admit. As early as January 2d, 1818, the common law of England, with all statutes and acts made in aid of the same prior to the fourth year of King James the First, &c., and which are of a general nature, not local to that kingdom, and not inconsistent with the laws of this State, was adopted by our General Assembly. The probate jurisdiction, as it was connected with the Church of England, was of course deemed inconsistent with our republican institutions. This led to the establishment of courts in this country unknown to the common law. In some States they are called "Orphans' Courts"—"Surrogates"—"County Courts"—and with us and others, "Probate Courts."

From the formation of our Territorial Government in 1800, up to 1818, the jurisdiction now exercised by our Probate Courts was vested in the Court of Common Pleas or Circuit Courts. In the last mentioned year that jurisdiction was transferred to the associate judges of the Circuit Courts, who retained it until the act of January, 1824, when it was taken from them and conferred upon the "equity side of the Circuit Courts," or, in other words, upon the President Judges. At that day, if I have been correctly informed, the President Judges made no small show in the political arena, and as they received no extra pay for the additional labor thus cast upon them, they succeeded the following year in getting the probate business transferred to the associates again, subject to their revision.—Acts Feb. 11th, 1825. Here the probate business rested until January 23d, 1829, when the present probate judge system was established. By this review it will be seen that, since 1818, the associate judges have had the control of that court ten years, the President Judges one year, and the Probate Judges about twenty-one years. These frequent fluctuations plainly prove that the people have never been satisfied with these courts; and I can say that, so far as my information extends, from an investigation of the old records of these Courts, and my own experience as a practicing attorney for the last nine years, that they have had good cause for that dissatis-

faction. I will further say—and I believe the old members of the bar and the records of the State will bear me out in the assertion—that there can be no period found since 1818, in which the probate business has been as efficiently administered as during the term in which the President Judges of the circuits were compelled to perform those duties.

It may be now asked how we are to remedy this long borne evil? I will answer it freely and without disguise. PAY YOUR JUDGES. Do you expect to procure men well qualified to discharge all the complicated duties of these courts for the pitiful sum of fifty dollars a year? And yet, sir, that is about an average of what they now receive. He that knows *anything* about law, will tell you that that sum will not pay your judges one dollar a day for the labor they should bestow out of court to qualify them for their duties, not to mention the time spent within. There are no judges whose duties are as complicated as those who preside in our Probate Courts. To fill that bench as it should be, would require an honest, firm, upright man—a good accountant, familiar with the ecclesiastical law, so far as relates to the granting of letters testamentary and of administration—familiar with all their nice distinctions in regard to trusts as treated of in works on equity—familiar with the common law of England, and familiar, in short, with the whole law of our State that relates to the many nice and subtle questions which arise in these courts. And yet the people murmur because their judges permit estates to be squandered, because they make titles to land by which the innocent suffer, and because, in short, that they are not all that they should be—wise, honest, and familiar with the laws! I have found it to be the case, not only in law, but in all the practical details of life, that MONEY is the grand moving principle. Few men can be found capable of filling such important stations who have patriotism enough to do it for fifty dollars a year. I repeat it, sir, if you want good courts, you must pay the judges who preside.

The history of all the cases of any one county in this State, if it could be fairly and truly written, would show such startling developments that it would lead to the abolishment of these courts without delay.

An old member of the bar in my part of the State, who is a sound lawyer and good practitioner, styles these tribunals "courts of confiscation." He says that the administrators, clerks, doctors, and lawyers make a clean sweep of the whole." This is rather a harsh censure; but I am fearful, sir, that such cases are not rare. The dead man, the widow, and the orphan have never been the particular favorites of the living. At an early period in the English law, the whole personal estate of the decedent vested in the King, as "the father of his country," and was not even liable for his just debts.



The King subsequently granted the property of decedents to his holy bishops, to be used by them "in pious uses," which they construed to mean for their own use—not the pious use of paying the dead man's debts—not the pious use of providing for the bereaved widow—not the pious use of rearing and educating the helpless and destitute orphan—but to minister to their own corrupt and luxurious vices! And, sir, the feeble guard which we throw around the widow and orphan here leave them but little less room to murmur, than under the iron rule of the old monarchs of England.

Sir, the General Assembly has spoken with more than one voice, through its laws, in condemnation of our probate system. The auditors of the respective counties have the control of your Trust Funds, the surplus revenue, and the Common School Fund, and are authorized by law to loan the same, by taking mortgages on real estate; but they are strictly forbidden not to loan money on any lands, the titles to which have been acquired by *purchase at executors' or administrators' sales!* Now, sir, what language does this speak? The State has an *interest* in these funds, and she knows that the courts, through which these titles are made, are so defective that she will not permit her officers to risk her money. Surely this is very kind and considerate! The farmer, the mechanic, the laborer, those who are not familiar with the laws, may purchase their lands and get bad titles; but the State is too wise to lose her funds in such unsafe investments. Surely this *interest* which the law-makers of the State seem to feel for her, and *not for the people*, is ahead of the age!

I cannot pass by another law, to be found within our code, although it may not be strictly within the scope of this debate. By our general law of limitations, twenty years adverse possession of land, with color of title, gives the possessor a right against the world. In the case of sales of land by guardians, administrators, or executors, the heir or ward is compelled to bring his action within *five years after the sale*, or within five years after the termination of the guardianship, R. S. 1843, page 458, sec. 25, thus giving these generally helpless claimants *one-fourth of the time* that is given to the adult citizen in other cases to recover his lands. Is this not too hard, when we take into consideration the manner in which these sales are made. Upon a deficiency of personal estate to pay the debts of the decedent, the administrator commences suit against the heirs for the sale of the real estate. An attorney has to be employed to file the petition—the sheriff takes his writ, and with due form and ceremony goes to the widow's house, who has the innocent, helpless, suckling defendant upon her breast. A man unfamiliar with our law would ask, what is he doing? Why, sir, he is reading his writ to that babe, that can neither walk nor talk,

commanding it to be and appear before the Probate Court, to show cause why its lands should not be sold to pay its father's debts! Oh ye wise law-makers, your wisdom is astonishing! Thus, sir, the lands pass from the hands of that suckling child, and five years after the sale he is forever debarred from reclaiming it, no difference whether it was justly or unjustly sold! The whole system of our present probate laws, with the organization of courts and all, seem to me to be an altar erected upon which the widow, the orphan, and the helpless, may be conveniently sacrificed. Enough of this. I will now return to the subject.

From the view which I have taken, two conclusions follow. The first is, that the Probate system should be changed, and the second is, that that cannot be done without a fair compensation to the judges. As the people did not expect at our hands that we would fasten upon them any expensive system, let us see whether the same amount now paid for our judicial officers cannot be more judiciously used. Under the plan submitted by the gentleman from Dearborn, (Mr. Holman,) by abolishing the offices of the Associate and Probate Judges, I am sure we can.

The cost of the present system is about as follows:

|                                        |       |         |
|----------------------------------------|-------|---------|
| 3 Supreme Judges, at \$1200.           | - - - | \$3,600 |
| 13 Circuit Judges, at \$800,           | - - - | 10,400  |
| 180 Associate Judges, say \$50 each,   | -     | 9,000   |
| 90 Probate Judges, Auditor's estimate, | -     | 5,000   |

286 Judges.—Total pay of Judges, - \$28,000

This estimate varies from that submitted by the gentleman from Dearborn, as I make no allowance for extra charges. I think extra charges should not be made in the estimate, as about an equal amount of costs of that kind would probably arise under any system.

The following would be the cost of the plan proposed:

|                              |          |
|------------------------------|----------|
| 3 Supreme Judges, - - - - -  | \$3,600  |
| 24 Circuit Judges, - - - - - | 19,200   |
|                              | \$22,800 |

Thus making a saving by the proposed plan over the old system, of \$5,200 a year. I must, however, say that I think the judges under this system should be allowed \$1000 salary. The expenses under the proposed plan would then be—

|                                     |         |
|-------------------------------------|---------|
| 3 Supreme Judges, at \$1200, - - -  | \$3,600 |
| 24 Circuit Judges, at \$1000. - - - | 24,000  |

\$27,600

Which would leave a balance of \$400, in favor of this over the old system, and raise the salary of the Circuit Judge from \$800 to \$1000 per year.

That these 24 Judges will be able to perform the labor, has been shown by the gentleman

from Dearborn, in an example of his part of the State. I will offer one to show that it will also suit the counties in the part of the State where I reside. There are 186,000 polls in the State, which being divided by 24, (the number of Judges proposed,) would give to each circuit 7,750 polls. Vanderburgh, Gibson, and Posey, would lack 600 polls of that number, so I will add in Warrick:

| Counties.    | Polls. | Days C. C. | Days Pr. Ct. |
|--------------|--------|------------|--------------|
| Vanderburgh, | 2,454  | 28         | 56           |
| Posey,       | 2,500  | 18         | 36           |
| Gibson,      | 2,140  | 12         | 24           |
| Warrick,     | 1,707  | 10         | 20           |
|              | 8,801  | 68         | 136          |

Thus showing that in these four counties, containing more than a thousand polls over the necessary ratio, a Judge would have to serve 68 days in the Circuit Courts, and 136 days in the Probate terms, making in all 204 days in the year.

Thus I think I have shown that the plan is economical, superior to the present system, and in every way capable of being carried out, without any additional expense.

By the amendment I shall offer, if it shall happen to be inefficient, after eight years' trial, the Legislature can establish some other system. I hope the Convention will have the nerve to throw off the chains that have so long bound us, and if they will not accept this, that some plan may be adopted that will, in some extent, at least, improve the present feeble Probate system.

Mr. BORDEN said he desired to make a few suggestions which he had been prevented from doing on Saturday, in consequence of suffering from the effects of a severe cold which produced hoarseness.

It had been said that this was a matter for lawyers to discuss and to decide upon. He affirmed that it was a question which it was important for the lay members to consider and decide. [Laughter.]

Mr. PRATHER. What does the gentleman mean by lay members?

The PRESIDENT. The gentleman from Allen has the floor.

Mr. PRATHER. I am aware of that, sir, but I wish to get an explanation.

Mr. BORDEN. I mean those who are not lawyers professionally. But I believe the Convention is going to permit all persons to practice at the bar, therefore, there will be no lay members. [A laugh.]

Mr. BORDEN then proceeded to address the Convention again, in continuation of his remarks on Friday last. He said he had some amendments which he desired at the proper time to propose. He contended that to give the necessary independence to the judiciary, the judges should be elected for a reasonable term of service, and should receive a liberal salary.

He contended that the judges of the Supreme Court should be elected by the people of the whole State, that they should go out of office in classes, and that they should be eligible to no other office during their term of service as judges. Another change that he desired to see was that the Supreme Court should hold a session once a year in each district. He contended that the present probate system should be abolished, alluded to the New York and Pennsylvania probate systems, and argued that the Convention should decide the question for themselves, and either create a county court or throw the probate business at once into the circuit court and increase the number of circuits. His remarks are withheld for revision; they will be published hereafter.

Mr. CLARK of Tippecanoe. The debate having been opened to the lay members at the suggestion of the gentleman from Allen, I have the permission of my friend from Ripley, who is a great economist, to occupy about five minutes of the time of the Convention.

The argument of the gentleman from Posey, goes to show that the administrators of estates and the lawyers and officers of the courts are the greatest enemies of the widow and orphan. But he did not show us how estates could be settled without the intervention of courts and lawyers, and administrators. To carry out his argument, the gentleman should have indicated some way in which we could get rid of these instrumentalities. He tells that our statutes, in the most conclusive manner, certifies to the incompetency of the probate court, by providing that lands, the title of which has been derived through the agency of this court, shall not be admitted as security for funds loaned by the State. The Statute testifies in the same manner, to the incompetency of the circuit court. [Mr. Clark read from the Revised Code, to the effect that no land sold on execution issued on judgments obtained in the circuit court, should be taken in security for money loaned by the State.] So that by the same argument, the circuit court is just as objectionable as the probate court.

Now, the gentleman from Allen says, that we dodge this question—that we are afraid to abolish this probate court. But he proposes to establish a probate court and call it a county court; although it is nothing else than the present probate court.

Mr. BORDEN. The gentleman misunderstood me. I say you should decide the question. If you do not establish a county court, the business should be thrown into the circuit court.

Mr. CLARKE of Tippecanoe. Well, you establish a county court to transact the probate business. In what respect will it differ from the present probate court, except in name? The court has the same jurisdiction. You elect the judge by the same electors. You refuse to enlarge the salary to induce more competent men



to take the office, and how will the court be improved in any respect by calling it a county court?

The gentleman from Posey stated many objections to the law, in relation to the administration and settlement of decedent's estates. These are subjects for the Legislature to amend and settle. The defects of the law are not the fault of the probate judges. Nor is it the fault of the present system, that prudent men are not always appointed as administrators. Men do not always manage their own affairs prudently. And wise men may even be unwilling to burden themselves with the trouble of other people's affairs.

If estates could be settled without the intervention of administrators, his argument would be true. The greater part of the business of the probate court, is the settlement of accounts; and I venture to say that the circuit court would not bestow the necessary labor upon this branch of their business. The greater part of the evil of which the gentleman complains is not in the court, but it is owing to defect in the law. We have not had laws that would enable the administrator to collect debts that were due to the estate. This has been one of the great evils of our probate system, and is one of the chief causes of delay in the settlement of estates. Now, sir, I could go to our circuit court and show that we have had civil cases there, where there were living parties pursuing claims for five years, without obtaining a decision. And what greater security would we have that probate business would be decided speedily. I think it would be impossible to make any court that would remedy all the evils that are complained of. But if we establish a new probate court, I have not yet heard how we are to get rid of the enemies to decedent estates—administrators and clerks. If we transfer the probate business to the circuit court, there would be these harpies of lawyers of which the gentleman complains so much, exacting still larger fees.

A DELEGATE. "And doctors, too."

Mr. CLARK. Yes, sir, the doctors' fees have also to be paid, and I grant you they are high enough. If the clerks' fees are too high, they can be reduced. If he is a harpy, upon the estate, you can cut him off with a smaller allowance, but if you establish a surrogate court, and make the judge his own clerk, will he be less a harpy? When you make his fees depend upon the record that he himself shall keep, will he be less a harpy? I imagine not.

Now, if we leave this question open, whenever the experience of the country suggests a better system, the Legislature will provide it. They will provide higher salaries when the business and the condition of the State will permit it, and not before. But if we establish this provision in the Constitution it is fixed and unchanged.

The gentleman from Floyd, who is so exceedingly anxious to provide a perpetual existence for the probate court, and who also thinks it will be greatly improved by calling it a county court, told us the other day, that even his county could not pay such a judge a high salary. That the business will not justify it. Well, sir, I cannot perceive any better way than to leave the matter as provided in the present Constitution. The Legislature will continue the present system until the circumstances or necessities of the State require the organization of a different court. They can provide for a surrogate for each county, or make probate circuits, as circumstances may require. Some counties are large and populous, others are small, with but few inhabitants. Possibly, in the larger counties the business may pay a competent man, in each one, to devote his whole attention to it. Not so in the smaller ones; and in these it may be necessary to join two or three together and form a circuit. It is not a high salary that gives a man ability or legal knowledge. But to render a man skillful or capable of transacting any business readily, he must devote his attention to it. It must occupy the greater part of his time; or, in other words, it must become *his business*. To enable a man to be a competent probate judge, he must receive such a salary as will allow him to devote the principal part of his time and attention to the business of being judge. Unless the office be placed on such a footing as to reward a competent man for the employment of his time in the discharge of its duties, we can have no assurance that we shall have more efficient judges.

Mr. RISTINE. Mr. President: I have listened with much attention to this discussion, and am willing to acknowledge that, in many particulars, I have been much edified. Amid all the arguments advanced by the many speakers, but few, if any, defects are disclosed in our present circuit court system; the great assault has been made upon probate courts, or rather upon the judges of those courts, and the honorable gentleman from Dearborn in his sympathetic recital of the wrongs and oppressions endured by widows and orphans at the hands of ignorant and incompetent judges, has almost made us all, with universal accord, ready to exclaim "down with them!" But, sir, in all this discussion, in all the arguments used, it strikes me the speakers have generally missed the mark. I think, from my experience, and the knowledge which the members of this Convention have of the practical workings of this system, that we may all be very easily satisfied that the true, the greatest source of the evils complained of, remains almost if not wholly untouched. I will give, as briefly as I can, what I conceive to be the evil, and how that evil is to be remedied, and remedied effectually. It is a false philanthropy, inducing wrong legis-

lation; it arises and grows out of that law which gives preference to the nearest of kin, or the largest creditor in the administration of decedent's estates, without any reference, whatever, to competency or qualification in the discharge of the duty required. How often, sir, is it that applications for administration are made, and granted, to persons who have not even the qualifications which enables them to write their own name? Our present statute makes it imperative that this grant should be made—the court cannot avoid it. What then follows as the consequence of such an appointment? This administrator or administratrix seeks the counsel of some person in their own vicinity, in whose knowledge of the business they have to transact they have confidence, but who, in fact, is just as ignorant of the duty as he or she. With such counsel, and with such is often the case, the duties are entered upon, and before the court is advised, the whole estate is reduced to an almost inexplicable mass of confusion, and delays and losses are the inevitable consequences which follow. Now, sir, this is no fancied picture. I would go into detail of the many cases that have occurred under my own observation since I have served as clerk of the circuit court of the county which I, in part, represent here. It is in the settlement of estates by such a class of administrators, that complaints are made; their business capacity does not permit them to come into fair and even competition with those with whom they have to deal. They have not that legal knowledge which enables them to distinguish, at all times, between a legitimate and an illegitimate claim; and thus situated, they are frequently made the instruments through, whom the more cunning extract sums which ought not to be paid. These unjust claims come before the court properly receipted, and are admitted as vouchers in the settlement. The delays consequent to all such cases accumulate costs which in the end are paid from the assets of the estate.

I believe the only true system—the only efficient remedy for this evil, is to give to the courts, or the clerks in vacation, (subject to confirmation by the court at the next term,) the power to grant letters of administration only to such persons as are deemed competent, and will give the required security; this mode adopted, and the administration of estates would soon be confined to a few men, and to those only whose business qualifications and experience had approved them competent. It is unjust, sir, it is untrue, that the defects and consequent complaints which are made under this system, arise from the incompetency of the judges. In all the avocations of life, experience proves to each member of this Convention, that nothing can be expected to be well done except a competent person be engaged to execute it. How then, sir, are we to expect a duty well performed, requiring in most cases,

skillful, practical business qualifications, combined with a knowledge of legal duties and obligations, as long as your statutes yield a preference, indiscriminate of qualification. We all know that it is not practicable, at all times, for an administrator to have a lawyer at his elbow to counsel him on every occasion, nor is it necessary that every administrator should be a lawyer; but every administrator should be possessed of fair business qualifications, with a mind of sufficient capacity to comprehend those statutes which impose upon him defined duties. I care not what character of men you place upon the probate bench—how high their legal qualifications—until the Legislature does its duty by the enactment of such laws as will remedy the evils growing out of the present mode of appointing administrators, we shall not hear the end of these complaints. There is much connected with the present system which should be abolished—connected with the sale of real estate. There is too much form without substance, producing delay and attendant expenses in applications to sell lands by administrators.

In my county, and, so far as my knowledge extends, the people of other counties, have selected men for their Probate Judges, of good sound discriminating minds—men fully conscious of the responsibility resting upon them, and who, except in some of those “hair-splitting technicalities of the law,” are as competent to decide as any other men who scrutinize the conduct and examine with strictness the accounts of administrators, which we shall never be able to get from that class who have extracted from the books and condensed in their heads all the general principles and nice distinctions which many think are the only requisites for a competent judge. It is but seldom, sir, that widows and orphans have just cause to mourn over wrongs inflicted by illegal and “ignorant” decisions, made by Probate Judges; but I am willing to admit that it is too often the case that they have just cause to complain of those to whom the enactments of the Legislature have confided the trust, consisting of their all in the way of earthly goods. Sir, more is lost to this class, by the incompetency, than there is from the infidelity, of administrators.

To avoid delay, and assist in removing these complaints, the Legislature should clear away all those obstacles now in the way of administrators, for the collection of debts due decedents' estates, repeal all stay and appraisal laws, leaving out of the law every possible apology for administrators to delay their settlement. To me, Mr. President, it looks very difficult how this Convention is to insert in this Constitution that which will wholly remove these evils—how anything else than general principles, leaving the details to be made and carried into effect by the Legislature, (where it properly belongs,) from time to time, as defects may



present themselves, or as necessity may demand.

Innovation is the order of all human affairs, and of all human institutions. Change is inscribed on all our works. Then shall we act most wisely, in providing for the correction of contingent and probable evils, as they may present themselves in our onward march, or assume for ourselves a knowledge competent to scan the future, and provide safely against those evils which the experience of the past proves to be incident to all the works of human origin?

Mr. FOSTER. The gentleman from Allen says that it is for the lay members to discuss this question. Well, sir, I am one of the lay members, and I wish to express my opinions, very briefly, in regard to it. This Convention, sir, has been in session for nearly four months, long past the ordinary period of incubation, and we have not been able to produce a chicken yet. I suppose the reason is, because most of the eggs are added.

This question in regard to the Probate Court was discussed in my county. The people were in favor of the election of judges, and they also supposed there was considerable defect in the probate system, which required to be remedied. Now the proposition is, to elect twenty Circuit Judges—the gentleman from Dearborn proposes twenty-four—and to give them probate jurisdiction. Under the present system, the expenses of the Probate Court are about twenty-eight thousand dollars. Now, if we establish twenty-four courts with twenty-four judges, and give each a salary of a thousand or twelve hundred dollars, their salaries will amount to about twenty-six thousand dollars, which is something less than the expenses of the present system. But it appears to me, that if we give probate jurisdiction to the Circuit Court, twenty judges will be quite sufficient. There are thirteen Circuit Judges now, and there is no difficulty, so far as I have ascertained, in transacting all the business that belongs to the Circuit Court. This will average not quite five counties to each judge. There are some counties in which there will be always more business than in others. The people are of the opinion that a system may be established, which will be less expensive than the present, and I concur in that opinion.

Mr. COOKERLY. With the view of getting a vote upon the section, I move to lay the amendment of the gentleman from Dearborn upon the table.

The yeas and nays were demanded, and they were ordered.

Mr. HOLMAN. I suppose it is in order for me to withdraw my amendment?

The PRESIDENT. The gentleman cannot now withdraw his amendment.

Mr. CLARK of Tippecanoe. I move that the gentleman have leave to withdraw his proposition.

Leave was granted by consent, and the proposition was accordingly withdrawn.

Mr. NEWMAN moved to amend so that the State should be divided into Circuits, leaving the number of Circuits to be fixed by the Legislature.

Mr. KELSO. I am sorry that the gentleman from Dearborn has withdrawn his amendment. However, when we cannot get what we ought to have, we must take the best we can get. His proposition would have cost the State less than the present system. The present system costs about \$28,000 per annum, and the system proposed by the gentleman from Dearborn (Mr. Holman) would not cost over \$26,000, and would have been furnished with a competent court for the transaction of probate business.

Now my friend from Fountain (Mr. Ristine) has taken a good deal of pains to prepare a speech, and he has delivered it in a very proper manner; though by-the-bye, it had more beauty than substance in it. I say, sir, it is useless to attempt to conceal the fact, that there are Probate Judges in Indiana who do not understand even the statute law, much less the general principles of the law. There are plenty of judges, sir, who, on the most simple questions of law, apply to the clerk to know what the law is, even the statutory provisions, and what their decisions ought to be. Through the hands of these County Judges, the whole real estate of the county passes, on a fair average, once in thirty-three years, and upon their decisions depends the stability of our landed estates in Indiana.

Now the gentleman from Wayne (Mr. Newman) proposes to leave the whole matter to the Legislature. Sir, we have left our present odious system to the Legislature for the last twenty years or more, and what have they done? What have they done for us in twenty years? The same system of laws regulating the proceedings of the Probate Court, would be well enough, if you put men upon the bench who are competent to discharge the duties incumbent upon them. But we have not got such men on the bench at present, in all the counties. In the county of Switzerland we have got good lawyers upon the bench, but in the county of Ohio this is not the case; the Judge is a first rate man, but no lawyer. Take the two counties together, then, it is a failure. It is as important we should have competent judges upon the Probate Bench, as on the bench of the Circuit Court. Quite as important cases come up before the Probate Court, as before the Circuit Court. It is true, the Probate Court does not try cases of murder, or cases in which the punishment to be inflicted is by imprisonment in the penitentiary. But that Court does try cases where the title to real estate is in question, and where the perpetuity of the estate depends upon the decision. Sir, the remarks of the gentleman from Dearborn, (Mr. Holman,)

the other day, were appropriate, every word of them; and he had good cause to make them, for in the Probate Court of his own county, within less than three months past, a decision was made by the Probate Judge, that a step-father might come in, and he did come in, and charge one hundred dollars for the support of an infant that was born a few weeks before or after its father's death. And that Judge was a fair average Judge.

Mr. COOKERLY (in his seat). He must be a very honest Judge.

Mr. GIBSON (speaking to delegates near him). I can refer gentlemen to decisions of Probate Judges still more outrageous than that.

Mr. KELSO. Now, sir, is a man who would make such a decision, competent to discharge the duties of a judge, however honest he may be? He takes from the helpless, fatherless babe, who cannot speak for itself—from it he takes one hundred dollars, and gives it to a heartless step-father, and for what? Because that babe sucked the milk from its mother's breast twelve months. Is not that, I ask you sir, a glorious recommendation to our present probate system—that an infant shall be charged at the rate of two dollars, or nearly that, per week, for the nourishment it receives from its mother's breast the first year of its existence? Such a decision is no more or less than a judicial robbery of that unfortunate orphan to suit the covetous inclinations of an unprincipled step-father. I now say that any one who would do so ought to be sent to the penitentiary for it, except the plea of ignorance shall be considered a good and sufficient excuse for his conduct.

Now, sir, if we adopt the proposition as it now stands, if we provide for twenty Circuit Judges and transfer to them probate jurisdiction I am of opinion that the business will be better done.

I want to place it in the hands of competent men. It is the man who presides as judge who is to decide upon what terms the real estate shall be sold, and such men should be selected as are qualified from long experience and legal attainments. We want as competent men on one bench as on the other. I still think it would be better to adopt the proposition of the gentleman from Dearborn, but for the sake of compromise, I will vote for the proposition as it now is.

Mr. COOKERLY. I hope the amendment of the gentleman from Wabash will be adopted by the Convention. I am opposed to the increase of the circuits, and I am opposed to giving probate business to the Circuit Courts. It has been asserted here that the lawyers, clerks, and Probate Judges divide the greater part of the estate of persons dying intestate among themselves. I tell gentlemen that if the business is thrown into the Circuit Court it will be in a still worse plight. The lawyers and judges

of that court will be very apt to take all that is left. I have always been opposed to giving the probate business to the Circuit Court. What the people want is that the man who is authorized to do probate business should live among them so that they may have access to him every day. They do not want to defer that kind of business until the Circuit Judge comes round once in three or six months.

The gentleman from Dearborn yesterday, backed by his friend from Ripley, asserted that if we create a County Court we shall have a pettifogging court. I tell the gentleman that if we adopt his proposition we shall have a pettifogging judiciary. I would rather have one pettifogging court than to have a whole pettifogging judiciary. My opinion is that if you change the system at all you should adopt a County Court. That is what we want. We want no increase of circuit. If a County Court be established, we may decrease the present number of circuits. Ten circuits will be quite sufficient; and we shall then have a well regulated judiciary.

Mr. MORRISON of Marion said: As nearly all the lawyers have spoken on this difficult subject, I presume that a few words from one of the "lay members" may be tolerated. The people have a very important interest in the regulation of the probate system of courts and laws. It affects a vast amount of the property of the community, and should be considered with a full understanding of the practical operation upon all classes of our citizens. In behalf of the people of Marion county, I can say that, at the present time, they are well provided with a Judge of Probate, fully able as to competency and integrity to discharge all the duties of the office, and well acquainted with the administration of the law. In this point of view, we are probably more fortunate than some of the other counties of the State, and we may, at another time, not be so fortunate as to have so good a judge.

But, sir, the well known defects of our present probate system have called forth much complaint among the people, and it is our duty to provide such a system as will hereafter be satisfactory to them. That it is liable to many objections no one will deny; but it is much easier to utter objections than to produce unobjectionable remedies.

The plan of the gentleman from Dearborn, to augment the number of Circuit Judges to as great a number as twenty, or even twenty-four, is, to my mind, quite objectionable. These judges will expect, each, to be paid a good large salary, and I am of opinion that we should pay our judges such a salary as would command the best talents of the State for judicial stations. If we have so many judges at high, or even fair salaries, the costs of the system will be burthensome upon the treasury. If we adopt the system of Circuit Probate Judges



es, independent of the Circuit Court Judges, we also incur a very considerable amount of expense, and do not furnish such a court as will be acceptable to the people for the transaction of their probate business. The Judges of the Circuit Court will have so much regular business, at each term, other than probate business, that they cannot well attend to that branch of duty with that care and attention which it so loudly demands; neither can the people by their own proper selves, appear in those courts in term time, to settle estates, or to arrange the difficult questions connected with such settlements. In either the proper Circuit Court or the Circuit Probate Court, it will be always necessary for the parties to employ lawyers, and this would be a heavy charge against any estate.

The cost of twenty-four judges, at one thousand dollars each, which is quite as small a salary as I presume would be requisite, would make the sum of twenty-four thousand dollars. This would be the expense of the Circuit Court system, in connection with the probate system. The Circuit Probate system would probably cost every cent of the same sum. From unmistakable proofs, the associate judges are to be abolished, and their pay will be saved. Some persons are quite sure that the abolition of the associate judges is very right and proper. I think there is some room for doubt on this subject. The people have frequently looked to the associate judges as a very safe check upon the President Judge, and as being the branch of the court whose sympathies and feelings are with the populace, and who were frequently as good judges of the facts and the evidence as was his honor the President Judge. But they are doomed to be no more. Now, I would ask what are we to do in some peculiar cases, to supply their places? Suppose there should arise a necessity for a bill of injunction, a writ of habeas corpus, or the certificate of a judge, where and how are these things to be procured, if there be no judge of competent jurisdiction in the county at the time? Persons wishing a writ of habeas corpus, or a bill of injunction, must follow the Circuit Judge around the circuit, and wait until he can leave his court to go and attend to these special cases. Would not this create much trouble and great confusion? Courts should always be organized in such manner as will best suit the wants of the people.

I think, sir, that a plan may be adopted, if the Convention will take time to consider it, which would lessen expenses, and always give to the people a court at home, always open—a court where they could transact their business by themselves, or through their friends, without employing a lawyer, or paying for his services.

I could organize a court in each county, having full probate jurisdiction, and such other

civil jurisdiction as the Legislature might from time to time confer upon it, which would be useful and safe to the people, and which would not cost a single dollar in the way of salary to the judge. I would make the judge his own clerk, and the fees of his office should be his only pay. If he should have the fees of the probate business, and also have civil jurisdiction so far as to decide all appeals from justices' dockets, the fees would be ample to enlist good legal and business talents, and the people would pay no more fees or costs than they now pay to the clerks of the Circuit Courts. As a further inducement to insure competent judges, a Common Pleas jurisdiction might be added, and all the fees be established and regulated by the Legislature. The term of office might be fixed at short periods, so that a frequent election would give the people an opportunity to hold the judge subject to a proper discharge of his duty, or to fill the place with a better one.

But there are some gentlemen who object to the principle that a judge shall be paid by the fees which shall arise in his own court. They instance the action of the Convention of New York, which, after a trial of the surrogate system, the surrogate being paid by the fees of his office, abolished that system, and from henceforth established the salary system. The cases are different. I propose a court which will require legal talent. The surrogate of New York might have only been a competent accountant. I propose short terms of office—say two years; and that the judge be elected by the people. The surrogate of New York held on a long term, and was appointed. The people of New York are rich, and able to pay large salaries. Ours are less wealthy, and desire economy, and cheap modes of doing business. Indeed, I am forced to say, the one system seems to me to be for the benefit of the lawyers, and the other for the good of the people. If we take away from the circuit courts the small cases, arising from appeals, and other trifling actions, we would give them much more time to devote to the criminal, and important suits in that court. More counties might be included in these circuits, and better salaries could be paid, them without imposing additional burdens upon the people. We could get the best lawyers for judges, and even if we paid each judge twelve hundred dollars a year, the State would be the gainer in the way of expense.

Twelve circuits, thus constituted, would be enough for the whole State. Twelve hundred dollars to each judge would amount to fourteen thousand four hundred dollars, thus saving nearly ten thousand dollars each year, in the way of salaries to judges. Every judge in the State would prefer to be diligently employed, if he were fairly paid for his services; and I, for one, am willing to pay according to the service.

The people desire some reform of the probate court system. The Convention should not

hesitate to comply with their wishes. I regret to see a disposition to either make a system more suited to the lawyers than to the people, or else to leave it unattended to in the Constitution. The people expect the Convention to make this reform, and, in my opinion, they should take the responsibility, instead of throwing it forward upon the Legislature.

Mr. PETTIT. It seems to me that the amendment of the gentleman from Wayne, ought to prevail, under the present circumstances. This section was reported by me, as chairman of the committee, but it will be recollected by the Convention, that the first section of this article has been re-committed with instructions to insert a provision that we shall have county courts, and justices of the peace. That amendment is made, and the committee are ready to report whenever it is in order to do so. If the Convention concur in the report that they have instructed us to make, then you will have established, by constitutional provision, a supreme, circuit, and county court, and, in my judgment, you will not want twenty circuits, if you have county courts. The word "twenty" may, therefore, with all propriety, be stricken out, and leave it to the Legislature to say how many circuits there shall be, according to the exigencies of the country.

Mr. LOCKHART. I would merely suggest that we had better lay this section upon the table, and let the committee report.

SEVERAL MEMBERS. "No, no;" "settle this question first."

The question being taken on the amendment of the gentleman from Wayne, it was decided in the affirmative.

Mr. WOLFE moved to amend the section so as to make the term of office of the judges "four," instead of "six" years.

Mr. DUNN of Jefferson moved that the amendment be laid upon the table.

The motion to lay on the table was, upon a division—ayes 58, noes 43—decided in the affirmative.

Mr. SMITH of Ripley moved to amend so that the judges shall not be eligible to any other office during their term of service, and not eligible to the same office more than six years in every twelve.

Mr. MILLER of Gibson. I believe the section is about right as it is; I, therefore, move the previous question.

The previous question was not seconded.

Mr. PETTIT. I regard the amendment as being ruinous to the judiciary. I move that it be laid upon the table.

The question was taken on the motion to lay the amendment upon the table, and it was, upon a division—ayes 96, noes 27.

Mr. MARCH moved to amend so that judicial officers shall not be eligible to any other office during the time for which they are elected.

Mr. SHOUP moved that the amendment be laid upon the table.

The motion was not agreed to.

The question being taken on the adoption of the amendment, it was decided in the affirmative.

Mr. McCLELLAND moved to take from the table the amendment of the gentleman from Sullivan, fixing the term of office of circuit judges at four years, instead of six, and upon that motion he demanded the yeas and nays.

The yeas and nays were ordered, and they were taken, with the following result—yeas 47, nays 73:

YEAS.—Messrs. Barbour, Bascom, Beach, Bowlers, Carter, Chapman, Chenowith, Coats, Cookerly, Crawford, Davis of Parke, Dobson, Dunn of Perry, Duzan, Fisher, Foley, Gootee, Haddon, Harbolt, Hawkins, Helm, Johnson of D., Johnson of O., Kilgore, Lockhart, Logan, Mathis, McClelland, McFarland, McLean, Milligan, Milroy, Mooney, Moore, Morrison of Washington, Prather, Sherrod, Smith of Ripley, Smith of Scott, Spann, Tague, Thornton, Wallace, Walpole, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—47.

NAYS.—Messrs. Allen, Anthony, Ballingall, Beard, Beeson, Bicknell, Biddle, Blythe, Borden, Bourne, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dunn of Jefferson, Edmonston, Farrow, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Hall, Hamilton, Helmer, Hendricks, Hitt, Hogan, Holman, Hovey, Howe, Huff, Jones, Kelso, Kent, Kendall of White, Kinley, Maguire, March, Mather, May, Miller of Clinton, Miller of Fulton, Miller of Gibson, Morgan, Morrison of Marion, Murray, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Shannon, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Tannehill, Thomas, Trimby, Watts, and Wheeler—73.

So the motion did not prevail.

The question then recurred upon the amendment of the gentleman from Ripley, to strike out the section, and insert in lieu thereof a provision to the effect that the State shall be divided into a suitable number of circuits; the judges to hold their office for four years, but to be only eligible eight years in any term of twelve years.

Mr. BORDEN. Does the gentleman suppose that a man who is competent to perform the duties of judge, will abandon his practice for the purpose of holding the office of judge for four years? It does seem to me that the proposition ought to be laid upon the table.

Mr. SMITH of Ripley. I have always heard it urged as an objection against an elective judiciary, that the judiciary ought to be entirely independent. I desire to place them in that attitude, and I say that, if we get a bad judge, four years is too long to keep him in office, and



if we get a good judge, eight years is long enough. For, sir, there are men enough in the State who are competent to fill the office of judge with credit to themselves and advantage to the public; so that it is quite unnecessary that the same judge should continue to hold office for more than eight years. Is it the intention of gentlemen that a judge shall be continued in office perpetually? I apprehend not. I ask the yeas and nays on the amendment.

**Mr. COLFAX.** The Convention has twice resolved already that the judges shall be elected for six years. I move that the amendment be laid upon the table.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 66, nays 49—as follows:

**YEAS.**—Messrs. Allen, Anthony, Ballingall, Barbour, Beach, Beeson, Bicknell, Biddle, Borden, Bourne, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Davis of Madison, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Farrow, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Hall, Hamilton, Helmer, Hendricks, Holman, Hovey, Howe, Jones, Kent, Kendall of White, Kilgore, Kinley, Maguire, Mather, May, McFarland, McLean, Miller of Fulton, Miller of Gibson, Morgan, Morrison of Marion, Murray, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Shannon, Shoup, Sims, Snook, Smith of Scott, Steele, Thomas, Trimble, Wallace, Watts, and Wheeler—66.

**NAYS.**—Messrs. Bascom, Bowers, Bracken, Carter, Chapman, Coats, Cookerly, Crawford, Davis of Parke, Dobson, Dunn of Perry, Edmonston, Fisher, Foley, Gootee, Haddon, Harbott, Hawkins, Helm, Hitt, Hogan, Johnson of D., Johnson of O., Lockhart, Logan, March, Mathis, McClelland, Milligan, Milroy, Mooney, Moore, Morrison of Washington, Prather, Sherrod, Smiley, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thornton, Walpole, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—49.

So the amendment was laid upon the table.

**Mr. EDMONSTON.** It seems to me that the section comprehends all that is necessary, and all that the Convention desire. For the purpose of getting a direct vote upon it, I move the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being, Shall the section be engrossed for a third reading?

It was decided in the affirmative.

On motion by **Mr. HOLMAN**,

The Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the

#### ORDERS OF THE DAY,

The first business being on section two of report number thirty,

**Mr. BORDEN.** Is it in order to propose an additional section to the preceding report, before this report is taken up?

The **PRESIDENT.** It is in order.

#### JUDGES OF SUPREME COURT.

**Mr. BORDEN.** I hold in my hand an additional section, to which I believe there is no objection. It simply provides that the Judges of the Supreme Court shall go out of office by rotation. It is as follows:

“Provision shall be made by law for classifying the Judges of the Supreme Court, so that not more than one of them shall go out in one year.”

In explanation of the reasons which induce me to offer this amendment, I will simply say that, should the Judges of the Supreme Court all go out of office together, under some great excitement, a party bench might be elected without, perhaps, any view of effecting a party object; and however much it is to be desired that party politics should form no part of the consideration on which a judicial officer is to be elected, we all know that, when party spirit runs high, we could have no kind of guarantee that in such case your Supreme Judges might not be thus elected, if they were all to go out of office together. There are other reasons, Mr. President, which might be urged why this section should be adopted, and I hope it will not be voted down without due reflection.

**Mr. PETTIT** (in his seat). I hope that section will not be adopted. I see no need for it whatever.

**Mr. NEWMAN** moved to amend the amendment by providing that not more than two of the Supreme Court Judges should go out of office at any one time. **Mr. N.** said that the reason why he offered this amendment was, that there would probably be five Supreme Judges, and that, as they were to hold their office for six years, it might be so arranged that two of them should go out every second year.

**Mr. PETTIT** moved to lay the section and amendments on the table.

A division being called for on the motion, there were yeas 33, nays 40.

So the section and amendments were not laid upon the table.

**Mr. DUNN** of Jefferson. It appears to me, Mr. President, that the section proposed by the gentleman from Allen, (Mr. Borden,) if it be amended in the manner proposed by the gentleman from Wayne, (Mr. Newman,) will have a very beneficial effect. If we have but three Judges, one can be elected every second year; and if the Legislature should increase the number to five, then, their term of office being six years, necessarily two of them can go out of

office at one time, and in that way, as the gentleman says, it would avoid the inconvenience of the Supreme Court going into office all at one time.

**Mr. WALPOLE.** I object to this amendment, because I think it is altogether unnecessary. If there were only to be one Judge elected, he might, it is true, be elected upon party considerations. But, sir, the case is very different where four or five have to be elected. In that case, the parties will split, and they will take the best men they can find of both parties. There is no reason, therefore, that I can perceive, why they should go out one in one year and another in another year. Such an arrangement may do well enough in a legislative body, such as the Senate. I say let them all go out together. I hope the amendment will not be entertained by the Convention.

**Mr. BORDEN.** One word of explanation in reference to what was said by the gentleman from Jefferson? The section, as I have offered it, accomplishes the object of the gentleman from Wayne, just as well as his amendment will do. If the Legislature should determine that there shall be five Judges, then one of them can go out in each year.

The question was then taken on the amendment offered by Mr. NEWMAN, and it was rejected.

**The PRESIDENT.** The question now is on adopting the section proposed by the gentleman from Allen (Mr. Borden).

The question being taken, the section was rejected.

**Mr. PETTIT.** There was a section of this report of the committee on the judiciary, which was laid upon the table, and which I wish should be now taken up. It was section number eight, and it is necessary that we should take it up to make it correspond with section number seven, in which the words "at least twenty" were stricken out. The presumption is, from a vote that was taken yesterday, that we shall have a small number of circuits. The object is, to take it up, so as to strike out the number of terms, leaving it to the Legislature to say what number of terms shall be held.

**The PRESIDENT.** The Chair would observe that the section belongs to another article.

**Mr. PETTIT.** We had this under consideration this forenoon, when the Convention adjourned on the motion of the gentleman from Dearborn (Mr. Holman).

**Mr. HOLMAN.** I do not know what may be the rule of order in such a case, but a motion was made to take up section No. 8 from the table with the pending amendment, before we adjourned this forenoon; and, pending that motion, a motion was made to adjourn, which was decided in the affirmative.

**The PRESIDENT.** The Secretary says not.

**SEVERAL MEMBERS.** "Yes, yes," and "that is so," and "the motion was made to take up the section."

**Mr. PETTIT.** Well, is it in order to move to take it up now?

**The PRESIDENT.** I suppose the motion to take up the section would be in order, but it is out of the usual practice altogether; it cuts the bill now under consideration in two. There is another section of this bill, and perhaps it would be better to dispose of that before proceeding to other business, as the bill is now before us.

#### PROSECUTING ATTORNEY.

The remaining section of report No. 30 was then read as follows:

"There shall be elected in each judicial circuit by the electors thereof, a prosecuting attorney, who shall hold his office for two years, and until his successors are elected and qualified."

**Mr. McCLELLAND.** I move to strike out the words, "judicial circuit" and insert the word "county."

**Mr. KENT.** I move to lay the amendment of the gentleman from Randolph on the table.

**Mr. McCLELLAND.** I ask for the yeas and nays.

The yeas and nays were ordered.

**Mr. THORNTON.** Although I aided my friend from Randolph in calling for the yeas and nays, I must say that I cannot vote for his proposition.

**Mr. NEWMAN.** Is it in order to move to lay the section and amendments on the table?

**The PRESIDENT.** No, sir. There is already a motion pending to lay the amendment on the table; and when a motion to lay on the table is made, it has precedence over any other motion to lay on the table that may be offered.

The question was then taken on the motion to lay the amendment of Mr. McClelland on the table, and it was decided in the affirmative—yeas 93, nays 24—as follows:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Barbour, Beach, Beard, Beeson, Bicknell, Biddle, Brookbank, Bryant, Butler, Carter, Chenoweth, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hamilton, Harbolt, Helm, Helmer, Hitt, Holman, Hovey, Howe, Huff, Johnson of D., Johnson of O., Jones, Kent, Kendall of White, Kilgore, Lockhart, Logan, Mather, Mathis, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Ristine, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Tague, Thomas, Thornton, Todd,



Walpole, Watts, Wheeler, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—93.

NAYS.—Messrs. Bascom, Borden, Bowers, Chapman, Clark of Hamilton, Cookerly, Davis of Parke, Dick, Duzan, Elliott, Hogin, Kinley, Maguire, March, McClelland, McLean, Murray, Read of Monroe, Ritchey, Spann, Tannehill, Wiley, and Work—24.

Mr. MARCH. I propose to amend the section in the following manner: Strike out of the fifth line the words "each judicial circuit," and insert, "in such districts as shall be prescribed by law."

Mr. NEWMAN. I move to lay the section and amendment on the table.

The question being taken, the motion was not agreed to.

Mr. FISHER moved to lay the amendment on the table.

The motion was decided in the affirmative, and,

The section was then ordered to be engrossed for a third reading.

#### ORGANIZATION OF CIRCUIT COURTS.

Mr. PETTIT. I move now to take up section 8 in report 29, and the pending amendment, for the purpose of amending the section so as to make it correspond with the seventh section.

The motion was agreed to by consent.

The section was read as follows:

"The circuit court shall be composed of one judge only, who shall hold at least three terms every year in each county in his circuit, and shall have such civil and criminal jurisdiction as may be prescribed by law."

The amendment proposed by Mr. Holman was also read as follows:

"The circuit court shall be composed of one judge only, who shall hold in every year at least three terms of the circuit court, and three terms of probate court, in each county of his circuit."

Mr. HOVEY moved to amend the amendment by providing that the circuit and probate courts shall be kept separate.

Mr. PETTIT. I believe, sir, that it is in order to move to perfect the section before a motion can be made to strike out. Now I want to perfect it so as to make it correspond with the preceding section. It will be remembered that the committee on the organization of courts recommended the establishment of county courts. Now the amendment proposed by the gentleman from Dearborn cannot possibly hitch with this.

Mr. HOLMAN. I do not propose occupying the attention of the Convention, or discussing the amendment proposed to the section. I do not propose to enter into any argument as to the propriety of this amendment. The whole subject taken together has been discussed; and

if it is to be understood by the remark of the gentleman from Tippecanoe (Mr. Pettit) that the county court system has been adopted, or that it will be adopted, [A voice—"It never will,"] I undertake to say that so far as that goes he is mistaken.

Mr. PETTIT (interrupting). I only say that the Convention ordered the committee to bring in that provision, and the committee is ready to report it.

Mr. HOLMAN. I only have to say that the gentleman from Tippecanoe, having explained that so decisive a vote has been taken by the Convention, since the section was referred back, as to leave no doubt upon the mind of any member of this Convention, that the provision as reported back, will not be adopted by this Convention. Between seventy-five and eighty of the members of this Convention have said that the county court system is not the system that we will adopt. Then, Mr. President, but two state of things now remain for the action of this Convention. The first is the adoption of the proposition which I have offered, and which is embodied in the amendment, and the second to leave the judicial system standing now where it has stood for thirty-four years.

And now, sir, it behooves us, as the delegates and representatives of an intelligent people, to determine whether the people expect us to remedy the judicial system or not. If the people have been satisfied with the present probate system, it is the duty of this body to support it. If, on the other hand, they have condemned the system as fraught with evil, then every member of the Convention is called upon by the oath he has taken, to discharge his duty to the State of Indiana, to adopt some other system that will produce better fruits.

Mr. President, what gentleman has occupied this floor in vindication of the probate system, or what gentleman has offered a satisfactory argument against the system which has been proposed and embodied in the amendment? Will any gentleman rise to his feet and state that the probate system now in practice, is better than the one contemplated, or that for the purpose of administering justice, the probate system is as well adapted to that end as the circuit or Supreme Court of your State? Why do we adopt a circuit system at all? Why do we not leave this matter open to legislation? Why adopt a Supreme Court? That is a matter which can be managed by the Legislature as well as any other feature of our judiciary system. Why not then leave it to the Legislature? Is it of more importance to the country that there should be a Supreme or Circuit Courts, than courts in which the whole body of the people are interested? I admit that the wealth of the country is more interested in the Supreme or Circuit system than the poverty of the country—more interested than widows and orphans are. But, sir, there is a large portion of the

community who are interested in these humble courts—made humble through the action of the Legislature; and the question now is—"Is it proper for us to attempt to remedy that system so as to produce better results in future?"

Mr. President, I wish to call the attention of the Convention to one fact stated by the gentleman from Posey, this morning. The Legislature of the State of Indiana, have said to the State—"We recognize the probate court as so incompetent for its jurisdiction, as not to risk any of our school or other funds upon real estate, the title of which is derived through an executor's or administrator's sale." Now, what is the result of the argument on this subject? It is this—that while the Legislature perpetuates a system in the State, that says that the titles conveyed by that court, for want of sufficient capacity in its presiding officer, are so defective that they cannot be received by the State as security for the funds that may be loaned to our people.

Now, sir, it is proposed by the system which I have presented to the Convention, that there shall be two terms of the circuit court held in each year, and three terms of the probate court, which are to be held separate. Will any one say that a judge of a county court, even with a salary of \$500 a year, will be as competent to transact this business as a judge of a circuit court with whom you trust your property and your lives? That judge will be competent; the people will take care of that, because they invest him with jurisdiction over everything that is dear in life.

The gentlemen from Tippecanoe will offer his amendment. All that I ask is a direct vote on the proposition I have made. If the Convention deems it its duty to leave this matter where it has stood for thirty-four years, of course they will do it; but if gentlemen believe that there should be a reform in the system, then their duty to their constituents requires that that reform should be made. All I ask is a direct vote upon the amendment.

Mr. HOVEY proposed the following amendment to the amendment:

"The General Assembly may, after the year 1860, abolish the probate court, as organized in this article, and confer the jurisdiction thereof on such other courts as may be organized."

Mr. H. said that this would give a fair opportunity of testing the plan proposed by the gentleman from Dearborn; and that if it should be found to be inconvenient or not to produce the results anticipated, the Legislature would have power to transfer the business to other hands.

Mr. MORRISON of Marion. I hope the Convention will not conclude itself in regard to its action on this matter without having submitted to it in detail something like another system. I understand the gentleman from Dearborn to wish to force upon the Convention directly either the one system or the other—

that inasmuch as the Convention has rejected the proposed County Court system they will have no other. Now I believe that the Convention are willing to look round and see if there is not some system that may be made applicable to the case. I object most strenuously to the idea that nothing but a Circuit Court is to suit the people with regard to this probate business. If you adopt that court you will compel every individual to employ a lawyer in order to make his appearance there. ["Consent."]

Mr. HOLMAN. In other words the gentleman means to say that no man can appear before a learned man without having a lawyer with him; but that he may appear before a blockhead with impunity. [A laugh.]

Mr. MORRISON. We all know that the rules of court are such as to prohibit a common man from appearing even in his own case.

Mr. SHERROD. I move to lay the amendment to the amendment on the table.

The yeas and nays were demanded, but they were not ordered.

The question was then taken on the motion to lay the amendment to the amendment on the table and it was agreed to.

The PRESIDENT. The question now is on the amendment offered by the gentleman from Dearborn.

Mr. WOLFE. I move to lay the amendment on the table.

Mr. WALPOLE demanded the yeas and nays.

The yeas and nays were ordered, and, being taken, they resulted as follows—yeas 78, nays 47:

YEAS.—Messrs. Alexander, Anthony, Badger, Barbour, Beach, Beard, Beeson, Bicknell, Biddle, Bowers, Brookbank, Bryant, Butler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Celfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Fisher, Gibson, Gootee, Gordon, Haddon, Hall, Helm, Howe, Huff, Johnson, of D., Jones, Kent, Logan, Maguire, March, Mather, Mathis, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Pettit, Prather, Read of Clark, Sherrod, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Thornton, Trimby, Wiley, Wolte, Wunderlich, Yocum, Zenor, and Mr. President—78.

NAYS.—Messrs. Allen, Ballingall, Bascom, Blythe, Borden, Carter, Clements, Dunn of Perry, Farrow, Foley, Foster, Frisbie, Garvin, Graham of Miami, Graham of Warrick, Hamilton, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Johnson of O., Kelso, Kendall of White, Kilgore, Kinley, Lockhart, McFarland, Milroy, Morgan, Mowrer, Owen, Pepper of Ohio, Pepper of Crawford, Read of



Monroe, Ristine, Ritchey, Shannon, Sims, Snook, Steele, Thomas, Toda, Walpole, Watts, Wheeler, and Work—47.

So the amendment was laid upon the table.

Mr. PETTIT. I now offer the following as a substitute for the section.

"The Circuit Courts shall consist of one judge only, and shall have such civil and criminal jurisdiction as may be prescribed by law."

It seems to me that it must be plain that we should make that amendment. The section as reported by the committee, provides that there shall be three terms in a year. We have stricken out the twenty Circuit Courts and left the number to be determined by the Legislature; but they may make so few of them that it would be impossible to hold three terms in each circuit. I think therefore that we should leave the number of the terms to be held, to be fixed by the Legislature, who will no doubt arrange it so as to harmonize with the number of courts that they may decide upon.

Mr. BASCOM moved to amend the amendment by striking out the word "only."

Mr. KENT moved to lay the amendment to the amendment on the table.

The motion was agreed to.

Mr. ALLEN proposed to amend the amendment by striking out and inserting the following:

"The State shall be divided into a suitable number of circuits for the decision of causes relating to the probate of last wills and testaments, and the settlement of decedents' estates, and also into a suitable number of circuits for the transaction of other business."

Mr. SHERROD. I move to lay that amendment on the table.

Mr. HOLMAN demanded the yeas and nays.

The yeas and nays were ordered and taken, with the following result—yeas 86, nays 36:

YEAS.—Messrs. Alexander, Anthony, Badger, Barbour, Bascom, Beach, Beard, Beeson, Biddle, Bowers, Brookbank, Bryant, Butler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Fisher, Foster, Garvin, Gibson, Goozee, Gordon, Haddon, Hall, Helm, Hendricks, Huff, Johnson of O., Jones, Kent, Kinley, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Sherrod, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Thornton, Trimble, Wiley, Wolfe, Yocum, Zenor, and Mr. President—86.

NAYS.—Messrs. Allen, Ballingall, Blythe, Borden, Carter, Dunn of Perry, Farrow, Fo-

ley, Frisbie, Graham of Miami, Gregg, Hamilton, Harboit, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Johnson of D., Kelso, Kilgore, Lockhart, Milroy, Morgan, Prather, Shannon, Sims, Snook, Steele, Thomas, Todd, Walpole, Watts, Wheeler, and Work—36.

So the amendment was laid upon the table.

Mr. WOLFE. I am quite satisfied with the expressions of opinion which the Convention has given in regard to this matter. I am also satisfied that we have spent time enough about it, and that the Convention are content to remain where they are. I therefore move the previous question.

Mr. WALPOLE. I hope the gentleman from Sullivan will withdraw the call for the previous question. The gentleman from Parke had an amendment to offer. I believe he had it ready.

The question was taken on sustaining the call for the previous question, and a division being asked, there were—ayes 62, noes 54.

So the previous question was sustained, and the main question was, by consent, ordered to be now put.

The PRESIDENT. The question is, Shall the section be engrossed for a third reading?

Mr. PETTIT. No it is not; it is on my proposition to strike out.

The PRESIDENT. The gentleman from Tippecanoe is right. The question is on the motion of the gentleman from Tippecanoe to strike out the section and insert what was read.

The question was then taken on the amendment proposed by Mr. Pettit, and it was agreed to.

The section was then ordered to be engrossed for a third reading.

Mr. KILGORE. Is it in order now, Mr. President, to move an additional section?

The PRESIDENT. No sir.

#### REPORT 31—NEGRO SUFFRAGE.

The PRESIDENT. The next thing in the orders of the day is report No. 31, on its second reading.

The report was read as follows: "No negro, or mulatto, shall have the right of suffrage."

Mr. THORNTON. I move to indefinitely postpone the section, because we have already provided that none but white male citizens shall vote. [Loud cries of "No, no, no," and "Let it pass," "It can do no harm," &c.]

Mr. THORNTON. Well, I will withdraw the motion.

The motion was withdrawn.

The article was then ordered to be engrossed for a third reading.

#### IMPRISONMENT FOR DEBT.

The PRESIDENT. The next business in the orders of the day is article No. 32, on its second reading.

The article was read by the Secretary as follows:

"There shall be no imprisonment for debt except in case of fraud."

The question being taken, the article was adopted, and, by consent, ordered to be engrossed for a third reading.

#### DUELLING.

The PRESIDENT. The next business in order is article No. 33, on its second reading.

The article was read as follows:

"Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person a challenge to fight a duel, or who shall agree to go out of the State to fight a duel, shall be ineligible to hold any office of trust or profit."

Mr. MILROY. I move to lay the article on the table. [Cries of "No, no, no," and "Consent, consent."]

The question being taken on the motion to lay the article on the table, it was decided in the negative.

Mr. KILGORE. I move that the article be indefinitely postponed. ["No, no, no."]

The motion to postpone indefinitely was not agreed to.

The section was then ordered to be engrossed for a third reading.

#### LAW REFORM.

The PRESIDENT. The next business in order is article No. 34.

The article was read by the Secretary as follows:

"The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, reform, simplify, and abridge, the rules and practice, pleadings, forms, and proceedings, both civil and criminal, of the Courts in this State. And they shall provide for the abolition of the distinct forms of action at law now in use; and that justice may be administered in a uniform mode of pleading, without reference to any distinction between law and equity. And the General Assembly may also make it the duty of said Commissioners to reduce into a SYSTEMATIC CODE, the General Statute Law of this State; and said Commissioners shall, from time to time, report the result of their labors to the General Assembly, with such recommendations and suggestions as to abridgement and amendment, as to said Commissioners may seem necessary. Provision shall be made by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners."

Mr. WALPOLE. Mr. President, I am entirely opposed to this proposition. I want the law-making power of the State to be vested in the General Assembly, and not to be conferred upon three irresponsible Commissioners. We

have already had a little experience, in Indiana, in arranging our statutes, which cost the State from five to ten thousand dollars; and no two lawyers can agree as to the interpretation of the statutes, as thus revised. If you go back prior to 1843, you will find that every statute is understood by lawyers. But since that time, your statutes, as revised, have been an unintelligible mass of confusion.

Sir, this is a mere measure to give employment to three men, from year to year, at a stated salary—a measure from which no practical good can result to the people. Sir, I want none of your Connecticut, nor New York, nor Yankee modes of improving our law practice. It may answer well enough for the people of the East, who are determined to try experiments, at all hazards and at whatever cost, but I think it will hardly suit the tastes of the people of Indiana. I move to lay the article upon the table.

Mr. WATTS. Will the gentleman from Hancock withdraw that motion for a moment? I have an amendment I would like to offer.

Mr. WALPOLE. Most certainly, if the gentleman from Dearborn thinks he can amend it.

Mr. WATTS. I propose to amend the article by adding the following:

"And hereafter, every legal voter of good moral standing shall be allowed to practice law."

A VOICE. Did the gentleman from Dearborn say "every negro voter"? [Laughter.]

Mr. WATTS. Yes, if the gentleman can find any.

Mr. KILGORE. I move to indefinitely postpone the article and the proposed amendment.

A MEMBER. No sir-ee; you can't do it. [A laugh.]

Mr. COOKERLY. This is a very important matter, and it does seem to me that the Convention should not hurry over it in this way. I do not wonder at some gentlemen here being very anxious to hurry over this matter, for it contemplates a great reformation; and there are many gentlemen on this floor, I am sorry to say, who are not only unwilling to reform that which needs reformation, but who would even go back from the position we now occupy. Sir, this article contemplates what I regard as a very desirable reform in the practice of the law. So far as the codification is concerned, I care nothing about that; but so far as regards a reform in the practice, I am decidedly in favor of it. When, however, I consider the quarter from which this opposition emanates, I am not surprised to see one gentleman get up and make a long and windy speech against this reformation, and another gentleman, also a member of the bar, get up and propose an amendment, with the view of turning the proposition into ridicule. It is only members of the bar, who desire to



stick to the old mode of practice that are opposed to all reformation.

**Mr. McCLELLAND.** I offer the following amendment—

**The PRESIDENT.** It is not in order to offer any amendment. The question is to indefinitely postpone the article and the pending amendment.

**Mr. KILGORE.** I am very sorry, Mr. President, that the client of my friend over the way was so unfortunate as to employ a lawyer who was not capable of distinguishing whether his remedy was at law or in chancery. [Great laughter.]

My object in making the motion for the indefinite postponement of this article is because there is nothing in it. The Legislature has the power to do everything which we ask to be done in this article. I am willing to leave the question with them, and if the people desire that this reform should be made, it will unquestionably be done by the Legislature, under the instructions of the people. Sir, if it were necessary to have anything in the fundamental law in regard to this subject, three lines are all that is necessary, either to abolish the distinction between the different forms of action, or the distinction between law and equity. And yet, sir, by this section, three commissioners are to be appointed, at a compensation, no doubt, which will be an exorbitant tax upon the people, for doing that which the Legislature ought to do themselves, and which they might do by one simple act.

If the motion to indefinitely postpone should fail, then gentlemen can offer their amendments; or if the amendment of my friend from Randolph is to strike out the article, I will withdraw my motion to indefinitely postpone.

The motion to indefinitely postpone was withdrawn.

**Mr. FOLEY.** Mr. President, if there be any one thing more than another, in which our people are interested, it is in this question of law reform. And I must here be allowed to say that they and I are very much obliged to the gentleman from Floyd, (Mr. Thornton,) for the very talented manner in which he has discussed this question in favor of the popular side. And, sir, I now appeal to the lay members of this Convention to come forward and sustain us in this movement, for I assure them it is one of vast importance to the interests of every man in the State.

**Mr. GIBSON.** Yes, and you can have the clergy with you, too.

**Mr. BLYTHE.** I offer the following amendment—

**The PRESIDENT.** There is an amendment pending, unless the gentleman from Vanderburgh wishes to amend the amendment.

**Mr. BLYTHE.** I will explain the object of my amendment, Mr. President, and offer it at the proper time, if it is not now in order.

**Mr. WATTS.** I will withdraw my amendment for the present.

**Mr. BLYTHE.** The gentleman from Dearborn having withdrawn his amendment, I will offer one which I hope may meet with the approbation of the Convention. I propose to amend by striking out, in the second line, all after the word "shall," to the word "revise" in the third line, and also all the residue of the section after the word "equity" in the seventh line. The section, as I propose to amend it, will then read:

"The General Assembly, at its first session after the adoption of this Constitution, shall reform, simplify, and abridge the rules and practice, pleading, forms, and proceeding, both civil and criminal, of the courts of this State. And they shall provide for the abolition of the distinct forms of action at law, now in use; and that justice may be administered in a uniform mode of pleading, without reference to any distinction between law and equity."

**Mr. President,** there is no gentleman in this Convention who is willing to go further than I am willing to go, in order to bring about a salutary, and what we all conceive to be a necessary reform in the practice of law. Sir, the evils complained of exist in the separation of the several forms of action, and in the establishment of two different tribunals—one a court of law, and the other a court of equity. There is no necessity whatever for these distinctions, and the amendment which I offer abolishes forever the distinction between law and equity, as well as the distinction between the several forms of action at law.

The only natural distinction is that which is now recognized by the law between actions which are founded upon contracts, and those which are founded upon torts. This distinction is the only one necessary to enable us to administer justice in the mode in which it ought to be administered.

I regret, sir, that it should be thought, and charged, that so many members of the bar stand in the way of these reforms. Sir, I do not believe that one solitary legal man in this Convention has any such disposition. You may review the course of the Convention, from the day of its organization to the present time, and you cannot point to one instance in which the members of the bar have held back upon any salutary and proper reform. We are willing to go as far as any men can rationally be expected to go in these reforms. We are willing to break down forever the absurd distinctions between the several forms of action, and the distinction between courts of law and equity, and in these alone are found the evils complained of. But as the gentleman from Hancock (Mr. Walpole) has said, I am unwilling that commissioners should be appointed for the purpose of doing that which any committee of intelligent lawyers in the Legislature can do in three days,

and for the additional purpose of revising our laws. The last revision of our statutes was by commissioners, and so miserably was the work done, that scarcely a lawyer can now tell what the law is.

**Mr. BORDEN.** That is the very reason why our statutes should be again revised.

**Mr. BLYTHE.** That is the very reason why they should not be revised by commissioners. Now if you will not provide commissioners for this purpose, why provide them for the purpose of abolishing the several forms of action. Sir, a common sense Legislature, in a session of five lines, can accomplish every thing which we propose. We want no commissioner or salaried officer to do that; we want no set of men, other than those who compose the Legislature, to get together and revise the laws of the State for us.

But, Mr. President, if I mistake not, this section reported by the committee goes further than this. It looks beyond the revision of the statutes; it looks beyond the abolition of the distinct forms of action, and provides in the future for the complete codification of your laws. Sir, that is a point to which I hope we will never go. There is no necessity for it. All that we can seek to accomplish—all that we can desire should be accomplished—can be effected by the amendment which I have offered. Commence your work of codification, complete it, and you yourselves will live to curse the hour when it was undertaken.

**Mr. PETTIT.** With the indulgence of the Convention, I would like to address them for a few moments on this subject. I am in favor of the principle proposed here, and in favor of the best mode of carrying it into operation; and I will say, that in my opinion, the best way to do so, is to appoint commissioners for the purpose. And now, if the Convention will indulge me, I will say why. Mr. President, I not only concur in all that has been said by the gentleman from Floyd, (Mr. Thornton,) but I would if possible, use even stronger language than he has used, in condemnation of the absurdities found in our present system of legal practice. I do not undertake to repudiate the pure principles of the common law. I am not for abrogating that law which is a protection to us all. It is not the spirit nor the policy of the law, which is our security while awake and asleep—which is our safeguard, whether at the hymeneal altar or in the bridal bed, whether at our firesides or at our daily avocations—that I would seek to change. I would not touch one scintilla of that law; but I would make the road to the court of justice open and plain, through which all may see the object before them, and upon which all may travel with unerring certainty and safety.

A more ridiculous system for the administration of justice never was devised by man or men, than the system of the practice of the common law of England, and of the United

States. [Applause.] Sir, let me give this Convention one single illustration. It is one that was often put by my colleague, to the people of our county, during the canvass. Having it in a book, he read it with much more effect than I shall be able to relate it. The case was something like this: A. shall go to B. and steal his watch from under his pillow, or take it out of his pocket, and run away with it. All of you would say that he had stolen the watch; but the common law says that B may waive the tort, and sue A in an action of assumpsit. In such a case, his declaration would be to this effect: "I, B, complain of A, that I sold him a watch of the value of a hundred dollars, and he refuses to pay for it, and I want a judgment," &c. This is the practice, and B may recover in such a suit. But what does A say in reply? He comes into court and pleads "non-assumpsit"—that is, that he did not undertake to pay for the watch. Now look at the position in which our mode of practice places these parties. Everything that the thief has said is true, while everything that the plaintiff has said is a lie. That is the fact. The plaintiff is compelled to tell a lie, and the man who has committed the felony tells the truth. That, sir, is the practice, and many such cases have I tried.

**Mr. THORNTON.** Action of trover.

**Mr. PETTIT.** Yes, action of trover; and, in fact, the whole round of actions. I might show the absurdity of the practice in the whole of them, but I will not trouble the Convention. Sir, there are too many hedges to climb over, in order to get into your courts. Look, for example, at your action of ejectment. Say that my friend from Floyd has rented me his farm for three years, and I keep it the fourth, and will not give it up. He brings an action of ejectment, and, instead of saying A complains of B, that he has got his farm, and refuses to give up possession, he goes and complains that John Doe has the farm of Richard Roe [laughter]. Why, sir, I never tried an action of ejectment yet, but it took me half an hour or more to make the jury understand that these are fictitious names. Sir, the whole thing is perfectly ridiculous. There is no necessity for this at all; and I would swap the whole of these absurdities away, and open the road to the pure fountains of justice so plain, that "a way-faring man, though a fool, need not err therein."

Now, one word more. I want to say to the laymen of this Convention, what, in my judgment, is the best way to accomplish this great and desirable object—an object which we all wish to accomplish, and which ought to be accomplished. How shall we do it? By leaving it to the Legislature, or by appointing a commissioner. Now, sir, while I candidly admit that I am unwilling to create more offices than are necessary, I am quite willing to create as many as are necessary. The question is, can your Legislature do this, or will you leave it to



be done by them, and thus defeat the object you have in view—for defeated it most certainly would be. Look at the matter; you have fixed the term during which your Legislature shall sit to sixty days in every other year; and I say to you that no Legislature nor any commission can make the necessary revision and reform, either in four or in six months. I do not desire that a commission should be appointed to enter into a general revision of the law, but merely a revision of the *practice* of the law. I seek not to destroy the law, but to improve the way to get at it. Now, ask yourselves the question, whether your Legislature can do the work, limited, as they are, to sixty days in every other year? In every other State of the Union, where this reform has been made, it has been found necessary to appoint a commission to do it. It has taken them some months to accomplish it. And, sir, let me say that this is a work which never can be done by your Legislature; and more than that, the whole project will be defeated unless you pass the section requiring the appointment of these commissioners. How can men, who know nothing of the old practice, remedy the defects in it? The members of the Legislature most certainly cannot do it; they have not time to do it; and I will assert further, that there is not a member of the legal profession in this Convention, who will say that it can be done by any other means than by that of a commission. As for the amendment of the gentleman from Vanderburgh, (Mr. Blythe,) if you adopt it, you might just as well strike out the whole section.

Mr. HALL. I was in the committee on the practice of law and law reform, when this report was adopted, and I must say that it was one which was well matured by the committee. They had this report under consideration at some four or five successive meetings, for the purpose of putting it in such a form as would be most likely to meet the wishes of the Convention, and effect the object designed. The majority of the committee adopted this section, and I was one of that majority. I have no hesitation in saying that this is the very section the Convention ought to adopt, if they wish to carry out this object of law reform. I know, indeed, that the chairman of that committee did not concur in this report, and presented a minority report to the Convention. In that minority report, I could not, of course, concur. I thought it was wrong, and I still think it wrong; and I now express my opinion, that, if gentlemen desire a thorough reform in this respect, they ought to pass the section as it is, for I fear that if we undertake to amend it, we will only make it worse. If the Convention should refuse to determine that this work shall be done by commissioners, I am pretty well satisfied that it will never be accomplished at all. Sir, it is utterly impossible for the Legislature to make such changes as are contemplated by this section, and such as the people call for.

Mr. KELSO. I am in favor of the amendment of the gentleman from Vanderburgh, (Mr. Blythe,) because it leaves this matter discretionary with the Legislature.

Whenever any proposition is made here, with the view of securing the rights of the widow and the orphan, then gentlemen say that this is a subject with which the Convention has nothing to do, but it is to be left to the Legislature. I am in favor of leaving this matter to the Legislature. I do not care how much they simplify the practice; I do not care how soon they break down the distinction between actions, or between law and equity; there is nothing that can be done in the way of change in any of these respects, that will not result in making more money for the lawyers, than they now make. But, sir, if we are to trust to the judgment of Legislatures that are to follow us, in regard to such matters as the settlement of decedents' estates, why may we not also leave this matter to the Legislature?

Now, sir, I deny the propriety of appointing a commission, as contemplated by that section—a commission that will be appointed from year to year, without limit, and at a salary, if we may judge of the future by the past, of at least six thousand dollars for the three. Sir, we once had commissioners, and we have had the fruits of their labors, and let me ask gentlemen whether those fruits are worth one-tenth of the price we paid for them. And what reason have we to hope that we will get any better commissioners now, than we had before? Undoubtedly the best men were selected that could be found to do the work.

Now, in regard to the difference in the forms of action, the gentleman from Tippecanoe has put a case which he has by no means put fairly. In the very case that he puts, I say that the plaintiff tells the truth, and the defendant the falsehood.

A DELEGATE. I cannot see how you make that out.

Mr. KELSO. I make it out very easily, only you do not understand it. Now, if I go to my neighbor and say I would like to have his horse, and I ask him what he is worth, and he replies that he is worth \$50, and I say "very well, I am satisfied that he is worth fifty dollars," and I then take him home with me; have I made any promise to pay the man for the horse? No, sir, I have not promised to pay one cent. Yet the law raises the presumption that I made the promise, because I was told the price of the horse, and I did not object to it. I knew it was his property, and I take it, knowing what he asked for it.

Now, if the gentleman's proposition is correct, I never did promise to pay, and shall I cheat the man out of his horse? I think the law is right in raising the presumption that I made the promise. The positions of the parties are the very reverse of that stated by the gentleman from

Tippecanoe; and if that gentleman's colleague read the case from a book, and presented it to his constituents in a stronger light than the gentleman himself has presented it here, all I have to say, is, that I should very much like to see the case. Why, sir, the common sense of the matter is with the position that the man promised to pay. Then, sir, how would you change it for the better? You cannot do it. You cannot make such a code of law as will make every man bind himself to do certain things. You must take the common sense meaning of the thing. You must take the action of the man, and, by force of law, raise the presumption of a promise. That is the only way by which you can arrive at a just mode of practice. I care not how far the Convention or the Legislature may reform this matter; for there is very little doubt, in my estimation, that, when this new scheme has been tried for twelve months, there will be a most anxious desire, on the part of all parties, to retrace their steps.

The gentleman from Floyd says that the people in his county were very anxious to have the change. I will venture to assert, Mr. President, if we could only get at the truth, that that gentleman and his worthy colleague, were the first that put the idea into their heads. It has been said that it is dangerous to become wise above the law, and yet, in seeking to adopt this new fangled system, we are running into that very danger.

Now, with regard to admitting every man to practice at the bar, I have no objection to that whatever. I say admit every man, and every woman, too, if you please. The more pettifoggers we can get into our courts, the more money your good lawyers will make. I am quite willing that every man should practice law. And if there are not men enough to break down the bar by their practice, let the women have a chance at it, too.

But, sir, in all seriousness, it occurs to me that this is a matter which ought to be left to the Legislature, for them to exercise their wisdom and judgment upon. And let me here remark, that, if it is the practice only that is to be remedied, the Legislature can do it in one week, at any time. Let it, then, be left to them, and not force them with the "shall" in your Constitution, to establish three salaried officers, to remain in the State for six, eight, or ten years, at a cost of some six thousand dollars a year.

Mr. FLOYD. I am not a lawyer, nor did I originate the term "lay delegates," as used here. The phrase came from another gentleman.

My worthy friend from Switzerland is very cunning. He says that the members of the bar will make money by their practice, if the present mode of practice be reformed. Now how does he propose to do this? Why he suggests that it should be left to the Legislature. And who will the Legislature be? Why, sir,

undoubtedly the majority of them will be lawyers, and will not do it. Now if we want this reform to be done, we reformers must come right up to the work at once ["consent."] There is a great deal of ingenuity in this cry of "leave it to the Legislature." Gentlemen are very willing now to leave a good deal to the Legislature, whereas some time ago they were scarcely willing to leave them a single vestige of legislative authority. This, Mr. President, is a reform which the people most urgently want, and I hope it will be adopted. I therefore move to lay the amendment of the gentleman from Vandenburg on the table.

Mr. KELSO. I ask the yeas and nays.

The yeas and nays were ordered, and taken as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beard, Berry, Biddle, Borden, Bourne, Bowers, Butler, Carter, Chapman, Clark of Hamilton, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foley, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbott, Hardin, Hawkins, Helm, Hogin, Howe, Huff, Johnson of D., Johnson of O., Jones, Kent, Kendall of White, Logan, Maguire, March, Mather, Mathis, May, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Niles, Owen, Pettit, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Steele, Tague, Tannehill, Thomas, Thornton, Todd, Trimby, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—90.

NAYS.—Messrs. Ballingall, Barbour, Beach, Beeson, Blythe, Brookbank, Bryant, Chenowith, Clark of Tippecanoe, Clements, Davis of Madison, Dunn of Jefferson, Duzan, Foster, Frisbie, Helmer, Hendricks, Hitt, Holman, Hovey, Kelso, Kilgore, Kinley, Lockhart, McClelland, McLean, Milligan, Morgan, Nave, Newman, Pepper of Crawford, Prather, Read of Clark, Ritchey, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Walpole, and Watts—41.

So the amendment was laid upon the table.

Mr. DUNN of Perry. I move to amend the article by striking out all after the word "equity," and inserting:

"The said commissioners shall report from time to time the result of their labors, and provision shall be made by law for filling vacancies in, and regulating the tenure of the office, and the compensation of the said commissioners."

Mr. SHOUP moved to lay the amendment on the table.

Mr. HOVEY called for the yeas and nays, and they were ordered.

Mr. NAVE. Before the vote is taken upon the proposition, I wish to give the reasons why I shall vote against it. I am utterly opposed to making innovations upon the long establish-



ed principles and practice of the law by which justice has been administered from century to century, to the inhabitants of the country, not because I expect to lose anything by such change, but because this innovation would, in my opinion, work much evil to the country, as I could show beyond question, if the Convention would give me its attention for a short time. [Much confusion and impatience.] I will not detain the Convention; I merely rose to contrast the workings of the system proposed in other States, with our present mode of practice. Look at Kentucky, which once stood high in the opinion of every legal gentleman of the nation. Where does she stand now? Certainly far behind the State of Indiana in reference to the decisions of her supreme court. Look again at New York, which once stood higher than any State in the Confederacy, whose opinions were the law in every court in this country, and in Kentucky, and elsewhere. And what is she now, in regard to this matter, compared to what she was a few years ago? Why, sir, their decisions are mere things that no lawyer dare refer to as a legal decision by which a court should be governed. I hope, sir, this "reform," as it is called, will not be effected. This eternal tinkering with the administration of justice will work an evil to the State if persisted in.

Sir, what do we propose to do? We were called here to amend the Constitution, and the Legislature appropriated forty thousand dollars for that purpose. And where do we stand now? If you create these three commissioners for the purpose of revising and codifying the law, I ask you when they will get through with their work, and what the Legislature will say about their pay? The people, sir, are not prepared to incur such an expense. Sir, we have had commissioners before, and I then had the honor of voting against the appointments for that purpose. And what is that revision now that we have got it? Why, sir, it is a perfect thing—a disgrace to the State—and if you appoint the commissioners as proposed in this section, have we any evidence that the thing will be any better? [Uproar.]

Mr. CARTER. I move that the Convention adjourn.

The Convention then adjourned.

TUESDAY, JAN. 21, 1851.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. MEYERS.

The journal of yesterday was read and approved.

#### SUPREME COURTS.

Mr. PETTIT, from the committee on the organization of courts of justices, reported back

the section (amended as directed by the Convention) which provides for the election of not less than three, nor more than five, judges of the supreme court, a majority of whom to form a quorum, and to hold their offices for six years, if they shall so long behave well, to reside in districts to be formed by the Legislature, and to be elected by the people of the whole State.

The question being, Shall the section pass?

Mr. COLFAX moved to re-commit the same with instructions to amend so that the judges shall be elected in such manner as shall be prescribed by law.

Mr. COLFAX. The proposition I have offered may not be in favor with a majority of the Convention. The gentleman from Tippecanoe yesterday set us the example of an honorable compromise on the subject of the Grand Jury system. I desire to follow in his footsteps. The committee on the organization of courts of justice, or a majority of them, originally reported a section providing that the judges shall reside in separate districts, and be elected by a majority of the electors of the district. This House on one day affirmed the report of the committee by the apparently decisive majority of twenty-eight; but, on a subsequent day, by a majority of nine, that vote was changed, and a provision adopted, that, although they should reside in districts, they should be elected by the votes of the whole State. It appears to me there might be cases when it would be improper to require the whole State to elect a judge—when it became necessary, for instance, to fill a vacancy for a single year, occasioned by death or resignation. It would be entailing upon the State a needless expense, to call out the whole State to elect a judge for the fragment of a term, who must, by the Constitution, reside in a certain district, and who might as well be elected by the voters thereof. It seems to me it would be better to leave this matter to the Legislature, with full powers to dispose of it as we have decided that they might dispose of the Grand Jury question. I move that the section be re-committed, with instructions to strike out that part of the section which declares positively that the judges shall be elected by the whole State, and insert in lieu thereof that they shall be elected in such manner as may be prescribed by law.

Mr. COOKERLY suggested to the gentleman from St. Joseph to amend his instructions so that the judges shall not be positively required to live in separate districts. If this was done, he said he would vote for the proposition, if not, he could not possibly vote for it.

Mr. PETTIT. I have a word to say in reference to this matter, if no other gentleman desires to address the Convention.

Sir, if this were not a principle of paramount consideration with me, I should yield to the proposition of the gentleman, but it is neither more nor less than abandoning the idea of the

people choosing their own officers. Are those over whom their jurisdiction is extended to be debarred from the right of electing them? The jurisdiction of the Supreme Judges extends all over the State. It extends to Lawrence county as well as to Tippecanoe and Randolph, or elsewhere, and each citizen should have a voice in their selection. You never can give satisfaction to the people of the State by placing officers over them in whose selection they have no voice.

The gentleman from St. Joseph says, if it should become necessary to elect a judge to fill a vacancy, you must call the people out all over the State, and put them to great inconvenience. Let me say to the gentleman and to the Convention, that labor and perpetual watchfulness are the price of liberty, and without these, liberty cannot be secured and preserved. The people expect every year to go to the polls and elect their officers. Sir, a republican government is the most expensive of all governments, and it may well be so, for it imparts a million-fold more advantages and blessings than all others; and those who receive these advantages ought not to find fault at a little additional expense.

If you would avoid the trouble and expense of electing your rulers, why, instead of electing a President of the United States, let Queen Victoria, or the Emperor Nicholas of Russia, rule over you. I ask the Convention if it is right that the people over whom authority is extended should elect the officer who exercises the authority. If it be right, let us do it; if it be wrong, let us give up our right to select our officers to somebody else. But it is what the people have claimed of us—to give them the opportunity to select their judges. I hope the session will not be re-committed, but that it will pass.

Mr. DUNN of Jefferson. The gentleman from Tippecanoe (Mr. Pettit) seems to think it would be a great outrage, if every elector in the State should not have the right to vote for all the judges of the Supreme Court. I would ask him which is the more important right, that of voting for those who create the laws, or for those who interpret the laws? If the gentleman will follow his argument to its legitimate conclusions, consistency will require him to insist upon the election of members of the General Assembly by general ticket. What is the duty of the Supreme Court? It is simply to decide what is the law. If, then, it is indispensable to the safety of the citizen, that he should have a vote in the election of each of the judges of the Supreme Court, how much more important is it that he should have the right of voting for each and all of the members of that department of the Government whose enactments affect his enjoyments of life, liberty, and property.

I am somewhat curious to know, moreover, how the gentleman reconciles his vote for the

election of the circuit judges by the electors of their respective circuits, with his argument for the election of the judges of the Supreme Court by general ticket. Does he intend that no citizen shall be required to answer to any action, except before the judge of his own circuit? If he does not, then what becomes of the important right of the citizen to have a voice in the election of the judge who is to decide upon his rights?

But, sir, I have not arisen to debate this question, for that is useless. I know this Convention will sustain the views of the gentleman from Tippecanoe, and will decide in favor of the election of the judges of the Supreme Court by general ticket; and I take this as the most convenient mode of entering my protest against that decision. I believe it will degrade the highest tribunal in the State, and make it a mere convenient place for retiring, broken down politicians. If the judges are elected by general ticket, they will be made by caucus nominations at the capital. These places, like all the other important offices in the State, will constitute a part of the stock of trading politicians, and will become a matter of bargain and sale. You will have a Governor, Lieutenant Governor, Auditor, Treasurer, and Secretary of State, and other officers, to elect at the same time you elect your supreme judges. The nominations of these various officers will be made in this city, and in the general scramble for place, qualifications will not be of so much consideration as the number of votes in the nominating caucus—the candidates for judges may be able to control for or against candidates for other nominations. It is not hard to predict who will win at this game. It will be those whom long experience has made familiar with the appliances that can be successfully employed on such occasions. The wily politicians will bear off the offices, if not the honors. The lawyer, who has devoted his life to the laborious study and practice of his profession, who has stood aloof from the excitement and dissipation of party politics, and is, therefore eminently qualified for a place on the Supreme bench of the State, will be oversloughed by men who never had a respectable circuit court practice. But, sir, if the judges are elected by districts not corresponding with any other political divisions in the State, and the candidates are known to the people of the district, I do not doubt but that the people will endeavor to make judicious selections. There will not, in such a case, be so much opportunity for political combinations and caucus dictation. Men will, I trust, be selected with a reference to their qualifications to discharge the duties of that high station. The people will not willingly and knowingly place upon the Supreme bench, a man to whose care, as a lawyer, they would not confide an important suit. But how can the people in one part of the State be acquainted with the character of lawyers in a remote part



of the State? Lawyers do not become generally known to the people of the State, like politicians.

And, sir, I very much fear another evil will result from the election of the judges by general ticket, and all at the same time. I fear that great questions of law will be decided at the ballot box—that the popular side of legal questions will be mounted as hobbies, to carry the riders to the Supreme bench. Heretofore we have had just occasion to be proud of the high reputation of our Supreme Court. I am afraid the Supreme Court, under the new organization, will have a reputation, both at home and abroad, that will afford us but little occasion of congratulation.

Mr. EDMONDSTON. I did not intend to say a single word to-day, in reference to the subject, and would not but for the remark of the gentleman from Jefferson, that if your Supreme Judges are elected by the State at large, you will have politicians elected to preside in the Supreme Court, but if you elect by districts, politicians will not be elected. According to the gentleman's argument, there is no political excitement except at the holding of State elections. There must be a source somewhere from which all the political influence and excitement of the State emanates. Now, sir, I can say and I think I shall be borne out in the assertion, that there is as much political excitement in proportion to numbers, in each and every one of the districts, as there is in the whole State, on the occasion of an election. I ask the gentleman whether the Supreme Court, which he is about to organize, is amenable to the district only, or to the whole State, whether it adjudicates upon matters belonging to the districts only, or whether its decisions affect the entire State, without regard to subdivisions. He must admit that the judges are amenable to the State at large, and that their decisions affect the whole community. Are the members of this Convention willing that a man shall exercise authority over them, shall adjudicate upon their persons and property, whom they have no voice in choosing. I appeal to the gentleman's own judgment and ask him if he is willing that a court shall have power over him and his, that he has no agency either directly or indirectly in creating.

Mr. DUNN. Every citizen will have a voice inasmuch as he will be called upon to vote for some one of the judges.

Mr. EDMONSTON. Well, sir, there are five judges to be elected. The voter will have then, one-fifth part of the rights of a freeman in this particular. Is the gentleman willing to take that? If he is he has not the spirit that I believe he has. I do contend that as the Supreme Court of the State is amenable to, and exercises authority over the whole State at large, every individual in the State, who has a right to cast a vote, should have a right to cast that

vote for those who present themselves for election to the Supreme Bench. The districting system is only proposed for the purpose of distributing these officers among the various sections of the State, that they shall not all reside in one part of the State. This is a principle that I will support, and I insist that it is a principle that should be permanently established, and it is a right which, in my judgment, the people of the State will never surrender. It is a matter which is to affect not only this generation, but generations to come, and you say to the voters of the State, you shall not vote for the judge who is to administer the laws unless he resides in your district, and then you shall be permitted to exercise one-fifth part of the rights of a freeman. I ask the gentleman if he is willing to district the State for the election of Governor and Lieutenant Governor? No man, I apprehend, would presume to propose anything so absurd. Then, sir, I for one, the whole people of the State being interested in a Supreme Court, maintain that the whole people should have the right to choose the judges who are to preside over that court.

Mr. COOKERLY moved to amend the instructions, so as to strike out all that requires the judges to live in separate districts.

It seems to me, sir, said Mr. C., very strange and very inconsistent that we should require the judges to live in certain portions of the State, and yet that they should be elected by the whole State. I can see no consistency in this. Gentlemen all admit that it is a State court; and if their arguments are correct in this respect, as I believe, that being a State court, they should be elected by the whole people. Why do they require that each judge shall live in one particular district, in one particular portion of the State? Now, I ask the gentleman from Tippecanoe, and all who advocate his proposition, why is it necessary that the judges should live in a certain district?

Mr. PETTIT. I stated the reasons the other day.

Mr. COOKERLY. I can see no reason why they should be confined to districts if they are to be elected by the whole people. If my amendment should be voted down, and the proposition requiring the judges to live in certain districts be retained, I shall be in favor of their being elected by those districts. If I had understood the question the other day, I should have voted against the re-commitment. The gentleman says the reason why this proposition is made is, that these judges shall be distributed over the State. If so, why not permit them to be elected by those portions of the State where they reside? I wish to be distinctly understood in regard to this question. I say I am in favor of electing the judges by the whole people; but I tell you now, that if you do not strike out that part which requires that the judges shall

reside in certain districts, I shall be compelled to vote against the proposition.

Mr. McCLELLAND. Is it in order to amend?

The PRESIDENT. No, sir. There is an amendment already pending to the instructions proposed by the gentleman from Vigo.

Mr. WALPOLE. I am opposed to the proposition of the gentleman from St. Joseph. He proposes that the judges shall be elected in the manner prescribed by the General Assembly. If it be made a subject for the action of the Legislature, they may change the mode of election from time to time, as parties change.

One party will establish one mode and when another party comes in they will change it to another mode, and after a little while it will be changed back again, and so on. It is a thing that I cannot consent to. I want the mode and manner of electing judges unalterably fixed. I can never consent that the people of one district shall elect one judge, and the people of another district shall elect another. As has been remarked by the gentleman from Tippecanoe, their decisions are the law of the land, and men living in one part of the State are as much interested in them as those living in another. The administration of the laws should be uniform, and every individual who is bound by the decision of these judges should have a voice in their selection.

Mr. COLFAX. A few words, sir, in reply to the gentlemen from Tippecanoe. This section, in its present form, as reported back from the committee, provides that the Legislature SHALL elect the State. This is made the imperative duty of the Legislature. When they perform that duty, if my amendment should prevail, they could then decide according to the will of the people, whether the judges shall be elected by the vote of the people of the whole State or not. When it is conceded, as appears to be generally conceded here, that judges should reside in separate districts, what wrong could there be in providing that those who know him best—who can best judge of his qualifications and merits—his talents and worth, should decide, which one of the rival candidates residing in that district should be elected. And if they are to be elected by the whole State, why do not gentlemen, to be consistent, provide that the electors of the State shall have privilege of choosing their bench from the best judicial talent of the State, without being confined to electing them from separate districts? When gentlemen concede that they shall reside in districts, it seems to me that they give up the argument.

But the instructions that I have offered virtually submits the matter to the decision of the people. If they wish the bench elected by the votes of the whole State, the Legislature can so enact.

We see that there is a diversity of opinion here in regard to this matter, and it may be that

the conclusion to which we shall come, will not be that which shall meet the approbation of a majority of the people. There is another advantage I think in leaving the matter to the Legislature. If they do provide for the election of judges by the whole State, and afterwards find that it is not the most desirable mode, it will be in their power to change the mode of election. A few years ago, (and only a few,) it was deemed the highest policy to elect Congressmen by general ticket. But what a change there is in public opinion on this subject. They are now elected by the district system all over the Union, and you could not induce the people to go back to the old system. Yet if we had had the revision of the system at that time, we probably would have inserted such a provision as the one now proposed in reference to the judges.

Now, if it is proper to refer the grand jury system to the Legislature, giving them the power to continue, amend, or abolish the same, I ask why the representatives of the people should not have the power to declare whether the judges of the Supreme Court shall be elected by the whole people of the State, or whether they shall be elected by districts. It does appear to me that this should be left an open question. The section, if passed as it is worded now, forever ties up the power of the people. But, if left open, the people, in the discussion they will have upon the Constitution we are framing, before they adopt it, will undoubtedly express their opinion on this question, whether they desire their Supreme Bench elected by districts or the whole vote of the State. If they decide in favor of the latter, their representatives in the Legislature can carry out their wishes. But if the majority of the people are in favor, as I think they are, of electing every officer by single districts, from County Commissioner up to Supreme Judge, the Legislature will then have the power to comply with their behests.

Mr. PETTIT. There is no comparison between the compromise which I offered yesterday, and that which is now sought to be imposed on the State. The compromise which I offered yesterday, was no compromise of principle. I never did nor never will I compromise principle. It was not a question of principle but a question of policy and expediency in reference to the manner of conducting criminal prosecutions. Was there anything in that proposition which was in the slightest degree connected with a sacrifice of the citizens of Indiana to choose their own officers? In what respect—in what particular is there an analogy between the cases? Sir, as well compare a fiend of hell with an angel of heaven, as to compare that proposition with this. This is neither more nor less than to enable a little despicable clique north or south, to impose upon the necessities of the State, in order to control the election of the judges of the Supreme Court. The gentleman



from Jefferson says, that if the judges of the Supreme Court are elected in the districts where they are best known, the best men will be selected. Just so long as political feelings and political animosities and excitement prevail in the State, so long will they divide and agitate every district of the State. Political excitement will prevail in districts as much as it will prevail all over the State. You have ten Congressional districts and in every one of these, political excitement rages at the time of election, as much as it would within that limit, if it were a State election. But if the gentleman's argument was worth a straw—if it had one ounce of solid principle in it, I say you have only to go down to the county where the candidate lives to know him. The argument is that he must be elected by the people who know him best. You must then elect him by a single county, in order that he may be elected by those to whom he is best known. A man is best known where his business may have led him. If it has led him out of the county in which he resides, he may be best known out of the county. If the people shall have a knowledge of the man whom they elect, the people of one district may elect a man who would not suit the people of another district. Sir, it is a base prostitution of principle.

Now one word in answer to the gentleman from Vigo. Terre Haute, I suppose, is abundantly able to furnish all the Judges for the Supreme Court. There are two Supreme Judges living in this town, both of whom, no doubt, desire to be continued on the bench. You talk about politicians being elected. Have you ever elected a Circuit Judge that was not elected upon a political basis? No, sir. It is useless to tell me that you can get along without political feeling. It is entirely out of the question. There are men in every section of the State who will certainly not unfavorably compare with our present Supreme Judges. Sir, this section is right as it stands. It contains a principle that is correct in itself; and it ought to be retained precisely as it is.

Mr. President, there is another reason why the Judges of the Supreme Court should be elected by the voters of the whole State; and that is, that there would not be any ground upon which to charge the Judge with partiality and favoritism to members of the bar. This charge would be very likely to be made against a Judge elected by a district, if he should decide a cause in favor of a lawyer who resided in his district, and against one who lived in another district. This charge would be avoided (which is very desirable) if each Judge's district is co-extensive with the State.

Mr. KILGORE. The reasons given by the gentleman from Tippecanoe, (Mr. Pettit,) why the Convention should concur in the report, is one of the strongest reasons, in my opinion, why we should not concur. The gentleman

refers to the election which went off in the Legislature but a few days since, as an evidence that the best man would be selected to fill these offices, irrespective of party. He referred to the liberality with which the dominant party voted for the election of a Whig. I ask the gentleman whether a single Democratic vote could have been obtained for that Whig, had not the Democratic members of the Circuit came up in a solid mass and urged the election of that man upon their brother Democrats outside of the Circuit?

Mr. PETTIT (in his seat). Did not the Senator from Henry oppose it?

Mr. KILGORE. The Senator from Henry belongs to the old abolition party, and is not recognized by the Democracy.

Yes, sir, every Democrat within that Circuit said he was the choice of a large majority of both political parties. Yet bitter denunciations are daily thrown out, because the Democratic party, by mere force of party drill, could not be forced to elect a man to the bench whom the people of the Circuit did not want.

If the gentleman's plan be carried out, it is clear to me that it cannot tend to promote the great interests of the people, or to elevate the character and dignity of the Supreme Bench. It may subserve party purposes, as it will prove to be nothing more nor less than a well arranged political organization.

Mr. PETTIT was here understood to remark, that the Judge was not to be a district officer, but a State officer, and as such should be elected by the whole people.

Mr. KILGORE. Then, sir, we might with the same propriety say, that the Circuit Judges are not district officers, but officers for the State at large. They have jurisdiction and power over the personal liberty of all the citizens of the State who may violate our penal laws. They can bring an offender from the county of Tippecanoe to the Marion Circuit Court for trial. They have jurisdiction of the various matters of litigation between man and man—no matter where he may reside, provided he is found in the Circuit long enough to be served with process. Thus it will be seen, Mr. President, that the Circuit Judges may, to some extent, be deemed State officers, and their election by general ticket might be urged with as much force and propriety, as that of the Supreme Judges.

This, Mr. President, is a political movement which I regret to see. The Judges of our Courts of Justice, so far as it is possible to do so, should be placed beyond and above mere party. The scales of justice should be held even, and with a hand too steady and firm to be moved by local excitement or party prejudice. And, sir, in order to secure this, it is our duty to keep them without the influence of party bickerings or political strife, and to remove

from them every inducement to become political managers.

But according to the plan and arguments of the gentleman, (Mr. Pettit,) he would make our judicial system a stupendous political machine; the aspirants to the Bench to become political squabblers, to mingle with, and partake of, all the excitements, to take sides, and publicly discuss political questions on the stump, in order to enable the people to determine as to their legal attainments, their moral worth, and inflexible integrity. He, sir, would have the party candidate for the bench become a political leader of the particular district in which he is located—to marshal the party and bring them into the field whenever required; and any dereliction from the duties of his leadership would doubtless prove fatal to his success.

Adopt the general ticket system, as proposed, and a party caucus will furnish all the candidates for the bench, and all the people will know about them will be that they are the nominees of their political party, and, as a general thing, as such they will support them, without ever troubling themselves about the qualifications of the men. As illustrative of this, if the Convention will indulge me, I will relate a circumstance which occurred a short time after the nomination of the lamented Polk for President. Mr. Polk, as it is well known, was not at that time of world-wide fame, and many good men had never heard of him before. I met one of those honest souls on the road, and happening to get into conversation with him on the subject of politics, amongst other things, the nomination for the Presidency was referred to. "And who is this James K. Polk?" asked the old gentleman. I replied, "He lives down in Tennessee, and they say he is a pretty good kind of a Duck river lawyer—was once Speaker in Congress, and is now the nominee of the Democratic National Convention for President." "Oh well," said the old man, "although I never heard of him before, I will go for him, because he must be the very best man they have, or they would not have nominated him." [A laugh.] Just so it would be with the nominees for Judge, under the proposed plan; one-half of their support would be from men who knew nothing about them, and cared as little, so they were the nominees of their party.

But, sir, if we confine the election of each Judge to the district in which he resides, we may hope to see our Supreme Bench filled by men of acknowledged ability and moral worth; men whose conduct has secured the confidence of their neighbors and given them a hold upon those of their acquaintances too strong and powerful to be broken by the hand of party. This, sir, has been recently demonstrated in the re-election of Judge Elliott to the Circuit Bench. He came before the Legislature backed and sustained by the representatives of all parties; whig and democrat alike urged his claims, be-

cause they knew the man; and knowing him, for the sake of justice and truth, were willing to forgo their party prejudices and place upon the Bench a man in whom the people were willing to confide. But were the democrat members from other portions of the State willing to yield to the will of the circuit, were they willing to forego their party prejudices even for the public good? No, sir, no; a large majority of them were willing and anxious to thrust upon the people of that circuit a mere partizan Judge without regard to his qualifications; and they are daily cursing and denouncing the honest and independent democrats who voted for Elliott as recreant to their party, sir, with such men the gentleman from Tippecanoe is willing to trust the election of all our Supreme Judges, against which I protest most solemnly.

The gentleman from Vigo (Mr. Cookerly) is right, sir, in the views he has expressed upon this subject. If we abolish the district system of electing, let us not confine the Judge to any particular district. If we do not retain both, then I am in favor of striking out both; and leaving the people at liberty to select Judges from any portion of the State they may choose, and thus destroy the gentleman from Tippecanoe's favorite system of political organization and leadership, about which he manifests so much solicitude.

Mr. SMITH of Ripley. I should like to know the state of the question at present.

The PRESIDENT. The question is on the motion of the gentleman from Vigo.

Mr. SMITH of Ripley. I find we have broken in upon a very fruitful subject this morning. I find gentlemen too, getting very eloquent; they could talk forever on the subject, and in order to bring the subject to a close, I call the previous question.

The demand for the previous question was sustained.

The question being,

Shall the main question be now put?

It was ordered by consent.

The question was first taken upon the amendment of the gentleman from Vigo, to the instructions proposed by the gentleman from St. Joseph—to strike out all that part of the section which provides that the Judges shall reside in their respective districts.

The question was decided in the negative.

The question recurred upon the motion to re-commit with instructions as proposed by the gentleman from St. Joseph, to strike out the words "of the whole State," and insert the words "in the manner prescribed by law."

The yeas and nays being demanded, and ordered, were taken, and resulted yeas—50, nays 84, as follows:

YEAS.—Messrs. Allen, Badger, Ballingall, Barbour, Beach, Beard, Biddle, Blythe, Bourne, Bowers, Brookbank, Bryant, Clark of Hamilton, Cole, Colfax, Cookerly, Crawford, Davis



of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Frisbie, Hall, Hamilton, Hawkins, Helm, Hitt, Hogin, Howe, Huff, Kelso, Kendall of White, Kilgore, Maguire, Mather, Morgan, Murray, Newman, Niles, Pepper of Crawford, Prather, Sims, Spann, Steele, Stevenson, Thomas, Todd, Watts, Yocum, and Zenor—50.

**YAYS.**—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Butler, Carter, Chapman, Chenowith, Clark of Tippecanoe, Clements, Coats, Crumbacker, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hardin, Helmer, Holman, Hovey, Johnson of D., Johnson of O., Jones, Kent, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Owen, Pepper of Ohio, Pettit, Read of Clarke, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Tague, Tannehill, Thornton, Trimby, Wallace, Walpole, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Mr. President—84.

So the Section was not re-committed.

The PRESIDENT. The question now is: Shall the section pass?

The yeas and nays were then taken, and the Secretary reported yeas 82, nays 49, as follows:

**YEAS.**—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Butler, Carter, Chapman, Chenowith, Coats, Cookerly, Crumbacker, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Hardin, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kent, Lockhart, Logan, Maguire, March, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Owen, Pepper, of Ohio, Pettit, Read of Clarke, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Tague, Tannehill, Thornton, Trimby, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—82.

**NAYS.**—Messrs. Allen, Badger, Ballingall, Parbour, Beach, Beard, Blythe, Bourne, Bowers, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Frisbie, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Kelso, Kendall of White, Kilgore, Kinley, May, Morgan, Murray, Nave, Newman, Niles, Pep-

per of Crawford, Prather, Sims, Spann, Steele, Thomas, Todd, Walpole, Watts, and Yocum—49.

So the section was passed, and under the rule referred to the committee on revision.

Mr. PETTIT. I have a further report from the same committee.

The Secretary read the report; it was in effect that the committee on the organization of courts of justice had complied with the instructions given them by the Convention by inserting at the proper place in section twenty-nine of same article the words "County Courts and Justice's of the Peace."

Mr. DUNN of Jefferson moved to re-commit the section with instructions to strike out the words "County Courts and Justice's of the Peace."

The question being upon recommitting with instructions,

Mr. DUNN of Jefferson. We have already I think a section providing for justices of the peace; if not we can have a distinct section on the subject. If this matter proposed to be stricken out, is stricken out, the section will then stand as it was reported by the committee, that is, "the judiciary shall be vested in a Supreme, Circuit Courts, and such other Courts as may be established by law." That is just the way in which it should be.

Mr. KILGORE moved to amend the instructions so that an additional section should be reported authorizing the Legislature to provide for the organization of a certain number of probate circuits with one Judge, &c.

Mr. BASCOM moved that the amendment to the instructions be laid on the table.

The motion was agreed to.

So the amendment was laid on the table.

Mr. MORRISON of Marion moved to amend the instructions proposed by the gentleman from Jefferson by striking them out and inserting, "that the people of each county shall elect a Judge of Probate and Common Pleas, the fees of the office to be fixed by law, &c."

Mr. KILGORE moved that the amendment be laid upon the table.

The question being on laying the amendment on the table, it was decided in the affirmative—ayes 71, noes not counted.

The question was declared to be carried.

So the amendment of the gentleman from Marion was laid upon the table.

The question was then taken upon

Mr. DUNN'S motion to recommit with instructions, and was decided in the negative—ayes 47, noes 50.

So the section was not re-committed with instructions.

The PRESIDENT. The question is:

Shall the section pass?

Mr. KELSO. It appears to me a rather useless thing to leave the Legislature the power

to make courts inferior to that of a justice of the peace.

Mr. PETTIT (interposing and Mr. K. giving way). I suppose every lawyer understands that the terms "superior," and "inferior courts," are known as technicalities. It does not follow that the "inferior courts" mentioned in this section must be inferior to a justice's of the peace court. A County Court is an inferior court; that is, it is inferior in jurisdiction to another court, the Supreme Court for instance, which is a superior court. It is proposed that the Legislature may create inferior courts, such as city courts for criminal adjudication. I do not see that there is anything in the language to prevent the Legislature from establishing a city court for the punishment of crimes in your cities.

Mr. KELSO. If we are going to take the responsibility of fixing a judiciary system, we ought to take it to a complete extent. You have failed to make provision in reference to one of the most important branches of the jurisprudence of the State; I refer to the administration of the estates of decedents. When the question came up whether the Legislature or the people should be intrusted with the power to regulate a few miles of county lines, or change a few sections from one county to another, the people were incapable of being trusted—the Legislature was unfit to act in the matter. But, this all-important Convention must do all that—they must place these things irrevocably beyond the control of the Legislature or the people? Why not take the responsibility now in a far more important matter—why not establish a court for the transaction of that all-important branch of adjudication—the probate business of the State?

Sir, there is not a more important court in the State than the Court of Probate. The title to all the real estate of a county either directly or indirectly, passes the ordeal of that court, and upon the correctness of the decisions of that court does and must depend to a great extent the stability of the title to real estate in the community. Sir, there is not a tribunal in the State which demands higher legal qualifications for judge than does the Probate Court. If you leave it thus at loose ends, it will be worse than a one horse court—it will be a half horse team—it will be such a court as will be a disgrace to the State. I ask all the friends of fair play, of a sound judiciary, and of the equal administration of justice to leave us at liberty to introduce a court that will meet the wants and exigencies of the case. But the rule now is, the more important the matter, the more certain the previous question must be moved, and we are choked down by a direct party vote.

Upon the dictation of a few leaders, debate is forbidden—no explanation is allowed—no

one seems to feel any interest for the widow and orphan—great care is taken to protect the living—his property is cared for. But, sir, when the icy arm of death has prostrated the husband and the father—when the disconsolate widow and helpless orphan are left to struggle with the adversities of a cold and unfeeling world—then, sir, there seems to be a perfect indifference as to their fate. It seems to make little or no difference whether the court whose business it is to protect their interest be competent or incompetent. Sir, I insist that it is our duty to provide for the creation of a competent court to discharge that high and responsible duty.

They talk to us about leaving this matter to the Legislature. Sir, it has been left to the Legislature ever since 1829—over twenty years—and what have they done? Nothing, sir; just nothing at all. The representatives of the people in the General Assembly are no more competent than we are, and they are, like a majority of this Convention, afraid to do what they know they should do. And indeed, sir, this morning we learned for the first time that the election of judges is to be made a political question. Sir, when this question was before the people it was the only one upon which their jealousy was excited, they fearing that politics might get into the construction of this part of our government, and thereby greatly weaken it. We did not then find any one willing to take the ground that the question should be mingled with politics. But now we are told that the candidates for the Supreme Bench should take the stump—that there should be a general ticket for the purpose of so compelling these candidates to stump it all over the State. The people did not expect that; and I, for one, am prepared to vote against it. My vote is all that I have to give that can be of any value: and I know that will not be sufficient.

I hope, however, that there are a sufficient number of friends of a sound judiciary in this Convention to vote the section down.

Mr. DOBSON. I wish to learn from the gentleman who reported the section, what he intends by the "County Court?" Is it to do, as it does now, the common business of the county held by commissioners—such as the people now understand the County Court to be?

Mr. PETTIT. I explained my idea the other day. If the gentleman had been here he would have heard what I said. I will now say to the gentleman that it was not upon my motion that the section was re-committed. The first section of the article was re-committed to the committee with instructions, on the motion of the gentleman from Floyd (Mr. Thornton). Under the instructions of the Convention to amend the section as it is now reported; I have



done so. The gentleman should ask the Convention what they meant by it.

Mr. DOBSON. Then I will put the question to the Convention. The section was re-committed when I was absent unwell. I did not hear the discussion in regard to the instructions. But the instructions were indefinite, and the section itself is indefinite. Do you mean to establish by constitutional provision, a common commissioners' court, or a Probate Court? What does it mean? I think, sir, that it is an indefinite section, and ought not to be passed—at least the part of it to which I have alluded.

Mr. NILES. I hope that this section will not pass in its present form. I should greatly prefer the section in the old Constitution which reads thus:

"The judiciary power of this State both as to matters of law and equity, shall be vested in one Supreme Court, in Circuit Courts, and in *such other inferior courts* as the General Assembly may from time to time appoint."

The section now pending contemplates a County Court inferior to the Circuit Court in every county in the State. In some of the larger counties, such as Jefferson, Marion, and Floyd, containing commercial cities, a county court may be organized under the present Constitution, and may be useful and necessary, while in the smaller and less commercial counties it would be an oppressive and useless burthen.

There have been great complaints—merited to some extent—against the present probate system. That it is defective all will admit. But the Legislature has the power at any moment, to apply the remedy by modifying the present Probate Court, or by transferring the probate business to the Circuit Courts, or by adopting any other plan which time and experience may suggest. What do gentlemen now propose? Why, sir, to fix permanently upon the country a system still more objectionable. The proposed County Court would be invested with some common law jurisdiction, and would probably be made to supersede the present probate system. There is no man who has been accustomed to observe the proceedings before justices of the peace, who does not know that a plain common sense man, with no pretensions to a knowledge of the law, and who decides according to his own sense of right, makes a better justice of the peace than any half baked lawyer. [Laughter.] Fasten upon the country the system now proposed, and you only make places for third-rate lawyers in a large majority of the counties.

I would not complain so much of this proposed County Court, were it a mere experiment which could be abandoned at any moment, but you propose to make it permanent in the Constitution, however useless and burthensome it may prove to be. Were our counties

all large and wealthy, it would be different, but the whole scheme seems to me unsuited to the condition of the country at the present time. One motive in calling this Convention was to diminish the public burthens, but this measure would require increased taxation in the smaller counties without any adequate benefits.

I am ready to admit that I am not prepared at this moment to say what kind of a probate system should be adopted, but it does seem to me that after we have established the organization of the higher courts, we may leave something to the Legislature—at all events, that we may do it with more safety to the public interests than to assume the province of fastening this County Court hopelessly upon our contemporaries and their children.

Mr. BADGER. Is it in order to move additional instructions?

The PRESIDENT. It is, sir.

Mr. BADGER. Then I move the following instructions:

To re-commit with instructions to strike out the section and insert—

"The judicial powers of the State shall consist of a Supreme Court, Circuit Courts, and such other inferior courts as may be established by law."

Mr. DUNN of Jefferson. I am sorry the venerable delegate from Floyd is so beset both before and behind. I hope, however, that notwithstanding the remarks of his adversaries, he will escape without harm to life or limb. If I, or others differ from that honorable delegate, on this subject of County Courts, which he appears to have taken under his especial guardianship, I think we ought to be permitted to advocate our views without being charged with personal hostility to that gentleman. I am opposed to inserting in the Constitution a provision establishing County Courts. The Legislature will possess the power to establish such courts, if we retain the provisions on this subject contained in the old Constitution. The instructions moved by the gentleman from Putnam (Mr. Badger) are not exactly the words of the old Constitution, but embody the same idea. I hope, therefore, that the motion to refer with these instructions, will prevail. But, sir, if by your constitution you establish County Courts, what jurisdiction do you propose to give those courts? As I understand the object of the friends of this measure, they do not expect the courts to perform the duties of your boards of County Commissioners, generally styled County Courts, but the County Court is to have certain civil and criminal jurisdiction. To these courts will also no doubt, be given probate jurisdiction, and there you will have all the evils of the present probate system fastened upon the State.

The friends of legal reform have been earnestly exhorted to rally to the support of Coun-

ty Courts and establish them by a constitutional provision. I take the liberty of saying to those gentlemen who are desirous of putting everything they believe to be right into the Constitution, and who talk so long and so loud about reforms, that by inserting so many provisions in the Constitution, they will effectually prevent useful reforms hereafter. They wish to bind the legislative power hand and foot, and when this is accomplished, what opportunity will there be for progress and reforms? As I understand the amendment introduced by the gentleman from Tippecanoe, (Mr. Pettit,) it provides that the judicial power of this State shall be vested in a Supreme Court, Circuit Courts, County Courts, justices of the peace, and such inferior courts as may be prescribed by law.

What are these "inferior courts" to be inferior to? I would understand the section to mean that these courts must be inferior to the courts of justices of the peace. I would be glad, then, to know what kind of courts they are to be. Something like the ancient British courts of pie-powder perhaps. I hope, sir, we shall adopt a provision corresponding with the one on this subject contained in the old Constitution, leaving it to the Legislature to establish County Courts or not, as the future welfare of the State may require.

Mr. KELSO. When I made a few remarks some short time since, I did not attack this gentleman's scheme. I had a different opinion of him, and any man who would introduce this plan ought to be ashamed of it. I said then, and repeat it now, that this section made no provision for one very important branch of the jurisprudence of the State—for a court to administer the estates of deceased persons, without saying a word about a one horse court in connection with the section.

We at present have a county court, consisting of three commissioners, and the people have been so long accustomed to them that they would be better pleased with them than with any other court we could give them as a county court. I apprehend the gentleman from Floyd, (Mr. Thornton,) with all his warmth and sagacity, does not suppose we would be right in committing the probate business to this county court. His plan, I understand, is to have one judge in each court. Well, that court must be so insignificant, so trivial in its character, and so regarded in its judicial reputation, that no lawyer would accept of the office. The gentleman went on to say that the opposition to the proposition came from members of the bar entirely—and by implication conveying the idea that the opposition to the provision was dictated by interested motives. What would they have to lose? Does the gentleman suppose that if a lawyer were offered a fee to plead a case in that court he would not accept of it? And I am free to confess that I

believe the bar in Floyd county could, perhaps, get as much business in the probate court in that county as the gentleman himself. The gentleman is a practical lawyer—who brags sometimes that he is a lawyer of 30 years standing—and he comes here and presents a proposition, and then gratuitously abuses the whole bar; not because they have opposed him, but because he thinks he can raise himself a little in the public estimation by such a course. Now, to whom do the people of this State, or of any State within the limits of this great government, look for a sound exposition of the laws, and all constitutional questions, unless it be to the lawyers of the country? Who has always been the great expounder of the Constitution of the United States but one of the best lawyers in the Union—Daniel Webster—and after him a hundred others scarcely inferior to himself? Who is the safe guard of the law but the judiciary, and the members of the legal profession? So far am I from being ashamed that I am a lawyer, I am proud of belonging to the profession.

I have no desire to waste time by answering, at length, the paltry little sneer which was thrown at me in regard to politics—"he has been on all sides, and, therefore, can accommodate himself to circumstances," &c. In that the gentleman is different from me. It has been wisely said that "It is the part of a wise man to change his course when he learns that he is wrong, but that the fool never changes," and as the saying goes, "of all fools, an old fool is the worst" [laughter]. Yes, sir, the gentleman may throw out his sneers as he pleases; conscious of the honesty of the motives which have ever influenced my actions, I feel impervious to the thrusts which the gentleman has made. I have had the moral courage to change my politics when I became conscientiously convinced they were wrong. I did not persevere in error for the sake of appearing what politicians call "consistent." Nor, sir, did I come here to truckle to any party; neither did I obtain a seat in this Convention upon party grounds. I came here to act untrammelled by any party influences. And, sir, I hold to this, that if there be anything which is especially low and degraded, it is to attempt to carry a measure in this Convention by mere "party;" it is the last consideration that should be put forward by any one. And, sir, the more especially should not a gentleman of one party truckle to those of the opposite, offering them a sort of salvo, saying "if you vote for my proposition there will be a chance of your getting an appointment." I trust in God that there is no man—not even a decent pettifogging lawyer, who would take the office of county court judge, or come in competition with any man who desired to take it. It is just such a judgeship as no decent lawyer, able to earn his bread by his profession, would accept. Yet gentle-



men talk about lawyers rising like "gemii," as if we were evil spirits, besetting him and his baunting on all sides. [Laughter]. Sir, there are as honest men at the bar as in any other walk of life, and of as correct principles. I shall be governed in this Convention by no consideration except by that of justice and propriety. Unless I think a measure right, I will not give it my support, small as that may be. But I care not from what party a proposition comes, if a principle embodied in it be correct, I will go for it. I say, as was well remarked by the gentleman from Owen (Mr. Johnson) that this is an indefinite court. What is to be its character? what duties is it to perform? There is not even jurisdiction left to the Legislature to establish any other court, unless courts inferior to that of justices of the peace. I say the proper course is to vote this section down, and put a proper one in its place.

The question being upon the motion of the gentleman from Putnam (Mr. Badger) to recommit with instructions.

It was decided in the affirmative—ayes 50, noes 46.

So the section was re-committed with instructions.

Mr. SMILEY. Would it be now in order to offer an additional section?

The PRESIDENT. No sir, it would not; the subject is not before the Convention.

Mr. HAMILTON, from the committee on Banking and Currency, reported back the 6th section of article No. 24, amended agreeable to the instructions of the Convention, by adding after the word "payment," in the 3d line, these words: "And all collateral securities required under a general banking law, shall be readily convertible."

The question being Shall the section be passed?

Mr. HAMILTON. One word, before the question is taken. It will be recollected that positive instructions were given the committee to amend this section. In accordance with those instructions the committee have amended the section as reported. As this subject has been fully discussed, I hope the friends of either system will allow it to rest until the article, as amended, shall have been printed, and laid before us.

Mr. PETTIT. It seems to me that the section requires the word "specie" to be added after the word "convertible," in order to carry out the meaning.

Mr. WALPOLE (in his seat). Say "gold and silver."

Mr. PETTIT. The word "specie" will cover what is required.

Mr. WALPOLE. Oh! well.

The section was so amended by consent.

Mr. PEPPER of Ohio moved to suspend the rule requiring the yeas and nays to be taken on the passage of the section.

The motion was not agreed to.

The question being taken upon the passage of the section as amended.

The yeas and nays were taken with the following result—yeas 113, nays 14:

YEAS.—Messrs. Alexander, Allen, Bascom, Beach, Beeson, Biddle, Blythe, Borden, Bourne, Bowers, Bryant, Butler, Chapman, Chenoweth, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson of D., Johnson of O., Kelso, Kent, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimby, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—114.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Berry, Brookbank, Clark of Hamilton, Davis of Madison, Helmer, Kilgore, Morgan, Nave, Walpole, and Watts—14.

So the section was passed, and the rule referred to the committee on revision.

#### NEW COUNTIES.

Mr. McLEAN, from the committee on miscellaneous provisions, reported a section providing that the citizens of Perry and Spencer may lay out a new county; and if a majority of the people of each of said counties shall assent to it, then the new county may be formed.

The section was read a first time and passed to a second reading to-morrow.

#### MISCELLANEOUS PROVISIONS.

Mr. WALPOLE, from the committee on miscellaneous provisions, reported several sections, providing "that after 1880 the Legislature should have power to revoke all charters which have not then expired—no corporation hereafter to exist over twenty-five years, except those of political and municipal character—statistics of population, agriculture, manufactures, &c., to be collected in 1855, and every tenth year after—bank charters and laws to be repealable, &c."

The sections were severally read a first time, and passed to a second reading to-morrow.

## REPORTS FROM SELECT COMMITTEES.

Mr. BIDDLE, from a majority of the select committee to whom had been referred a resolution of inquiry relative to the expediency of dividing the University Fund amongst the various colleges and common schools in the State, reported against diverting the fund from its original destination. The committee thought that a diversion of the fund for that or any other than the original purpose, would be doing an injustice to the trust. The committee recommended the indefinite postponement of the resolution, and asked to be discharged from the further consideration of the subject. A detailed argument accompanied the report in support of the position taken by the committee.

The committee were discharged by consent.

The question being on concurring in the report of the committee,

Mr. WALPOLE moved that the report be laid upon the table.

The motion was agreed to.

So the report was laid on the table.

Mr. BORDEN, from a minority of the committee, reported a section, providing that the University Fund may be divided amongst the different incorporated colleges in the State, in proportion to the number of students in each.

Mr. MORRISON of Washington moved that the report be laid on the table.

The question being upon laying the minority report on the table,

It was decided in the affirmative.

So the report was laid upon the table.

## NOTICE.

Mr. DUNN of Jefferson gave notice that he would, to-morrow, or on some subsequent day, move to strike out the thirty-seventh rule.

A DELEGATE. What is the rule?

Mr. DUNN of Jefferson. I will say, in explanation, that the thirty-seventh rule requires all resolutions of an imperative character directed to any of the standing committees, to lie over one day, if any objections be made.

The rule was then read by the PRESIDENT.

## STATE LITIGATION.

The PRESIDENT laid before the Convention a communication in reply to a resolution of inquiry relative to the amount of fees paid attorneys, in suits brought by or against the State during the last five years. The communication stated that the sum of \$1,960 had been paid as fees during this period.

Mr. WATTS. The resolution was amended so that the inquiry would go back ten years.

Mr. BASCOM. The gentleman is correct. I offered the resolution, saying five years; he moved to insert ten years, and I accepted the amendment.

Mr. DUNN of Perry. I move that the Convention adjourn.

The motion was not sustained.

Convention refused to adjourn.

The PRESIDENT. What disposition will the Convention make of the communication?

Mr. PETTIT. I move that it be laid upon the table.

The motion was agreed to.

So the communication was laid upon the table.

The PRESIDENT. The next thing in order are the

## ORDERS OF THE DAY.

Mr. OWEN. I ask of the Convention a suspension of its rules, for the purpose of introducing a resolution of some importance, and which, if we are to adopt it at all, should be passed now.

SEVERAL VOICES. Read! read!

Mr. OWEN. It is as follows:

"That a committee of one from each Congressional district be appointed by the Chair, to prepare an address to the electors of the State, embodying a brief statement of the changes proposed in the amended Constitution, and such other matters in connection therewith as may aid in securing its adoption."

I move a suspension of the rules, for the purpose of introducing this resolution.

The question being on suspending the rules, It was decided in the affirmative.

So the rules were suspended.

And the question being on the passage of the resolution,

Mr. OWEN said—

Mr. PRESIDENT: We have been in session here for three months and a half, and shall have to remain in session two or three weeks longer to complete our work, making an entire session of some four months. Its expense, including reporting and publishing debates and journal, may reach from eighty to a hundred thousand dollars.

It is of the greatest importance to the State, to say nothing of our own reputations, that the new Constitution, the result of all this labor and expense, should not be rejected by the people. And it is our duty to take proper and reasonable means towards securing its adoption. What are those means? One of the most efficient is, to prepare, and place before the people, in condensed form, a statement, showing distinctly what the principal changes are which are proposed in the new Constitution, as compared with the provisions of the old. The changes are numerous. Even we who have made them would be somewhat puzzled to sit down and enumerate them. Many persons, especially farmers living in remote and secluded spots, may not have the old Constitution by them when they receive a copy of that amended by us. And even if they have, it will be a work of considerable labor to collate and compare every one of its hundred and fifty sections.



I do not propose, sir, to introduce into this address anything like special pleading in defence of our work. Let it stand on its own merits. Let those who would examine arguments for or against any provision, look for these in our debates. Now and then, it might not be out of place very briefly to give the reasons for a change, and to State the effects to result from it.

It has been customary to talk of the changes the people expected in this new Constitution; and some, out of this body and not specially charged with the duty, have undertaken to say what *were* the specific amendments demanded. Sir, there was, in strictness, but one instruction, given without a dissenting voice, imposed equally upon us all, when we took the oath to discharge our duty as delegates. It was, to make a good Constitution; such an one as the people might feel satisfied to live under for half a century to come. All other instructions are, to a great extent, imaginary; the result of personal and local predilections: coming to us in one shape from the North, in a different one from the South; in one from the East, in another from the West. When we shall have framed a Constitution as perfect in all its parts as our combined judgment and experience enable us to frame it, then, and not till then, shall we have performed our whole duty here.

I know that many things have been touched by us, which may not have occurred, in advance to the people generally as necessary amendments. That is natural; and could not, indeed, well be otherwise. Did you ever, sir, undertake the thorough repair of an old house which had stood some thirty or forty years, untouched by the workman's hand? If you ever did, as I have, doubtless acquired some experience in the progress of the work. Perhaps you had a carpenter, in the first place; to examine the building, and report to you what repairs were essential, and at what probable expense? He might tell you of one or two sills evidently decayed; of a portion of the flooring to be renewed, or of a worn out, weather beaten roof which must be replaced by a new one. He would suggest, it may be, that the whole expense could not exceed a couple hundred dollars. But then he would add, that, until the floors were taken up and the joists and frame work of the building exposed, it was impossible to determine, with any certainty, what was necessary to be done. You bid him commence the work; and before a few weeks are over, it becomes apparent to you, that to make the job thorough and permanent, first one additional repair and then another must be undertaken. You perceive clearly, that, unless you do the thing effectually what money you do spend is but so much thrown away. While you are about it, you resolve to do, what, sooner or later, must evidently be done. You regard this as true economy; as costing less, in the end, than continual patching and daily expedients. You

did not, indeed, expect such a task when you first undertook it. You had no idea that your bill would run up, as you soon discover that it will, to some five or six hundred dollars. But not the less do you see and know, that you could wisely do but one of two things; either to refrain from the repair altogether, or to make it what it should be, effectual and enduring at once.

So it is with the task—an incalculably important one, which we were sent here to perform. Let men outside say what they please, it was our bounden duty, after once commencing our work, to do it thoroughly. I know that allusion has been made, in another place, to the time that has been consumed in our labors; and to the fact that our present Constitution was completed by its original framers in three weeks. Sir, much as I honor the memory of these men, truly as I believe the Constitution they gave us was, for its day, an excellent one, the best that, till then, had ever been framed; yet, cannot I shut my eyes to the fact, that if they had remained sitting in Convention for three years instead of three weeks, and had been paid throughout these three years, each one of them ten dollars a day; and if, during that entire session, they had, in addition to their three week's labor, done but one act, namely, to add to the Constitution we have been living under, six lines—six lines which find a place in the Constitution as amended by us, providing that the Legislature shall not have power to contract a public debt, nor to engage the State as stockholder in any corporation, nor to loan its credit to any individual or association; if, I say, during a session thus protracted and expensive, they had made but that single amendment, the expense incurred by their labors would have been the best money ever expended by the State, or paid by the people. [Enthusiastic applause.] The omission of these six lines has cost us six millions of dollars. We are paying, in consequence of the omission of these six lines, every year we live, three hundred thousand dollars; eight hundred dollars a day forever; a sum more than sufficient to maintain, in perpetual session, year after year, from the first of January to the thirty-first of December, such a Convention as this, with its hundred and fifty delegates, and all its expenses for rent, officers, journal and debates. [Renewed applause.] And this vast sum is paid yearly, not to our own citizens, to be again disbursed among us, but to those foreign bondholders who figured so largely in the recent bank discussion; an annual drain on our capital; tribute imposed by our own improvidence, and sent out of the State, never to return.

Thus, though it be our unquestionable duty to close our business here with all convenient despatch, it is not the less true, that the value of our labors cannot be measured by time, nor estimated in dollars.

Some things have been said that had much better have been left unsaid, about the pay of the members of the Convention. If I had been a member of the General Assembly last winter, I should not have voted, as per diem for the delegates, a higher rate than that to which we are entitled. For a State, deeply in debt as Indiana is, must husband her resources. But yet, if men were always paid according to the importance of the work they perform, our members of Congress would receive three dollars a day, and we eight. [Applause.]

I speak of that which I know; having been a member of Congress for four years: four eventful and exciting years. I was in the House when the great questions of Oregon, Texas, Tariff, and the Mexican War were debated and decided. And yet, put all these questions momentous as they were, together; estimate their effects, present and future, upon the people of Indiana, and they do not even remotely compare in importance with the effects to be produced upon our people by the amended Constitution, if the popular vote should decide its adoption.

In such an address as that proposed by the resolution, a few words might be introduced as to time and expense. It might not be inappropriate very briefly to allude to the fact, that we had no voice in deciding the number of delegates of which this body is composed; a matter which has mainly determined both the time consumed and the cost incurred by the Convention. We cannot, and should not, debar delegates from the right of speech; and in a numerous body the debates become almost necessarily tedious.

Nor was the reporting of our debates a matter of choice with us. That was decided in advance of our meeting here, by the Legislature of last winter. In defence of that decision it might be said, perhaps, that when these debates come to be printed and circulated all over the State, containing as they do, arguments for and against every important change that has been made, or has been rejected—the benefit they will effect may out-pay the cost at which they are published. I cannot say whether the people of Indiana sent here the best talent among them. I know they ought to have done so. I believe they intended to do so. And if the best talent in the State is to be found in this Convention, its debates in spite of their checkered character, must, as matters of future reference and materials for future construction, be of great and permanent value. But be this as it may, it should be borne in mind, that the expense of reporting did not originate with us.

As to the time already spent here, and the two or three weeks which may still be necessary to complete our labors, I am much more apprehensive that we shall overhurry matters, than that we shall unduly protract our session.

There is a great temptation to the former course. I feel it myself. Our inclination points one way, our duty another. Then too, I am aware there are professional men in this body who would rather pay ten dollars a day than to remain here any portion of the coming month. I know there are farmers here, who ought to be at this moment at home, preparing for their spring work. But yet I hope, sir, for the sake alike of the interest at stake and our own future reputations, that we will not precipitate the disposal of the business yet to be done. A four months session is not one of unusual length for a Constitutional Convention. It is seldom that a task similar to that entrusted to us has been completed in less time, even by a Convention of less unwieldy numbers than ours.

The Convention of New York, consisting of a hundred and twenty-eight members, sat nearly four months and a half. That of Ohio, consisting of a hundred and eight delegates, has already been in session more than four months, and does not seem yet to have approached the termination of its labors. The Kentucky Constitution, it is true, was amended in about three months; but the number of delegates reached a hundred only. While on the other hand, in Louisiana, more than double that time was employed. This is not to be wondered at. More important discussions have taken place, and more varied and substantial business has been done here since we met, than in a dozen ordinary sessions of your Legislature. [Loud applause.] That fact may be easily decided by any dispassionate man who will take up the proceedings of this body, and compare them with those of the General Assembly, during the last six or eight years. There are single sections in the Constitution we are about to submit to the people—not one, but several of them—each one of which is worth to the State more than the entire cost of this Convention. As one of the tax payers of the State, I would prefer to pay my share of that sum for each one of them, rather than to have them stricken out again.

In conclusion I remark, that it is not an unusual thing to adopt a resolution similar to that now offered. It was adopted in New York, in Kentucky, and I believe in other States. If this thing be well done, it will, I think, go far to obtain for the amended Constitution many votes, which, for lack of a distinct understanding of the character and effects of the chief changes proposed in it, might otherwise be cast against that instrument.

Mr. WALPOLE moved that the Convention adjourn.

The motion was not agreed to.

Mr. FOSTER hoped the resolution would be adopted. Although the public anticipated that the Convention would not be in session longer than a few weeks, yet his constituents approved of what the Convention had so far



done; and they recommended that the body should not pursue the course which the Legislature had been in the habit of leading, viz: doing the greater part of their business during the last week of the session. A few dollars more or less would be but a drop in the bucket.

Mr. WALPOLE observed that this was a most extraordinary time to introduce a resolution of this kind. The gentleman knew that there were many articles yet undecided, and the decision of which the gentleman (Mr. Owen) could not anticipate. Could it be said now who would be the advocates or the opponents of the Constitution? The gentleman took time by the forelock that he, as chairman of the committee, might have an opportunity of addressing a hundred and eighty thousand freemen upon a subject not yet matured.

There was once a party in this State called the "thunderers;" an organization which employed its powers in stumping for or against such measures as found favor with them. The gentleman appeared, with his other twelve associates, to have become a "thunderer" for the Constitution, before it was yet completed. A few men had been active in proposing amendments to the Constitution. The gentleman, with some others, appeared upon the journals as the constructors of the Constitution, while the rest of the Convention appeared as lame members. [Laughter.]

If he (Mr. W.) were the representative of serfs, he might be in favor of this proposition; but as the representative of freemen, he should most solemnly protest against this measure. He would never consent to say that the people of Indiana had not sufficient intelligence to enable them to examine the Constitution, and perceive what was right and what was wrong in the instrument. What he especially wanted was, that the Constitution be left to make its own address. Let the people take up the Constitution, section after section, and thus judge as to what improvements had been made upon the old organic law. He wanted no Robert Dale Owen to address the people of Indiana, and tell them they were not capable of judging as to the merits or demerits of the Constitution. He did not want—he had almost said, the gentleman from Tippecanoe, (Mr. Pettit,) the gentleman from Allen, (Mr. Borden,) or other "thunderers" to tell the people they ought to adopt the new instrument. He considered that any man who voted for this proposition, virtually told the people that they were not intelligent enough to understand this new Constitution. It was a libel upon the judgment and understanding of the people.

The gentleman was not contented with seven hundred and fifty copies of the debates—to be circulated in every school district—in which both sides of every question would be given; but in addition to that, he must have a one-sided statement, or address. These debates had cost

near \$10,000. Were they to be set aside, at the *ipse dixit* of the gentleman, and this committee from the "Congressional Districts" to act as god-fathers to the deliberations of the Convention?

He feared the influence of the gentleman's eloquence and warmth, upon the people, when brought to bear in favor of the new Constitution. Especially did he fear it, recollecting the effect which the gentleman's address in relation to the Board for the equalization of taxation, produced in this State, some years ago.

He opposed this resolution, because it was an insult to the intelligence of the people—because it was an apology, as it were, for the work of the Convention, and because the Constitution would not be the kind of a one which the people had expected. It says that the Convention, after having been four months in session, should delegate to 13 men the office of advocating the adoption of the Constitution—in fact, asking the people not to reject the result of their labors. It appeared to him, to say the least of it, absurd, when there was a published volume of the debates in every school district in the State, to do that office. He was opposed to the resolution, because it was an attempt to justify their own acts, and because it said that the people could not understand the provisions of the Constitution, and that the Convention alone could.

There was one other reason why he would oppose this resolution, and that was on account of the expense attending the publishing and circulating of this address. The Convention already had cost the State some \$80,000—this would cost at least a thousand dollars more.

One gentleman was to write the address, and that was the gentleman from Posey [Mr. Owen]. The others would merely put their "marks" to it, like so many Cherokee chiefs, placing their "marks" to a treaty on a piece of wampum. [Laughter.]

Mr. OWEN. If it be the desire of the gentleman from Hancock (Mr. Walpole) to smother, at its birth, what he is pleased to call "this four months bantling;" if he seek to defeat the adoption of the instrument which has so long occupied our time and thoughts, he is consistent enough in opposing this address. But there are few among his colleagues who share with him such intentions as these. We believe the work of our hands, imperfect as it must be, still well worthy of adoption. And, because we propose to place before our fellow-citizens a brief statement, distinctly setting forth the changes we have made, are we to be told that we offer an "insult to the intelligence of the people." Sir, as well might it be said that when the author, or publisher, of a book appends to it a table of contents, for the convenience of ready reference, he thereby insults his readers. (Applause.)

The gentleman referred to the article of expense, and supposed the publication of the address might cost a thousand dollars. I see not why it should cost us a cent. Every newspaper in the State that can spare room enough to give its readers a condensed view of the results of the labors of this Convention will be likely to publish it; and, certainly, without any charge to us.

But the gentleman seems greatly disturbed by the possibility, or probability, that I should have the writing of this address. It must be written by some one. If there is to be a child, somebody must be its father. (Laughter and applause). I am very anxious it should be written, but have not the slightest desire to write it. I moved the resolution because it did not seem to occur to any one else. I disclaim all right, whatever, to chairmanship on that account. The committee will, I hope, choose its own chairman, when it meets.

Mr. WALPOLE. I would as soon the gentleman from Posey wrote the address as any other gentleman on this floor.

Mr. OWEN. Indeed. The gentleman surprises me. I understood his chief cause of alarm to be, that the gentleman from Posey might, by his usual wily pleading, unduly influence the electors of the State in favor of the new Constitution.

Sir, I disclaim, once for all, any intention to put forth an argumentative defense, but only an explanatory synopsis. As such, I propose this address. As such, I trust the Convention will adopt the resolution.

Mr. KELSO. I will ask the gentleman to modify his resolution in this way: to let the delegates from each district appoint their own committee-man. [Cries of "no, no, no."]

The PRESIDENT. The Chair would be very well pleased to be relieved from the duty.

Mr. KELSO. I make a motion to amend the resolution as I have suggested.

The question was then taken upon the amendment to the resolution, and it was decided in the negative.

The question then recurred upon the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

On motion of Mr. SHERROD,

The Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the

#### ORDERS OF THE DAY.

The PRESIDENT. The first business in order is the following section of article 20, on its third reading:

"No person arrested or confined in jail shall be treated with unnecessary rigor. The Legislature may continue, modify, or abolish the Grand Jury system."

Mr. PEPPER of Crawford. I move to recommit with the following instructions:

"Strike out all after the word 'rigor' in the 13th line, and insert the following:

"No person shall be held to answer for any criminal charge except in such manner as shall be prescribed by law."

Sir, on yesterday I voted for the amendment of the gentleman from Tippecanoe (Mr. Pettit), because I considered it better than the section as originally reported by the committee on rights and privileges. The section as reported by that committee proposes to change, radically change, the administration of the criminal law, which has stood as now administered for a period of time, it is said, "whereof the memory of man runneth not to the contrary." To subvert a principle of the common law, which is said, by a learned jurist, to be "the perfection of reason and the combined wisdom of ages;" to utterly uproot a system which the corroding touch of time has in no wise effaced; a system that was transplanted by our puritan fathers as a republican feature into the laws of this country, which has since "grown with its growth and strengthened with its strength," and at this moment finds a prominent place either in the Constitution or the laws of every State in the Union.

Before the Grand Jury system is stricken out perpetually by Constitutional enactment, gentlemen should weigh well the consequences, be sure they have another system that will fill its place.

The amendment that I propose leaves the whole matter in the hands of the law making power, where it can with propriety be left. It more properly belongs to the *practice act* than to the *organic law*. If left to the former it can be modified, changed, or abolished at pleasure, as may best subserve the interests of the country; if engrafted in the latter, there it must remain unchanged, so long as the Constitution continues in force.

And, whilst I am opposed to abolishing the system by Constitutional enactment, so that it cannot be re-enacted should it become necessary, I am equally opposed to retaining it in the Constitution for the reason that then it cannot be abolished though its abolition may be imperatively demanded, but am in favor of leaving it an open question for the Legislature to settle and adjust, from time to time, as in their wisdom shall seem right. In this manner public sentiment will more certainly be attained, and justice as satisfactorily administered.

But, if the Grand Jury is to be continued in any shape, I hope it will be for passing upon the higher grades of crime only. I am anxious to see some reforms in the punishment of small offences. The present mode of punishing defendants for petty misdemeanors is unnecessarily expensive both to the public and the accused.



Give to justices of the peace exclusive jurisdiction over all the smaller offences, allowing the defendant the right to appeal. Make this change and there will be no necessity in a majority of the counties in this State for the Grand jury, if it be continued, to sit more than one day at each term of court; three-fourths of the riding bailiffs could be dispensed with, and the whole expense need not be quarter what it now is.

**MR. CLEMENTS.** I can see but little difference between the amendment now offered and the amendment proposed by the gentleman from Tippecanoe. I propose to amend the amendment as follows:

The **PRESIDENT.** A motion to re-commit is pending already.

**MR. CLEMENTS.** But I desire to re-commit with instructions to report the section as follows:

"No person shall be put upon trial for any criminal charge which amounts to a felony, except by presentment or indictment; and all crimes or misdemeanors less than felonies shall be tried in such manner as shall be prescribed by law."

**MR. PETTIT.** It seems to me that we have had enough of this matter. The section leaves it entirely discretionary with the Legislature either to abolish, or modify, or continue the present Grand Jury system, and I think it is altogether unnecessary to waste further time upon the subject. Yesterday the section was ordered to be engrossed by an overwhelming majority, showing in the most decided manner what are the feelings of the Convention, and, in my judgment, I think we had better pass the section as it is.

**MR. CLEMENTS.** I do not desire to occupy the attention of the Convention more than a single moment on this question. What, let me ask gentlemen, has been the great cause of complaint against the present Grand Jury system? Simply, I believe, that too many offences have been left to them to investigate; that parties have been dragged from their homes before Grand Juries, on the most trivial occasions.

Now what does the amendment of the gentleman from Tippecanoe propose? It proposes to leave it to the Legislature to say whether our Grand Jury system shall be abolished or not. One Legislature at one session may abolish it, and another at the very next session may re-enact it, and thus we may go on abolishing and re-enacting, having no certainty as to the mode by which offences shall be tried. Did any body ever hear it complained of because a horse-thief, or burglar, or murderer was indicted? Never, sir. Nor, sir, do I believe that we should ever hear a single word of complaint if the system were amended in the manner in which I propose. It cannot be possible that any one can ever complain of a Grand Jury having a right to indict for a high crime. The

amendment I have offered proposes to take from their jurisdiction all crimes except felonies. I do hope the amendment will not be laid upon the table.

**MR. OWEN.** A single word as to what fell from the gentleman from Crawford (**Mr. Pepper**) in regard to the incongruity of the section. The committee on revision and praseology will make all these amendments; and if it should be found that any section should contain incongruous matter, they will break it up into two or three sections, if necessary to do so.

**MR. DUNN** of Perry moved the previous question.

The call for the previous question was sustained, and the main question was ordered to be now put.

The question being first on amending the instructions as proposed by the gentleman from Daviess (**Mr. Clements**),

**MR. CLARK** of Tippecanoe demanded the yeas and nays.

The yeas and nays were ordered, and being taken resulted as follows:

**YEAS.**—Messrs. Alexander, Allen, Badger, Ballingall, Barbour, Beard, Biddle, Blythe, Borden, Bourne, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Gordon, Graham of Miami, Haddon, Hall, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Kelso, Kendall of White, Kilgore, Lockhart, Maguire, March, Morgan, Newman, Rariden, Read of Monroe, Ritchey, Smith of Ripley, Spann, Stevenson, Thomas, Walpole, Watts, Wolfe, Wunderlich, Zenor, and **Mr. President**—54.

**NAYS.**—Messrs. Bascom, Beach, Beeson, Berry, Butler, Carter, Chapman, Chenowith, Coats, Colfax, Cookerly, Crumbacker, Dick, Dunn of P., Duzan, Edmonston, Fisher, Foley, Garvin, Gibson, Gootee, Harbolt, Hardin, Hendricks, Huff, Johnson of Orange, Jones, Kent, Kinley, Logan, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Ristine, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Steele, Tague, Tannehill, Thornton, Trimble, Wheeler, Wiley, Work, and Yocum—67.

So the amendment was rejected.

The section then recurring on the amendment proposed by **Mr. Pepper**, it was rejected—ages 35, noes not counted.

The **PRESIDENT.** The question now is, Shall the section pass?

The yeas and nays were demanded, ordered, and taken, with the following result:

**YEAS.**—Messrs. Alexander, Allen, Badger, Ballingall, Bascom, Beach, Beard, Beeson, Ber-

ry, Bicknell, Butler, Carter, Chapman, Chenoweth, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dunn of Perry, Duzan, Edmonston, Foley, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Holman, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of White, Kinley, Logan, Maguire, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Tannehill, Thornton, Trimby, Walpole, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—95.

NAYS—Messrs. Barbour, Biddle, Blythe, Borden, Bourne, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Foster, Frisbie, Haddon, Helmer, Hitt, Hogin, Hovey, Howe, Kelso, Kilgore, Lockhart, March, Morgan, Rariden, Smith of Ripley, Stevenson, Tague, Thomas, and Watts—33.

So the section was passed

#### DIVISION OF THE STATE INTO CIRCUITS.

The PRESIDENT. The next business is section 7 of article 29, on its third reading.

"The State shall be divided into a suitable number of Circuits, and a Circuit Judge shall be elected by the electors in each Circuit, and shall reside therein; and shall hold his office six years, if he shall so long behave well; and no person elected to any office in this State shall be eligible to any other office of trust or profit in the State, during the term for which he was elected."

Mr. McCLELLAND moved to re-commit the section, with instructions to strike out the word "six" in the 24th line, and insert the word "four," so as to reduce the term of holding office by the circuit judges to four years, instead of six. He thought that a majority of the Convention, after considering the matter, would be disposed to make that change.

Mr. PETTIT. I wanted time to have prepared an additional instruction, so as to strike out that part which renders a judge ineligible for re-election during the term for which he was elected, and which will render it necessary that he should resign his office on the bench before he can be re-elected to any other. Now what is the difficulty here? Take it even in the case of a justice of the peace. He is declared a judicial officer, and if you elect him in that capacity for four years, he cannot be elected as a county commissioner, or even as a representative in your legislature. Thus it may happen,

too, that a vacancy may occur in the supreme bench, to which the people might desire to elect some man already on your circuit, and although he might be the best possible man that could be found, with such a provision as that he could not be elected.

Mr. MARCH. For one, I hope the principle contained in that part of the section which it is proposed should be stricken out, may be retained. I am in no way particular about the phraseology, but if there be any one place which ought, more than another, to be kept pure from the polluting presence of the habitual and professed office-seeker, it is that of the judiciary, and I trust that this provision will be preserved in the Constitution. For one, I should be willing to make every officer holding an important office ineligible to re-election to any other office during the term for which he is elected—and I would do so on the principle that when a man has sought an office and obtained it, or when it is conferred upon him without being sought, and he accepts it, he should make it a public duty to fill it well, and not make one office a ladder by which to climb into notoriety or to get into another. Sir, I cannot subscribe to the doctrine advanced in this Convention, and that, too, by high authority, that offices are the mere rewards of talent and public service. They are public trusts, instituted for the public good, and their duties ought to be discharged with faithfulness, to the end, by those who hold them. [Applause.]

Mr. RARIDEN. I understand that we are now to have a supreme bench, professedly elected by the people, but in reality to be elected by a junta at the capital composed of both parties. The people are to elect the circuit judges, and they will have some opportunity of becoming acquainted with the proper men to select on whom to confer this honor. But they will have no means of judging of the men— [Here Mr. R. was interrupted by a loud stamping of feet and thumping on the benches, and a variety of other noises. When the confusion had in part subsided, he proceeded to say:—] I have not been troublesome to the Convention for three or four days, and I assure gentlemen that it is not for the gratification of hearing myself speak that I offer a remark or two on this subject; but I say that the plan proposed must always result in our having a circuit bench superior to our supreme bench. It is important that we should have men of talent and intelligence; but if the circuit courts are to be the courts in which you will have the most intelligence, which I cannot but think will be so, why not let appeals and writs of error come from the supreme court to the circuit courts, and thus reverse— [The noise again became so uproarious that Mr. R. took his seat without finishing the sentence.]

Mr. BORDEN. The section, as it stands, really prohibits a judge from being a candidate



for re-election. Surely that can not be contemplated by the Convention?

Mr. MARCH. I think the gentleman from Allen is mistaken as to the meaning of the section.

The question was then taken on the motion to re-commit the section with instructions, and the yeas and nays having been demanded and ordered, they were taken, with the following result:

YEAS.—Messrs. Alexander, Bascom, Beach, Berry, Butler, Carter, Chapman, Cookerly, Davis of Parke, Dobson, Dunn of Perry, Duzan, Fisher, Foley, Frisbie, Gootee, Graham of Miami, Haddon, Harbott, Hardin, Hawkins, Hitt, Johnson of Dearborn, Kinley, March, Mathis, McClelland, McLean, Milligan, Milroy, Mooney, Moore, Pepper of Ohio, Ritchey, Shannon, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Thornton, Trimble, Walpole, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—53.

NAYS.—Messrs. Alexander, Allen, Anthony, Barbour, Beard, Beeson, Biddle, Blythe, Borden, Bourne, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dunn of Jefferson, Edmonston, Farrow, Foster, Garvin, Gibson, Gordon, Hall, Hamilton, Helmer, Hendricks, Hugin, Holman, Hovey, Howe, Huff, Johnson of Orange, Jones, Kelso, Kent, Kendall of White, Lockhart, Logan, Maguire, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Sherrod, Sims, Steele, Stevenson, Thomas, Watts, and Wheeler—72.

So the motion to re-commit did not prevail.

Mr. RITCHEY. I move to re-commit the section with the following instructions: to add after the words "State, or United States," the words "except to a judicial office." I think these instructions are proper. As the section now stands, it provides that a judicial officer shall not be eligible to any other office to which he may be elected within the State. It now provides that he shall not be eligible to any office of the State or of the United States. Now, let me ask you how common is it for judges to be riding through counties and electioneering for a seat in Congress, or in the Senate. While I would regard it as highly improper to allow judges, holding the high stations which they are called to fill, to be electioneering for other stations, while filling the one to which they are elected, especially those to which I have referred, I can see no propriety in seeking to prevent them from ascending in the judicial scale. I hope that the section will be re-committed, and that the instructions I have suggested will be adopted.

Mr. PETTIT. I desire to know of the gentleman from Johnson if he contemplates that the State shall put restrictions upon the qualifications of a man to hold office under the general government? Is that the idea?

Mr. RITCHEY. Yes.

Mr. PETTIT. Now, let me say to that gentleman, and to the Convention, that, to my mind, beyond all question, we cannot do any thing of the kind. I suppose that if you make a man a judge of the Supreme Court, or a justice of the peace, the people of the whole United States would have a right to make him President. The qualifications in such a case are made by the whole people, and no State in the United States can prevent the people of the United States from electing whom they please. Now, sir, if we do this, it would not only be absurd in itself, but it would look as if we did not know the difference between the general and the State government. Such a provision will be of no force whatever. You may take up a simple justice of the peace, and make him President of the United States, or the President, by and with the advice of the Senate, may make him a foreign Minister, for anything that you can do. The Constitution of the United States has fixed their qualifications, and you cannot alter them.

Mr. RITCHEY (amid much confusion) rose and said: He simply wished to state to the gentleman from Tippecanoe that he supposed the Convention could provide in the Constitution that a man should not be eligible to any other office, while he held a seat on the judicial bench. He was quite aware that the Constitution of the United States prescribed the qualifications of Congressmen and Senators, but he thought the Convention might say—[The remainder of the sentence was not heard by the Reporter, owing to the confusion which prevailed in the Hall.]

Mr. EDMONSTON. I never like to move the previous question, but it appears to me that this has gone far enough. I move the previous question.

Mr. PETTIT. If the call for the previous question is sustained, will that prohibit any further proposition to re-commit with instructions?

The PRESIDENT. Yes, sir.

Mr. PETTIT. Then I hope it will be voted down.

The question being taken on the call for the previous question, it was sustained—ayes 51, noes 33—and the main question was then ordered, by consent, to be put.

The question was then taken on the motion to re-commit with instructions, and it was decided in the negative.

The question then recurred on the passage of the section, and the yeas and nays being ordered and taken, resulted as follows—yeas 86, nays 39:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Barbour, Bascom, Beard, Bidle, Blythe, Brookbank, Bryant, Butler, Chenowith, Clark of T., Clements, Coats, Cole, Colfax, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Hawkins, Helm, Hendricks, Hitt, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of White, Kinley, Logan, March, Mathis, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morrison of Washington, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Sims, Smiley, Smith of Scott, Spann, Stevenson, Tannehill, Thomas, Thornton, Trimble, Wiley, Wolfe, and Zenor—86.

**NAYS.**—Messrs. Beach, Berry, Borden, Bourne, Carter, Chapman, Clark of Hamilton, Cookerly, Crumbacker, Davis of Madison, Dunn of Jefferson, Duzan, Fisher, Gibson, Harbolt, Hardin, Hogin, Holman, Kelso, Lockhart, Maguire, McLean, Moore, Morgan, Murray, Pettit, Snook, Smith of Ripley, Steele, Tague, Wallace, Walpole, Watts, Wheeler, Work, Wunderlich, Yocum, and Mr. President—39.

So the section was passed.

#### CONSTITUTION OF THE CIRCUIT COURT.

The **PRESIDENT**. The next business in order is the 8th section of article 29, on its final passage.

The section was read as follows :

"The circuit court shall be composed of one judge only, and shall have such civil and criminal jurisdiction as shall be prescribed by law."

The question being taken, the section was passed.

#### PROSECUTING ATTORNEY.

The **PRESIDENT** announced the next business in order to be the following section of article 30, on its final passage:

"There shall be elected in each judicial circuit, by the electors thereof, a prosecuting attorney who shall hold his office for two years and until his successor is elected and qualified."

Mr. **DUNN** of Jefferson moved to lay the section on the table.

The motion was decided in the negative—yeas 53, nays 73.

Mr. **MARCH** moved to re-commit the section with instructions to strike out the words, "In each judicial circuit," and insert "in such districts as shall be prescribed by law."

Mr. **COLFAX** moved the previous question, which was sustained.

The question was then taken on the motion to re-commit, offered by Mr. March, and it was decided in the negative.

The section was then passed.

#### NEGRO SUFFRAGE.

The following section being on its third reading, was then passed :

"No negro or mulatto shall have the right of suffrage."

#### IMPRISONMENT FOR DEBT.

The following section was then read a third time and passed :

"There shall be no imprisonment for debt, except in case of fraud."

#### LAW REFORM.

The Convention then proceeded to the consideration of the report of the committee on the practice of law and law reform, the pending question being on the amendment offered by Mr. Blythe.

Mr. **CARTER**. I had not intended, Mr. President, to enter into this discussion at all, but to let the people of Montgomery county see the fulfilment of my pledges by my votes. But, sir, having the floor, I feel constrained to add my weight and feeble influence to the adoption of this section, and I do it the more cheerfully because I know that an entire reform in the practice and pleadings of law, are earnestly demanded by the people, and that my honorable colleagues hold no other proposition more nearly at heart. In this as well as other discussions, I speak not for myself alone—I speak the sound convictions of the two honorable gentlemen who sit by my side. Age brings with it judgment and experience—youth may possess talents, but it is wise on the part of the possessor to heed the admonitions, and reverentially respect the opinions of the aged. Sir, a long period of service for the people, with their commendation, tells well of the correctness of the judgment of the one, while the intimate connection with the people, and the trust they have confided in him, speaks as strongly of the weight of his opinions and his judgment. I then, sir, repeat that I am not speaking alone for myself, but also on the part of my honorable colleagues. I am a law reform man. It is well known to a majority of the members of this Convention, that I am a member of the bar; but notwithstanding the prejudices of early education, I am one of those who favor a reform in the practice and pleadings of our courts to the fullest extent. Sir, I have seen on this floor an attempt to throw a stigma on those who favor this measure, and sorry I am that the attempt comes from the legal profession. They will find that the people will not sustain them, and they will hereafter regret that they ever took the position they have. So far as I am concerned, I can only say that ridicule has no terrors for me, and if the measure I advocate will bring on me shame, let that shame come—I am willing to bear it. While, however, I would make this statement, I would also say that among all the



varied occupations from which men are chosen to perform public duties, none can be found more honorable, more intelligent, or more efficient in the discharge of those duties, than the lawyers of our country. In the advocacy of law reform, when I say that the practice and pleadings of our courts are totally and radically wrong, I do not mean to pass any censure upon the members of the profession. The faults of the law and its practice do not belong to them; the fault belongs to the law makers, and to the old system which was brought into this country by our English ancestors, and with which the members of the bar of the present day had nothing to do.

Sir, of all the questions which have agitated our people and which have operated as a reason for the call of this Convention, there is not one in which so much interest has been felt, not one reform which has been so loudly demanded.

It is a hackneyed but yet a true saying that "this is an age of progress." "Progress" has marked itself on every feature. Of our government, change is written on all things. Churches and their systems have had their day and passed away. Thrones have tottered, Despotisms become Republics, and where once stood the palace and swayed the sceptre, now breathes the free man a free air. But shame to our State, that it must be said the worse than useless formalities and technicality of a "hoary fabrick of pedantry and absurdity," has stood unchanged boasting of its barbaric origin, and defying modern innovation.

The object of law is to do justice between man and man. In order that it may be revered and obeyed, it should be simple and uniform, and its truth and reason made apparent. Law is intended for the good of all who live under it, and as such, its truth and reason should be apparent, so that all could see, read, and understand. But are our laws easily understood and found? Certainly not; for the law boasts of its "glorious uncertainty."

Our rules of law number no less than two millions. They are found in statutes, reports, commentaries, and digests of this and every other State of the Union, and England. The people or the lawyer cannot find the law anywhere in consecutive order; but, in order to discover what is binding and what is not, we are compelled to travel through the musty pages of a law library of a thousand volumes, and gather the law of the land in the courts, precedents, dicta, and conflicting decisions of English courts, and other States.

Sir, I denounce our present system, and with a great man I unite in saying that "it is a cunningly devised machine to make money and deceive the people." Sir, this opposition to the old dummery of the law is not hasty, nor is it new. The English bar has taken it in hand, and one of the greatest of Englishmen has ably discussed the matter, regardless alike of the slurs

and imputations of the interested friends of the system. I mean Bentham. He says of the system, "strip off the tinsel with which it has been bedizened all around by interested idolatry, unblushing hypocrisy, and prostrate admiration, the technical system presents in all its parts, enough to stagger belief, and make a man doubt the reality of the object spread out before his eyes." Sir, I must be permitted to introduce another authority, whose words in the profession are almost law. Judge Wells, of the United States district court, says: "During the fifteen years that I practiced law, I can say, with safety, that not one-half of the suits with which I was familiar, were decided upon their merits, or upon principles of substantial justice. This was hardly in any degree attributable to the courts, but was to be attributed principally to the system of practice and pleading."

Our pleadings admit of a mass of imposture, trick, and chicane. If, then, Mr. President, the system is what it is stated to be, and what every man, who knows anything of the law, knows it to be, the system ought to be changed, or some other, better suited to our wants, substituted in its stead.

That plan, and a good one, too, has been proposed by the committee in their report, the adoption of which I confidently expect by this Convention. I would abolish the whole system of pleading; all the distinctions between actions in law, and between law and chancery. Commence all suits by a simple complaint, in which nothing but the real facts shall be stated in a short, concise, and, if you please, even in an informal manner, in order that a jury, a court, and all present may at once understand the merits of the case, freed from the unmeaning verbosity and indistinctness of the old forms. Make the answer the same, simple and concise in the statement of the grounds of defense.

Why is the plaintiff required to make a statement of his action in writing? Simply to inform the court and the opposite party of the grounds on which he sues. The defendant makes his defense in the same way, to inform the court and plaintiff of the ground on which he rests his defense. Now our pleadings do not really give that information; then let us have the reform.

The report of the committee also provides for the abolition of the distinction between law and equity. To that I also subscribe. I can see no necessity for the distinction, and some of the requirements of that court. Sir, in a court of law, you bring your witnesses into court and produce them before the judge, the parties, and counsel, where, on a rigid examination, every word can be carefully weighed, and every action closely scanned by court and jury, and the proper credit given to the testimony. But it is not so in chancery proceedings. The testimony of the witnesses is taken down before the hearing of the cause, generally by some inferior officer;

the witnesses do not stand face to face with those interested, even if within the portals of the court, and room is thus given for corruption and trick, especially with a witness who is but little versed in the nicety of language. Sir, the system is oppressive. A man mistakes his action—goes into law where he should go into chancery. He has an equitable defense, but cannot plead it, but must let judgment go against him, by default, pay the costs, and then go to chancery to enjoin or set aside the judgment. Is this just?—rather is it not oppressive? The proposition before the Convention remedies these evils, and causes suits to be decided on their merits and not on the formalities of law. Bentham truly said, “the common law kicks the defendant into the ditch, and chancery has to come to pull him out again.”

There is a disposition on the part of gentlemen here, who seem to favor reform, to oppose the appointment of commissioners, and to leave the re-modeling of our laws to the Legislature. One argument for the adoption of this course, is, that we did the same thing a few years ago, and that it did not answer the purpose. Sir, the gentlemen are mistaken in part; their duty was to only revise our statute law. There was no attempt made to reform the English system, under which we still operate, nor had the commissioners the power, so that the argument affects nothing save that the labors of the commissioners were not perfect, which is rather a poor reason why men appointed to perform an entirely different duty should succeed no better. It is also said that the attempt has failed in New York. Sir, the gentlemen are mistaken here again, for the system is not fairly under operation yet, but I am assured by a gentleman from that State, that the people much approve of it. I would like to read his letter, but it is not now in my possession.

As to this amendment of the gentleman from Crawford, (Mr. Pepper,) which deprives lawyers from having anything to do on this commission, I would like to know if he supposes he can defeat a proposition of this kind in that way.

Mr. PEPPER of Crawford. I am not opposed to legal reform. No gentleman will go farther than I into the work of wholesome and necessary reforms in the practice of law. Yesterday there appeared to be a disposition on the part of many gentlemen to distrust the sincerity of some of the legal profession on this important subject, and I hastily offered the amendment to convince them that I was not only anxious for the reform but was willing that that reform should not be left to lawyers.

But the amendment tolerates proscription, a doctrine to which I do not subscribe, and I will at the proper time withdraw it.

Mr. CARTER. That is good news. I can only say that lawyers are men who ought to be chosen. They, of course, would be more inti-

mately acquainted with the business. Sir, in conclusion I would say, that I hope there will be no serious opposition on the part of the legal profession to this reform. A lawyer necessarily holds an important post in society. In his hands daily is placed the protection of the lives, liberty, and property of his fellow citizens, and he should exercise his influence with care and discretion.

I do not believe that this reform will injure the profits of most of the members of the bar. Good lawyers will always find business, while inferior ones must give way. But it will affect the amount of litigation, and greatly decrease it, if the reform is placed under the hands of able men, and they make it judicial. Sir, this reform once effected, Indiana will have taken an advance position. The people have begun to think that a law suit is a game of chance; that belief will exist until they can see the workings of justice and hear it speak in plain business words, not in the strange jargon, useless technicalities, and unintelligible forms of our present practice. This done it will be true that law is indeed the “perfection of reason.”

Mr. KELSO said he had an amendment which he would offer at the proper time. He would read it for the information of the Convention. If the Convention would adopt it, it would certainly shorten this business very much, and he thought would, at the same time, accomplish all that the Convention desired to effect in this reform. He was not going to throw anything in the way of law reform, but he would offer the following in case the pending amendment should be voted down:

“All distinctions in forms of action founded upon contract, and between those founded in wrongs, and between actions in chancery and at law, are hereby abolished.”

Mr. BORDEN rose and said—

Mr. PRESIDENT: In throwing myself perhaps for the last time upon the indulgence and courtesy of the members of this body, I beg to assure them that nothing but a fear of being charged with a dereliction of duty, not only to those who sent me here, but also to the Convention, by the favor of whose presiding officer I was placed upon the committee “on the practice of the law, and law reform,” could possibly induce me to make the attempt at this late period of our session, worn out, as the patience of the Convention must be, by the protracted debates we have already had on various subjects, to address them on the subject now under consideration. But, sir, when I see the efforts that are being made to defeat the proposition reported by that committee, and after hearing, as I did yesterday, the violent denunciations made by the gentleman from Hancock (Mr. Walpole) and the gentlemen from Vanderburg and Switzerland (Messrs. Blythe and Kelso), I feel constrained to raise my voice in its defense, and therefore trust that the Convention will ex-



cuse me if I now attempt, in as brief a manner as possible, to give my own views upon this subject, and to some extent the views of my associates on the committee; and the reasons which influenced the conclusion at which we arrived.

The committee instructed me to report the following section:

"SEC. — The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings, both civil and criminal, of the courts of this State. And they shall provide for the abolition of the distinct forms of action at law now in use; and that justice may be administered in a uniform mode of pleading without any reference to distinction between law and equity. And the General Assembly may also make it the duty of said Commissioners to reduce into a written and systematic Code, the General Statute Law of this State; and said Commissioners shall, from time to time, report the result of their labors to the General Assembly, with such recommendations and suggestions as to abridgement and amendment as to said Commissioners may seem necessary. Provision shall be made by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners."

Now, sir, this report contains two distinct propositions. It provides for the appointment of three Commissioners; and it is made their duty, first, to prepare and report to the General Assembly for its revision and adoption, a system to reform the practice, pleadings, forms, and proceedings of the various courts of the State. But the proposition goes further, and requires the Commissioners, if the Legislature deem it necessary, to make a complete revision of the Statute laws of Indiana.

It is perhaps here proper for me to remark, that there was some difference of opinion among the members of the committee of which I have the honor of being chairman, with regard to the policy of undertaking to codify anything beyond the Statute law. A portion of the committee differed with the majority in two respects. The minority preferred that the people themselves should elect the Commissioners, believing that they would be more likely to elect such men as were known to be favorable to the contemplated reform than the Legislature; and secondly, they were desirous that the codification should embrace not only the Statute law, but also the common law; or, in the language of the minority report, "the whole body of the law of the State," provided the Commissioners should find it practicable and expedient to do so. The majority, however, in their report, confine the codification exclusively to the Statute law. I united in the minority report, deeming it, on the whole, preferable to that of

the majority; but as there is such a strong disposition evinced to defeat the report of the majority, I think the friends of reform had better rally to its support.

Sir, it will be observed that the reform proposed includes a reform of the law itself, as well as its practice in both civil and criminal cases. And, sir, I believe the great majority of this Convention, and I am sure the great body of the people are satisfied that there is a most pressing necessity for reform in both these respects; and I cannot but believe that this will be the conviction of every intelligent mind after proper reflection upon the subject. Thus, sir, it will be noticed that the difference of opinion was not on the question whether the interests of the people would be promoted by reform; but it existed on the question as to the extent to which the reform should be carried. This division of sentiment in the committee resulted in three reports—the one from the majority, now under consideration—one made by the gentleman from Wayne, (Mr. Newman,) which is said to be more conservative in its character—and the one from the minority to, which I alluded, which goes farther, and is considered by many to be too radical. Now, sir, for my own part, I have long entertained the opinion that there was much with regard to the pleadings, practice, and forms of proceedings of our courts, which required an entire change; and that the whole was susceptible of a profitable and useful simplification. To do this, will be to bring the practice of the law more into accordance with the necessities and spirit of the age in which we live; for any system, to be popular, must be brought within the comprehension of the mass of the people. I am aware, sir, that the earliest and most celebrated advocates of legal reform have mostly hitherto directed attention to making a change in the law itself by means of codifying. Yet, if I may judge from what I see here, I find that public opinion is better prepared for a reform in the practice of the law, than in the law itself. Both are equally necessary, in my humble opinion, and I do not know why one is needed more than the other.

As it is made the duty of the commissioners first to report a system to reform the practice of the courts, I will follow that course, and assign my reasons in favor of it first. Sir, it should always be borne in mind that it is not sufficient to have laws for the decision of controversies between citizens, but it is equally important that we should establish rules of procedure, by which the laws themselves may be ascertained and enforced. And it does seem to me that the rules of procedure should be so formed as not only to insure a prompt but certain administration of justice between the parties. Justice, sir, is the end and aim, while the forms and proceedings of the courts are merely the means to reach the given end. We should all desire

to make these means as direct and plain as possible; or, in the language of the distinguished gentleman from Tippecanoe, (Mr. Pettit,) in the course of some remarks with which he favored us yesterday, they should be so plain that "the wayfaring man, though a fool, should not err therein."

Sir, the law derives its vitality and spirit from the means which are afforded for its enforcement; for, without complete means to put it in operation, it remains in fact a dead letter upon the pages of your statute books. Thus, sir, the most casual observer will see the great, nay, the absolute necessity to the people of Indiana of a well-digested and maturely-considered "code of procedure" to regulate the courts of this State; and I presume no one will deny that this code, when perfected, should be such as will insure a cheap and prompt, as well as certain administration of justice. It has been very properly observed, that it is of little importance how wise or just soever may be the laws of a people, unless justice can be meted out at a cost within the reach of all, and without tedious delay; it is nearly the same to them as if, in fact, they had no law at all.

Before proceeding further, I desire to call the attention of the Convention to the fact, that several of the States of this Union have, within a few years past, introduced the reforms contemplated by this proposition. The State of New York has taken the lead in this respect, and has for several years in succession employed the ablest jurists of that State in the arduous business of reforming the practice of her courts, and in codifying her laws. Missouri and several other States have more recently followed the example of that State. I may be allowed to mention here, sir, that I have been in the State of New York twice since her new code of procedure went into operation, spending a considerable time there at each visit, and have had the pleasure of witnessing the practical working of their improved code. During the past season I spent several weeks in the city of New York, and took the pains to visit their courts, and there observed the daily application of their new system in the administration of justice; and, sir, I became satisfied, from what I saw and heard, that it in every respect answers the expectations of its most sanguine friends; that it fully meets the purposes for which it was instituted, and that it is much better calculated to secure the administration of justice than the old *effete* system which it has superseded. Sir, I found this opinion of the public confirmed by some of the ablest judges and members of the bar of the State. In confirmation of this, I could, if it would not be trespassing too far upon the patience of the Convention, read extracts from the letters of three of the most distinguished judges in that State—Messrs. Sandford, McCoun, and Harris—which have been kindly placed in my hand by my

friend from Floyd, (Mr. Thornton,) who, I am glad to say, has so nobly thrown the weight of his character and influence in this Convention in support of legal reform. These letters are lying on my desk, and are at the service of any gentleman who may feel disposed to examine them.

Now what is the object and aim of all litigation? If I be able to form a clear conception of it, it is either to redress a wrong, or to vindicate and enforce a right; and I hope, sir, the people of Indiana will not allow their prejudices to forbid them to adopt that system which will, in the most certain and simplest manner possible, effect this result. And although the system may have the objection brought against it by the gentleman from Hancock, (Mr. Walpole,) that it originated in Connecticut or in New York, and, in his opinion, has too much of the Yankee odor of wooden nutmegs to suit his taste, yet, for one, I am disposed to adopt an improvement when I am satisfied of its utility, come it from what source it may.

It is true that I studied my profession originally in the State of New York; and the circumstance that our business transactions in Northern Indiana, bringing us into daily intercourse with the people of that great State, induces us to examine with some degree of care, not only their judicial system, but also the new code of procedure which they have lately adopted. These facts to some extent, I admit, may have influenced my opinions. But, sir, it will be recollected that New York under her old system, and Indiana now, adheres more closely to the old English system of special pleading than any other States in the Union. Indeed, I have in my hand the last number of a law magazine published in the city of New York, which says that Indiana is the only State that still clings *strictly* to that system. I know that there are gentlemen on this floor as well as members of the bar of the State generally, who think the system of special pleading is better calculated than any other mode of procedure, to obtain the ends of justice. But I am inclined for my part, to think that there is much in the machinery of it that tends to produce a directly opposite result. Sir, the reality is too often sacrificed to technical and artificial, and not unfrequently very unmeaning form; and we should not be surprised that such should be the result, when we reflect that this system was formed and shaped when yet in a plastic state by the influence of the middle ages, a period when the learning of the world was mainly confined to cloistered monks, and when a system of scholastic pedantry had overrun and involved in its hidden mysteries every department of human knowledge.

Sir, no one more fully appreciates than I do, the advantages conferred upon us as a people, by the adoption of the common law in our country. As was well remarked by the gen-



tleman from Tippecanoe, (Mr. Pettit,) there is no desire among reformers to abolish this noble inheritance and substitute any other system in its place. No, sir; I trust that not only the liberties of the people of Indiana, but the time may come when the liberties of the people of this entire continent, will rest upon the broad basis of the common law. "Improve, but not destroy," is our motto. But, while we do not deny that many good results have flowed from the adoption of the common law, yet, in our opinion, in consequence of its introduction there have also resulted some evils. Among these is the fact which is now justly complained of by the people, that with the adoption of the common law, we have also imposed upon ourselves the books of practice, the forms of pleading, and the rules of proceeding used in the English courts. I need not remind gentlemen that long before the introduction of the common law here, these forms had been elaborated there in the most extravagant manner, by the accumulation, without much regard to order or good sense, of the numerous terms and phrases, of similar meaning, with which our language is so replete.

[Mr. B. then proceeded to recite the terms commonly used in an ordinary deed of conveyance in illustration of what he referred to, and then went on to say:]

It must be evident to every reflecting mind that the inevitable tendency and effect of the whole system is to obscure the simplest idea which could and should be given in perhaps a single word.

Mr. President, I find that I will not have time to enumerate in detail but a very few of the evils resulting from the present system; but shall console myself with the reflection that others are to follow me who probably will point them out, and if they do not, that they must be obvious to all who have either practiced law or even been a casual observer of the proceedings in our courts of justice. While, sir, I am interested in the good repute of the law, the truth compels me to say that the effect of this system often amounts to a denial of justice; it enhances the expense, and results in long delay in the trial and decision of causes. Perhaps I would not go too far, were I to say that the success which often follows a resort to *quibbles and tricks*, encourages such disreputable practices, and that only defeats the ends of justice in civil cases, but very often, sir, enables the greatest criminals to escape the punishment justly due to their crimes. I trust the Convention will excuse me for reading a short extract from the history of a case of this kind, exhibiting in stronger colors than I could portray, the abuses of the system of practice which obtained in the criminal courts of England, before the reforms lately introduced into that country, and which, as formerly used there, is mainly the system now prevail-

ing in Indiana. The following extract is from Niles' Register, and is headed

#### GLORIOUS UNCERTAINTY OF THE LAW.

A late London Morning Chronicle says:

"At the Lancaster circuit a prisoner was indicted for uttering a forged bank note. On being arraigned, he pleaded guilty, but at the suggestion of one of the barristers, and with the advice and consent of the Chief Justice who presided, he retracted his plea, and pleaded not guilty. On the trial, clear and indisputable evidence was given of his having uttered the note, which was proved to be a forgery, and that he knew it. The note was then read by the prosecuting counsel to the jury, the counsel for the prisoner and the Judge at the same time reading the original indictment and a copy, to see that the note was correctly set forth in them. The note appeared to be correctly set forth up to the signature, on which a question of variance was raised in behalf of the prisoner. In the indictment the Christian name of the signature was written *Christ'r*, (for Christopher). In the note it did not clearly appear whether the little mark which was above the abbreviation *Christ.*, was an *r*, or a tick following the figures in the line above. The Judge, after having examined the note with a large magnifying glass which he uses, declared it as his opinion that it was a *tick*, and not an *r*, and that the prisoner must therefore be acquitted. The counsel for the prosecution contended that it must be an *r*, as the Christian name forged was Christopher, and *Christ.* with an *r* above, was the common way of abbreviating it, and the usual way that the person wrote his name. Well, said the Judge, we will leave it to the jury.

"Gentleman of the jury," said his Lordship, handing them the note, 'have the goodness to examine it, and tell me whether you think it a *tick* or an *r*. I think it is a tick, but you must judge for yourselves; perhaps you will see better if you take my glass.' The jury after looking at it carefully through the medium of the judge's magnifying glass, were of course of the same opinion with the Judge, and had no hesitation in saying that they thought the mark in question was a tick; upon which the Judge directed the jury to acquit the prisoner."

The editor then goes on to remark, that "a greater farce than this, the whole of which was strictly agreeable to law, we cannot well imagine. The truth was staring the Judge in the face in two distinct shapes. The man's avowal of guilt, and the evidence which, independently of that admission, subsequently demonstrated it; but turning his eyes from the manifest truth, the Judge applies thereto a microscope, in order to see whether a *tick* has been mistaken for an *r* in the indictment—an action that presents a perfect satire on the administering the justice of a country—which

turns the eyes from truth, while it magnifies 'FORMS.' The Judge, then, in effect, says to the jury, 'You will declare the prisoner not guilty, gentlemen; not because he is not guilty, for we all know very well that he is guilty, both by his own confession and the evidence; but because the officer of the government who drew the indictment, not having the benefit of my magnifying glass when he penned it, accidentally mistook a *tick* for an *r*.' Beautiful is that system of justice by which a confessed criminal is pronounced innocent, because in the description of his offence, a *tick* has been mistaken for an *r*. Surely that is the perfection of reason which says that a man, who, by his own admission, and the clear evidence of others, committed a particular criminal action, has not committed that action, because somebody else wrote the letter *r* where he ought to have written a *tick*!"

It will be observed, sir, that the editor, in his denunciation, seems disposed to throw the blame, not only upon the judge who presided, but also upon the counsel for the prisoner. This is wrong. The judges must enforce the law as they find it. It is the system in which the fault lies, and not with those who are called upon to preside at, or assist in its administration; and it is but just that this fact should be constantly borne in mind by those who are disposed to denounce the present system. I have more cases at hand to which I could refer, showing the effect of the system.

Mr. PETTIT (in his seat). Oh! the books are full of such cases.

Mr. BORDEN. The gentleman says "the books are full of such cases." That is very true; and I presume most of the members of the Convention, especially those who are members of the bar, can recall cases of a similar character, that have occurred in our own and other States of the Union. But, sir, it is no more than justice to the mother country to say, that, however absurd was her practice in this respect formerly, she is now far in advance of us in regard to legal reform. It must be frankly confessed that we have, but in a few States of the Union, the improved course of procedure, as practiced in the courts of that country at this time. Sir, those improvements were brought about there by the salutary spirit of reform advocated by those brilliant lights of the profession, Romilly and Brougham, and were finally carried into effect by the English judges, in pursuance of an act of Parliament passed for that purpose.

I have already alluded to the tenacity with which we adhere in this State to the old English system of special pleading, in the trial of civil cases. It seems to me we too often forget, in this system, that justice is the end at which we aim; so intense and eager is the pursuit after phantoms raised by questions of *special pleading*. The books that treat of plead-

ings, practice, and forms of proceeding, are numerous, and for their illustration require the study of many thousands of adjudged cases. So great is the labor thereby involved, that it is now well known it requires the application of a life-time to master them; and the whole, sir, is a sealed book except to those who are thus skilled and learned in the abstruse and hidden mysteries of the art of special pleading.

I desire now to briefly allude to some other features of the old system, to which I object. I am aware it is a very common expression among the members of the bar, that "the law is the perfection of reason." A beautiful sentiment, truly; and while I admit it is true, to a great extent, in regard to the principles of the law, yet I regret to say there are many things connected with its practice, which approximate very near to the acme of human folly. For instance, what can be more absurd than to require the same officer to dismiss the same identical case as a judge at law, and then to take jurisdiction of it in the capacity of a chancellor?

So long as the jurisdiction in law and equity was conferred upon separate and distinct tribunals, there was some show of reason for continuing that mode of procedure. But now, sir, that the same court has had, in this and most of the other States of the Union, conferred upon it the adjudication of cases in both law and equity, I see no necessity for keeping up distinctions in the mode of procedure. It is well known that the jurisdiction in chancery cases was formerly to but a very limited extent; but these courts have, from time to time, extended their jurisdiction, until it is frequently a very difficult question for the most astute lawyer to decide if his client's case is of an equitable or legal cognizance. Especially has this become the case in this State, where the same judge is required to administer both systems. The courts of law in this State have taken upon themselves to grant relief in many cases, where, in the mother country, and in those States where law and equity are administered by distinct courts, it could only be granted by a court of equity. In fact, sir, the tendencies of the two systems have been mutually to trench the one upon the other; and they have, in fact, become so inseparably interwoven, that I can see no better course to pursue in our State, than the adoption of the proposition which is now under consideration, which will result, if carried out as contemplated, in a simple, uniform course of procedure, abolishing the distinctions now kept up between the proceedings at law and equity.

I recollect hearing a case argued in the Supreme Court of the State of New York, many years since, when I was a student at law, the history of which is so pertinent to this subject that, with the permission of the Convention, I will attempt to relate it. It is a long time, sir, since I heard the case argued, though I have



read it once since in Wendell's Reports, soon after it was finally decided. The case is very similar in character to the one related by the gentleman from Floyd, (Mr. Thornton,) in his remarks on yesterday. The question that arose in the case to which I allude, like his, (Mr. Thornton's,) was, whether relief was properly to be had on the law or the equity side of the court. Two individuals, having a matter of controversy between them, agreed to leave it to the decision of arbitrators. The case was heard, and the award made by the referees. But it was afterwards alleged by one of the parties that there was some irregularity in the proceedings, and he refused to pay the award. He was sued upon the arbitration bond, on the law side of the court, and it was (as the sequel will show) finally decided that his defense was just. But when sued on the bond, the question came up whether he could make his defense on the law side of the court, or whether it was not properly a matter of only equitable defense. The Circuit Court, in which the case originated, decided that the defense could not be made at law, and the Supreme Court, to which the case was carried up, affirmed the decision. The defendant was compelled to pay a heavy bill of costs, and was remanded back to the same Circuit Judge before whom, several years previously, the suit was first instituted. He then applied for relief on the equity side of the Court, and relief was granted him, by an injunction to stay the proceedings at law. The other party appealed to the Chancellor of the State, who affirmed the decision of the Circuit Judge; but the same party, not being satisfied with the Chancellor's decision against him, took the case up to the "Court of Appeals for the correction of Errors," and the Chancellor's decision was finally reversed, in the court of last resort, for the reason that the defense was originally at law, and not in equity!!

And, sir, the defendant was again compelled to pay a heavy bill of costs, and once more go before the Circuit Judge and make his defense at law; and thus after fifteen years of most expensive and harrassing litigation the injured party obtained relief. Now, sir, on reading the history of similar cases which are frequently found in the reports, a person is at a loss to conceive for what purposes courts were instituted, unless indeed to defeat the very ends for which they were professedly established, or to fill the pockets of clerks and other officers with fees. The case I have cited it is true occurred in the State of New York; but it was under the same system which prevails here of keeping the law and chancery jurisdiction separate, and therefore the moral is as applicable in Indiana as in New York. What was the difficulty in the case to which I have adverted? Nothing more nor less than to ascertain the true boundaries which separated the two systems. And when we see the

ablest jurists of that State—men who have devoted the energies of great minds and the labor of a life-time to the investigation of such questions—when such men with the vast store houses of legal knowledge before them, and the amplest means to possess themselves of the sources of legal information, fail to determine correctly as to whether a given case should be brought, or a defense made on the law or the equity side of the court, what might be expected of the errors into which lawyers of less experience and with fewer advantages might fall? And should we be surprised if they frequently committed errors in judgment by directing their clients to take one road to obtain justice, when in fact they should have taken another?

I hold, sir, that this Convention was called by the people for the purpose of reforming the abuses existing in the government. I believe the people will be greatly disappointed, and perhaps many of them will be induced to vote against the new Constitution unless some effective measures are adopted by us to provide remedies for the many evils now existing in the practice and forms of proceeding in their courts. I am further of opinion that the present is the most favorable period at which to take the incipient steps to bring about in our courts of justice a course of procedure more consistent with truth, and more reconcilable with common sense than that which now obtains. It does seem to me, it is a proposition to which there can be no dissent, that the rights and privileges of the people of Indiana could be as well guarded and secured without their being necessarily hedged around with volumes of falsehoods, fictions, and absurdities. I have never been able to convince myself that it was necessary the proceedings in our courts should be disguised in Norman French, bad Latin and worse English, and in the terms and phraseology of a language that can hardly be said to be spoken at the present day. I conceive, sir, that our legal proceedings should no longer rest under this veil of lingual obscurity either for the purpose of misleading or confusing a practically intelligent juror, or to make it impossible for the parties to comprehend or understand the business in which they are engaged.

I should be gratified, sir, if some of the gentlemen who have denounced so vehemently the report of this committee, and who avow themselves as opposed to all legal reform, would give us a good reason why a case when it comes into court should not be stated in the pleadings and proceedings in a manner clear to the comprehension of men of ordinary intellect. I can see no good reason why a bill in chancery or a declaration in an action at law cannot be framed with the use of half the words now held to be indispensable, but which at the same time would be amply sufficient to state the real cause of complaint. As the system now stands, however, when a citizen is sued the case is fre-

quently so stated that it is next to an impossibility after reading the complaint filed in the clerk's office, to understand the real cause for which suit has been commenced. The facts stated in the complaint or defense should be made as brief, simple, and direct as possible; but sufficient should always be stated in the record to inform the opposite party, of the precise ground of action or defense, so as to prevent surprises or the taking of any advantages at the trial.

Let me inquire, sir, why it is required that the plaintiff should state his cause of action at all? For one I am at a loss for an explanation to know why this is required, unless it be for the purpose of enabling the court and opposite party to understand what he claims, the facts and proof by which he designs to sustain his case, as without this information the defendant could not tell what to deny or admit, or how to prepare for trial. Inasmuch as it is just as important that the plaintiff should be made acquainted with the grounds of the defense, the opposite party should state it in equally short, clear, and intelligible terms. It must be obvious that there can be no practical utility in reducing the pleadings to writing unless it be so done as to enable the parties and the court to understand the real matters in controversy.

I hope, therefore, that if the Convention should pass this section, none but men qualified for the task will be placed upon the commission. And, sir, I hope that when the commissioners come to act upon the subject, they will remove every inducement to the use of technical and useless phrases, involved terms, and verbal surplage. It is to be hoped that plain and simple language will take the place of obscurity, direct and terse terms the place of circumlocution, and that truth will everywhere be substituted for falsehood and fiction. This seems to be a very desirable result. And to obtain it, it is only necessary, as I have already said, to require the plaintiff to state his case, in brief, plain, and comprehensive language, divested of all complexity and ambiguity—such a case as he knows he can sustain by evidence. Then, sir, require the defendant to answer it with equal directness and perspicuity. After the parties have thus stated the case, which they intend respectively to sustain or defend, then let the evidence on both sides be heard. If either party fail to sustain the case stated, but makes out a case, which, as between man and man, would be deemed worthy of relief, he should not be prohibited, but rather invited to amend his pleading on just terms, always giving to the opposite party, at the same time, the privilege of so changing his defense as to meet the new case of his adversary. And, sir, above all let the circumstances of each particular case influence the court, after all the facts have been placed before it, in the decision of the matter, and the granting of the relief sought. If, for instance, it should be found that it would be

right for the defendant to make out and sign a deed of conveyance for a tract of land, or that he should return a particular article of personal property, let the court enforce an order for that purpose. If it be found that damages in money are the proper compensation, why let damages be awarded, and never, as is too frequently the case now, allow an honest man to be turned out of court with a heavy bill of costs to foot, although he has shown himself entitled to relief from the courts of his country, but has merely mistaken the technical proper form of action; or for the reason that he has entitled his case a suit at law, when he should have called it a proceeding in chancery. Is there any insurmountable difficulty in doing this? I believe not. I know that there are some minds so constituted that they cling naturally and tenaciously, and perhaps I may say imperceptibly, to the past; that such men should meet us at the threshold with the violent denunciations that they have, was to be expected. But let me say to them that they will be compelled to yield their narrow prejudices and their reverence for customs because of their antiquity, to the progressive spirit of the age, or to the reforms which are everywhere being made in the strongholds of error and abuse. Sir, it does seem to me that if this Convention should adjourn without providing for such reforms in this respect as are clearly necessary and as are demanded by the people, the masses will themselves, and that at no distant day, take efficient means, and perhaps less conservative than could be desired, to do away with the present system of law proceedings, with all their technical absurdities and unintelligible pleadings and forms, which now have so great a tendency to bring the administration of the law into deserved disrepute. And, in sweeping away these abuses, many things that are in themselves good, and should be retained, will, I fear, be destroyed. Sir, the present voluminous forms and puerile fictions are not vital to the establishment of courts, nor are they necessary to the promotion of justice, and as this is the case, why should we permit them longer to remain, serving no useful purpose, but rendering the law itself intricate and inaccessible, and I may say with truth perhaps, almost incomprehensible?

THE PRESIDENT here intimated that the gentleman's half hour had expired.

SEVERAL VOICES. Go on! go on!

On motion, the rule was suspended, in order to allow the gentleman to terminate his remarks.

Mr. BORDEN, in continuation, thanked the Convention for its courtesy to him, and he would endeavor not again during the session to trespass upon its attention. Time will not allow me (said Mr. B.) to dwell on this part of the subject, though it is far from being exhausted. But I will again express the earnest hope that the friends of reform will not allow this opportunity to pass without doing something to effect



a reform in our courts—a reform which, to the knowledge of all, is called for by the people of Indiana.

I have consumed so much time in discussing this part of the subject, that I fear I shall not be able to dwell so fully on the reform of the laws themselves as I could have desired.

The second proposition is, that the commissioners shall also—if the Legislature shall conclude it is necessary and proper—proceed to reduce to a *written and systematic code* the whole body of the laws of the State, or such portion of them as said commissioners shall find practicable and expedient.

I have already, sir, alluded to the fact of the division in the committee on this part of the subject referred to them by the Convention. A majority of the committee were unwilling to extend the codification beyond the statute law of the State; but a minority of the committee, (including myself among others,) desired to embrace the whole body of the law, if the commissioners should come to the conclusion that it was practicable to accomplish that object. It has been said here, sir, that the work was too great for man to accomplish. For my own part, I believe that without going out of this Hall I could name three men who are competent for the task. But whoever may be appointed, I again repeat, I hope that none but the very ablest men in the State will be selected for such an arduous station; with such men I am willing to leave the question whether this great work shall be now undertaken or not.

The State of Kentucky, in her recently amended Constitution, has made provision for the appointment of commissioners; and it is made their duty to revise and arrange the laws of that State, "both civil and criminal, so as to have but one law on any one subject." I deem this a well considered provision; the effect of it will be to enable the people of Kentucky to understand their laws much more readily than we will ours, so long, at least, as they remain in their present form.

Mr. President, one of the first maxims of our law is, "that ignorance of the law is no excuse for its violation," and as this is the rule, allow me to ask why it is not due to the people, whose rule of action it is, to the spirit of the age in which we live, and, above all, to the character of our free institutions, that an earnest and efficient effort should be made to place before the people, in as simplified a form as possible, all the laws by which they are to be governed. And let me ask why these laws should be longer permitted to lie scattered through thousands of volumes, hidden from the great mass of the people in a language which, if not obsolete, is, at least, not familiar to or easily understood by them? I conceive that, in a great and free State like this, nothing is more needed; and, therefore, upon no other subject, could the people so well

spend a portion of their money as to secure a plain explanation of the rules of action laid down for their government; and what is of equal importance, the publication of those rules, so that by a reasonable amount of attention, their principal features, at least, might be understood by every member of the community.

I cannot believe, sir, in this "noon-day of the nineteenth century," when the sun of general intelligence is shedding its rays upon all the civilized world, that it is necessary for me to go into any lengthened argument to show that the adoption of some proposition similar to the one now under consideration, is necessary to the preservation of the liberties of the people of this State. For, sir, I take it that, notwithstanding our organic law is admirably adapted to secure the direct responsibility of all our public servants—notwithstanding the admirable theory of our form of government, still these advantages, to a considerable extent, are practically lost, so far as the real security and happiness of the citizen is concerned, while the greater portion of our laws lie concealed in comparatively unintelligible and inaccessible folios, quartos, and octavos. Voluminous works which can only be comprehended by those who have the time and means for laborious research into the shapeless mass of abstruse technicalities in which they are involved. Is it to be wondered at that ninety-nine out of every hundred, men being required to grope their way through this labyrinth of darkness, are compelled to confess themselves ignorant of the laws to which they must conform at their peril? Will it be contended that such a system ought to be continued, now that the people have given us the power to remedy such evils? I hope, not sir. Let me say to the gentlemen who oppose us that they cannot continue the present system in the midst of an intelligent people, who, nearly a century since, declared themselves not only free, but that in future they would make their own Constitutions and laws, and have the administration of justice placed in the hands of those to whom they themselves should confide the trust.

And, sir, why should we not have this radical change effected? Reforms are progressing in all other professions—all other sciences have become, to use a common phrase, more "popularized," and, to a great extent, brought down to the comprehension of the masses, and made to administer to their necessities and happiness.

All other departments of human knowledge have been exhumed from the ceremonial coverings of the dead languages, and technical and professional phrases. Chemistry is no longer concealed in the heavy volume of the scholar, but is translated, as it were, into the easy reading of the school book, until every child in the land may be made familiar with the science. The same is true in regard to geology, botany, astronomy, and natural and

mental philosophy. In fact, sir, all the learned and profound treatises on these subjects have been condensed and made plain, and easily to be understood.

Let me ask, then, why the science of the law of all others is to lag behind the age—a sealed book to the mass of the people who it mostly concerns? The store houses of legal knowledge are full of the recorded wisdom of the past—of the study of a profession continued through centuries; and all, sir, that is desired (and, in fact, what is needed) is to bring it into a form so that it may be practically applied to the necessities of the people.

There is another reason which appears to me of much force in favor of the attempt to codify the laws, it is this: that the Legislature is under the same moral obligation to declare and make known the law that the citizen is to observe it when made known. It is clear that these duties are mutual, and *obviously* not to be separated. To define, with accuracy, and make known the law, seems to me to constitute the very essence of justice. The certainty of the law without its being made known, or the promulgation of the rule of action without being certain, are both violations, and, in an equal degree, of the rights of the citizen.

But, Mr. President, it is perhaps a useless waste of time for me to dwell longer upon the necessity of a codification of the laws, unless the Convention shall deem the undertaking practicable. And this leads me to notice the fact that whenever it is proposed to define our laws more strictly by codifying in whole or in part, the common law, the first objection usually made by the anti-reformers is that no code could possibly provide for every case that may arise. I do not, sir, deny this, but readily admit on the contrary, that to a certain extent the position is true. But, sir, let me inquire of those who raise this objection if nothing is to be undertaken except it is certain of being immediately accomplished and made perfect? I would like to inquire what work depending upon human wisdom for its accomplishment would ever have been commenced?

Now, suppose we admit to these gentlemen for the sake of argument, that the human intellect is unequal to the task of precisely and clearly defining a rule for every case that may arise in the varied experience of man, surrounded as he constantly is, by new combinations of circumstances. Suppose that some cases may arise in the intercourse, trade, and diversified business transactions of a highly civilized and commercial people, for which no human foresight could provide, would this admission make it right and proper for the law givers of the State negligently to fail to provide rules for such cases as are of the most daily occurrence, and that too, sir, when not only the principles of the common but also of the civil law, are at hand, ready and awaiting to be reduced to a regular

and systematic code? For the life of me, sir, I see no insurmountable objection that there can be to the codification of, if not the whole, at least a part and perhaps when the experiment has been tried, the greater portion of the laws of this State. I apprehend all that is necessary is, that the salutary principles of the common law, and such amendments as from time to time, have been made "in aid of it," (as the lawyers express it,) should be sifted to the bottom and reduced to a written text, in a tangible form, so as to be readily grasped and comprehended by those who are called to administer and obey it. If the Convention will allow me, I will read an extract from a report made to the Legislature of Massachusetts, on the subject of a codification of their laws. The names of Judge Story, Prof. Greenleaf, and Mr. Metcalf, are signed to this report. [Mr. B. here read the extract referred to.] From this, (said Mr. B.) it will be seen that these distinguished men give it as their opinion, that a codification of the laws is not only practicable but also highly expedient. I am aware, sir, that there are those who call these men mere theorists; but for my own part, when I am backed by such authority, I do not feel much disposed to be driven from my position.

It is true, sir, the proposition before us, contemplates going no farther than a codification of the statute law of the State; but I trust that the report of the minority, which proposes to go farther and contemplates a codification of the whole or a part of the common law, will be substituted for it. If an effort be made at all to codify the common law, it should, of course, be adapted to our republican and popular form of government, and to the state of modern society. And above all it should, as it very readily could, be made to embrace all such improvements in the science of the law, that an enlightened experience has now made necessary.

When this has been done, I hope there forever will be an end to "judicial legislation," which is admitted to be one of the greatest evils now afflicting the country. By doing this, our laws would be secured from the great uncertainty now attending their administration, and other benefits would be conferred upon the people of the State in more ways than I have time to enumerate, or this Convention to listen to.

We have declared, sir, in the bill of rights which we have adopted, that no man shall be deprived of life, liberty, or property, except in pursuance of "the law of the land." Now, sir, this is all very well in theory, but what is the practical operation? Has the legislative department of our State Government, really done what it ought, to bring our laws home to the comprehension of the people in a manner as fully as was in their power to do? No, sir, they have not. Until this "law of the land" is more clearly defined, who can tell what it is? If any man should feel disposed to try the experi-



ment let him take a difficult case and go and ask the opinion of the judges of your highest court, whose duty it is to apply the law in all matters of controversy between citizens, and on whom is thrown the great responsibility of deciding in the court of last resort, precisely what the law is, and see if any two of them will give the same opinion. Why, sir, we have only to turn to the decisions of the highest tribunal of the land—the Supreme Court of the United States—to see that the dissenting opinions of the members of that court upon many important questions brought before it are nearly as numerous as—and allow me to say in my humble opinion—frequently more able in point of argument than those of the majority. Ask the ablest men in the legal profession the same question—men whose heads have grown gray in the toils and endless researches of the mysteries of their avocation—who pride themselves in encountering all the difficulties of conflicting authorities—in probing to the bottom all the perplexities and abstruse intricacies of the law—and see what answer they will give to that very same question. After a full investigation of the same authorities and precedents, you will probably get an opinion, fortified with authorities founded in countless volumes of cases argued and determined; but it is more than likely no two of them will be of the same opinion.

And here I would remark, lest I should omit it entirely, that the multiplication of law reports has become a most burdensome tax upon the profession, and through them, upon the public. And while, sir, I have no objection, but on the contrary approve of the publication of all such cases as establish some new, or settle some doubtful point, including such cases as, from their importance, entitle them to be reported, yet I believe that the business of law reporting has become too much of a book-making business. Just think of it. In the courts of the General Government these reports already amount to more than a hundred volumes, and their number is constantly on the increase. Besides these, the number of volumes in the different States of the Union amounts to at least a thousand. If we add these to the vast catalogue of those of our mother country, we will have several thousands of volumes of these reports. And the digests, abridgements, and treatises which are sent forth from the press there, and frequently re-published here, can hardly be enumerated. Thousands of these reported cases have been doubted, explained, or overruled. Indeed, sir, large volumes have been published, consisting of overruled cases alone. And it can now be said, with the strictest regard to truth, that the laws of our State, which govern in our courts, are nowhere to be found set forth in a clear, concise, and a consecutive order and method. Nor are they, in the shape in which they exist, published in a language certain and intelligible, so that they can be

readily found and observed. Sir, when a citizen is under the necessity of ascertaining the law in a given case, he cannot go to a code of laws enacted by the representatives of a free people, and adapted to the wants and necessities of the present generation. No, sir; but he must resort to a law library; and even such a library will be considered a moderate collection, when consisting of only five hundred or a thousand volumes. Every term of the Supreme Court of the United States, and of the Courts of the different States, contribute their volumes, while every session of the Legislature of our own State, adds its quota to multiply and swell the already overgrown mass. The citizen of a free State, where every institution should be established for his benefit, when it becomes necessary for him to acquaint himself with the law, must search into this unintelligible mass to ascertain what the law is at the peril of his property, his liberty, and it may be—his life. The work is a most forbidding one; and when we reflect on the maze of perplexity through which the citizen must grope his way in search of the law, can we wonder at the absurd results and disastrous litigation which ensues? And never, sir, until the principles of the law, which are now dispersed over innumerable pages, and veiled in the idioms of a language that belongs to the past, are collected in a systematic code, and rendered in plain language, will it be possible for a person of only ordinary intelligence to prepare himself to appear in Court, either as plaintiff or defendant, in his own case, or serve as a juror where the legal rights of his neighbor are involved. He must take, with the simplest confidence, whatever is told him professionally; and sometimes he makes the discovery that law and justice are two different things, and are not always found in each other's company.

It is said by those who claim to be the champions of the common law, and the present system of practice and proceeding under it, that it is "a science." Certainly, then, its votaries should, like all other true friends of science, be willing, not only to improve it, but that the mass of it which is already known, should be arranged and condensed in such a manner as can be readily understood by those upon whom it operates. We are well aware that no branch of human knowledge is more often required in connection with the every-day transactions of life. For this reason, it strikes my mind, it should not be confined in artificial mysteries, known only to a class.

But let me explain, lest I should be misunderstood. I am aware, sir, that the charge is frequently brought against lawyers, that as a class they cherish and foster the uncertainty of the law; and many believe that if the laws were made more certain and definite, their trade, like the shrine makers spoken of by St.

Paul, would be at an end, or at least, rendered less profitable than it is at present.

I believe, sir, there are many, too many I fear, of the profession, who may be actuated by such unworthy motives. But, I am glad to find, not only in this Convention, but throughout the State, many members of the bar who are bold and fearless advocates of legal reform. Here, if it be not considered out of place to mention one in particular, I will say that the present Secretary of State, Judge Test, who is one of the ablest lawyers in the State, has been for years a constant and steady advocate of "law reform." The accusation is therefore unjust, when applied to the bar generally. At the same time, an imputation so generally made, and by many people actually believed, of unworthy motives influencing a whole class, is significant of the state of public sentiment, and should satisfy us how deep-rooted and general are the prejudices against the present system, and should convince us that these prejudices can only be eradicated by abolishing the evils which are interwoven with the system, on account of the uncertainty of our laws, and by thoroughly reforming the practice and proceedings of our Courts. I do not apprehend that the reducing of our laws to a written code, and reforming the practice of our Courts, will necessarily have the effect to dispense with the services of the profession, by enabling every man to become his own lawyer. That idea is altogether too utopian, and could only have originated in the mind of one not acquainted with the organization of society. Sir, there exists in the very nature of things, a political as well as a moral necessity for the profession of the law. Our social and political fabric would crumble to pieces without "order," and there is no security for order, unless in a pure and wholesome administration of justice. Laws are necessary to the existence of justice; and we cannot have laws without a Legislature to enact, and a court and bar to expound and enforce them. Just as the security and happiness of the individual depends upon a well-organized state of society, so is society dependent on wise laws for its continuance. Therefore, sir, the general tirades which we often hear against "the bench and bar," are ill-advised, and will not for a moment bear investigation. Both must and forever will exist. And, sir, should this State ever be so fortunate as to have her laws reduced to a systematic and comprehensive code, and the practice and proceedings of our courts should be rendered as plain and intelligible as possible, still, any one who would attempt to practice law without having thoroughly studied it—who had not mastered the science to which he made pretensions of knowledge—would meet with about the same success which would attend the efforts of a blacksmith, who might undertake to manufacture lever watches. As well might a man set up for skill in surgery,

though well acquainted with other branches of knowledge, without having thoroughly mastered the subject.

Therefore, sir, in advocating a codification of the laws, and a reform of the practice, I do not support the proposition with a view to dispense with the profession of the law. But I do anticipate that one of the great benefits resulting from the reform we propose, will be to reduce the law as a science, more to the comprehension of the masses. The developments of this century should satisfy us that the more simple and easy to be understood all trades and professions are made, the more secure are the people from oppression and imposition of any kind. And I cannot see why it is not the interest of every lawyer who prides himself upon the dignity of his profession, to relieve the law from all unnecessary intricacies and fictions, that do not well comport with the earnest and straightforward character of the people of this age; and from the antiquated maxims, forms, and rules, which have lost their value by reason of the lapse of the period for which they were constructed. Sir, improvement in every department of science tends to make its principles clearer and easier of comprehension, and it also tends to disseminate knowledge among the mass of the community in that particular department. I can perceive no reason why it should be otherwise with the law. That it is desirable to have the unwritten maxims called the common law, whose doctrines govern our courts, and whose principles pervade our whole judicial and social systems, properly arranged into a code, will be admitted by all, if it be possible. I have already said that we are now under the necessity of searching for them through hundreds and thousands of volumes of reports. I can see no good reason why these principles cannot be sifted thoroughly once for all, by competent men, and the result of their labors condensed into a code which could easily be referred to, instead of being compelled to hunt through a camel's load of books, which was said to be the duty of the Roman lawyer, before the Justinian code was compiled.

The gentleman from Vanderburgh, (Mr. Blythe,) while he said he was willing to go to a certain extent in the reform of the practice, opposed the proposition under consideration, for the reason that it squinted at a codification of the laws. And I have heard others express the opinion that the task was too Herculean, it could never be accomplished, and it would only result in an useless waste of the public money, to make the attempt. For myself, I believe that, if persons friendly to the undertaking were placed at the work, its accomplishment is entirely practicable; and in support of that position I have only to refer to the codes of Justinian and Napoleon, and the successful efforts of Livingston and his associates, to codify the greater portion of the laws of the State of Lou-



isiana. I think the importance of the subject is worthy of an effort, which should be commensurate with the object to be attained. It is impossible to calculate, at this time, the advantages which must result to the people of this State, when the codification of their laws shall have been successfully accomplished. But, sir, it is due to truth to state frankly—for I do not desire to conceal a single fact—that the successful prosecution of such a work demands a combination of great abilities, learning, and ripe experience, devoted to business for many years.

I wish further to state, without concealment, that, should the Convention adopt the report, the most radical changes will be effected in the practice of our courts; the doing away with the distinctions between law and equity is of itself a very great change, and involves highly important consequences. But I trust no one can charge me with a desire for rash innovation. I am always willing, however, to examine everything which claims to be an improvement; but I would adopt nothing which could not be demonstrated to be safe and useful. It is far from my wish to reject anything because it is ancient and has been handed down to us from the hands of our forefathers. Neither, on the other hand, can I respect any abuse, because it has received the sanction of age, or its origin is so remote that "the memory of man runneth not to the contrary."

Surely, sir, this is a subject deserving of our most serious consideration; and I trust that no fear of change, no unworthy dread of the new, because it is new, will deter this Convention from the performance of its duty. I have already referred to the natural repugnance in the minds of some men to change. This feeling is proper, and often opposes salutary barriers to rash innovation. But with some, this conservative feeling is carried too far, and leads them to the defense of acknowledged evils, and a morbid desire to suffer under ancient abuses, rather than adopt the most practicable reforms; and this feeling is quite as much to be guarded against as that of a desire for constant change.

Sir, during the canvass at which I was elected to a seat in this Convention, it was frequently charged against me, that I was too radical in the reforms I then advocated. But I trust the declaration I then made to the people, "that I was not a rash innovator," has been borne out, as well by my votes in this body, as by the propositions which, as a member of the committee on "the practice of law and law reform," I have had the honor to submit. These propositions have received the sanction of several States of the Union in their favor; and I feel a great degree of confidence that a little investigation will convince the members of the Convention that the most beneficial results will flow to the people of this State from their adoption. In urging this proposed measure of reform in the practice and the

codification of the laws, I feel that I am actuated by no unworthy motive, and only by an earnest desire to promote the greatest good of the greatest number; and least of all, by a spirit of reckless innovation.

In conclusion, let me appeal to the legal profession, as represented on this floor, and say to them that no more useful or noble direction could be given to the varied acquisitions, intellectual powers, and acknowledged influence of the profession, than that of bringing into a condensed and simplified arrangement, not only the practice, forms, and proceedings of the courts, but also in reducing to a clear and brief form the various and clashing principles of the common law, the toilsome research into which has so much delayed the decisions of our courts, has brought such discredit upon the profession, and engendered so many popular and deep-rooted prejudices against the law itself.

With these remarks, I submit the question to the decision of the Convention, believing that it will receive the deliberate and serious consideration that its vast importance to the people of Indiana demands at our hands.

I desire to express my thanks to gentlemen for the patience and attention with which they have listened to this imperfect expression of my views.

Pending the question on the amendment offered by Mr. BLYTHE,

On motion of Mr. RARIDEN,  
'The Convention adjourned.

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WEDNESDAY, JAN. 22, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. NEW.

The journal of yesterday was read and approved.

Mr. OWEN presented a remonstrance from citizens of Posey county, expressing their disapprobation of the action of the Convention in regard to the public debt, declaring in their opinion the matter ought to have been left open, so that by a vote of the people a debt might be authorized in case it should be thought necessary.

On presenting this remonstrance,

Mr. OWEN remarked, that he differed in opinion with the signers of the petition, and he would be prepared to render to his constituents when he returned home, the reasons upon which his opinions were founded.

The petition was laid upon the table.

COURTS.

Mr. PETTIT from the committee on the organization of courts of justice reported back the section relating to the judicial power, amended as directed by the Convention, so as to provide that the judicial power of the State shall be

vested in one Supreme Court, Circuit Courts, and such other inferior courts as the General Assembly shall establish.

The question being,
Shall the section pass?

On motion by Mr. CLARK of Tippecanoe,
The rule which requires the yeas and nays was suspended and

The section was passed and referred to the committee on revision.

The Convention then proceeded to the consideration of the

ORDERS OF THE DAY,

The first thing in order being the section which provides for the appointment of three commissioners to amend the rules of practice of the courts and to codify the laws.

The pending question being on the amendment of the gentleman from Crawford, to the amendment of the gentleman from Perry,

Mr. RARIDEN. I am admonished, sir, of the impropriety of attempting to discuss this subject at any length. I perceive that the Convention is not in a proper temper to hear discussion. I see there is an indisposition to listen to any suggestions that may fall from human lips, and I do not wonder at it, for we have been here a long while. My whole object this morning is merely to implore the Convention not to adopt this measure precipitately—not to adopt any course with regard to this matter without mature deliberation. To leave the thing, at least to some extent, within the power and control of those who are to come after us. So far as regards such reform as pertains to the manner in which the administration of justice shall be conducted—so far as doing away with the cast-iron rules and technicalities is concerned, there is no gentleman in this Hall who is more willing to see indications of such reforms than I am. I say it is desirable, if there be any clumsy rules or absurdities in the manner in which justice is administered by our courts. If, as the gentleman from Montgomery said yesterday, our whole system and science of jurisprudence is becoming a machinery that is merely calculated to inspire awe and to humbug the community, the sooner we get rid of it the better. I say if it be the truth, that it is but a cunningly devised humbug to impose upon popular credulity, the sooner we get rid of it the better. But I have never before heard gentlemen use language of this kind. We are acting under a system of jurisprudence which has been the work of all ages, and in the improvement of which have been engaged the wisest men the world have ever produced, and I have never heard expressions such as those used by the gentleman from Montgomery applied to it before. Perhaps the gentleman himself has not been within the temple of its knowledge. I suspect that he has not penetrated further than the vestibule.

Mr. CARTER. The language was not my own. I quoted the authority of a member of the New York Convention, a man of high legal standing.

Mr. RARIDEN. Well, sir, I could quote greater names. I could point you to men of far greater abilities and attainments who, for the purpose of producing effect here, used the same cant. Men sometimes present themselves in such array of words to astonish us with the extent of their love for the people and the magnitude of their plans for their improvement and their happiness. I say again, it is not that I am opposed to any useful reform. I have been in courts of justice all my life. I was raised in a clerk's office, and if there is any thing on earth that I do understand, it is the practice and administration of our courts of justice. There is nothing so abstruse or difficult about the administration of justice in our courts as the gentleman seems to suppose. The multiplication table or the alphabet is just as mysterious to a child, as our system of jurisprudence is to a man who has not spent some time in making himself acquainted with it. I hear it said, too, why is not the law made plain? Why not bring it down to the understanding of every man?

Well, I believe it has been the object of every wise and good man in all times to make the law plain, to bring it within the comprehension of every man; and it is the object of courts in its administration to simplify practice and to illustrate its wisdom and justice. Let me ask you, why do you not make the parliamentary law under which we now are proceeding plain? Why do you not make the laws which govern this body so plain that every man can understand them. It is vastly important that they should be understood by every one who has to act and govern himself by them. But how many men are there in this Hall, no matter how long they may have served in legislative bodies, who understand thoroughly the parliamentary law when that is contained in a little book of perhaps ten or a dozen pages? How many men, and men too, the greater part of whose lives have been spent in the contemplation of this very subject, are there who can say that they understand this law?

Well, sir, let me ask you, is it made purposefully obscure so that it shall be as Mr. Huffman says, but a cunningly devised fable? Well, sir, another illustration: Here is the book of the New Testament, written in as clear and explicit terms as any book was ever written, by men, too, who did not wish to mislead. How is it in regard to that book? We do not all understand it alike. How is it that there are so many and so various interpretations given of the contexts of that sacred volume? Why, it results from the organization of the human mind, not from any design or purpose to make the rules of conduct inculcated in the New Tes-

tament obscure or difficult to be comprehended. And it is for the same reason that parliamentary law seems to be complex and difficult to be understood, and that our system of jurisprudence is still more difficult to be understood, because it acts upon and resolves all the complex transactions of fraudulent men. Talk to me about writing the laws plain! You cannot put your finger upon any statute now in the books that is not plain.

But they are all aimed at classes of cases. The common mind cannot comprehend the variety of cases that will occur in the transactions of mankind.

Time will not permit me to do more than to glance at some of the objections stated by gentlemen. They tell me that the law must be written plain, so that it may be understood by every body; and so should astronomy, and so it is, and how many understand it! Sir, nineteen-twentieths of our law is unwritten law—the mere common sense of man acting upon facts. Let us examine one branch, and it is more important, perhaps, than all the rest: the law of evidence, for instance. How many gentlemen are there in this house who know anything at all about the law of evidence? How many are there who understand the philosophy of the human mind, and all the influences that divest it. There is an intimate relation between the law of mind and evidence. Do we not know that the jury that tries the case are not eye witnesses of the transaction? Their minds are enlightened in a different way. Their knowledge of the matters which they are to try, is communicated to them by the instrumentality of ear, through the medium of witnesses. I could refer you to cases in which no man in this house could come to a satisfactory determination in ten weeks' time. Let me suggest a case, a case that occurs every day in a court of justice, and it is a case about which more law is written than all others put together: Two witnesses, men of equally good character and intentions, come into court to give testimony in a case, yet they may stand in direct contradiction to each other. Now one or the other is to be believed; they cannot both be right. Where is the written law that directs you in regard to your action in hearing and deciding upon such testimony? How could it be written? How can you set down directions in regard to the little things, looks, and circumstances that must have influences by which the human mind is actuated? Well, sir, there is another thing: You may frequently see two men of equally good intentions, and of equal candor and property, giving testimony in a case; and they may each tell their story in the same words, yet one will make a deep impression upon his hearers, while the other makes but little impression, and gains but little credence. One will make a permanent impression on the mind, and another will fail to do it. Where is the law that regu-

lates that! How can you write it! By what settled philosophy is the human mind governed in adhering to the testimony of one of these men and, rejecting or taking little note of that of the other? The reason of their making a different impression arises from the fact that they are constitutionally different; that there is a difference between the men themselves, more than in their evidence. The man who is of strong despotic will and mind, and positive in his statements, makes a strong impression, while a feeble man, of timid character, makes but a feeble impression, no matter how pure and true his statements. I am speaking of the law of evidence. There is as much reform needed there as any where; and as it is out of our power to write the law in express terms, (who could write rules to be relied upon in such a case?) we must be guided by some different means.

When two men are brought into court to testify, and one of them be known to be a man of bad character, it frequently happens that the man of bad character tells his story in such a way as to induce belief, while the man of acknowledged good character makes his statement in such a way, and under such circumstances, that the court cannot act upon it, and feels bound to withhold assent to his statements. The court is sometimes conversant with the springs of human action—but this is not learned from law books—and will give its opinion according to that knowledge. I am speaking of the intrinsic difficulty of reducing this part of the science of jurisprudence to a written code. We can only establish general principles. It is impossible to provide rules for all human transactions, when a slight change of conduct would defeat the rule. They must be classified, and when there is no specific rule prescribed, then the former decisions of the courts in relation to similar cases are called in to aid the judgment of the court in forming a decision in that particular case; not upon a new theory, but consistently with established theory, in cases in which no precedent or analogous case can be found. But gentlemen say, let us have all the rules of law and of the practice of our courts, plainly written. Well, if you do that you make the chancellor or presiding judge an absolute dictator. The judge is not to be governed by the rules and decisions of those who have gone before him, by those rules that have obtained the consent of mankind; he is absolute, so far as his jurisdiction extends. No matter how tyrannical, vicious, or corrupt, he may be, he may excuse himself under the pretence of honest intention, without a rule to guide him. You cannot punish him for it. I have always been accused of a want of veneration for the ancient forms of the law. I have always regarded them as *grimgrubber*, as Mr. Bentham calls them. The wisdom of mankind, the power of human intelligence, is daily re-

noulding them, and fitting and adjusting them to the wants and convenience of the present age, and justice is seldom caught in these toils. If it is from the ignorance of those who administer as priests at her altar, and not from the law's obscurity, I look upon the old forms of proceedings now as a matter of incumbrance.

As to the proposition to do away with the distinctions between actions at law, I have no particular objection to it; but let me say to the Convention that you might almost as well undertake to blend all sciences together, as to do away with the distinctions between actions. You might almost as well declare that the professors in your colleges shall teach mathematics and astronomy, Latin and Hebrew, all at once, to the same class. Sir, such a course as that would, in my opinion, lead to confusion. The science of law would never have come to any degree of maturity, had it not been for close and severe study. Some have made one branch of the law their study, and some, others, till every branch has had its oracle. For instance: on the case to that class of actions to that particular branch of practice, some devote their labors, and such become thoroughly master of it. Another man investigates the subject of title, by which landed property is secured. Some understand the action of trespass better than any other. Some understand chancery practice better than all others. And thus each branch of law and practice comes to be reduced to almost exact science. [So much confusion that the speaker could scarcely be heard.]

Sir, I perceive very clearly that I can produce no impression upon this House. [A laugh.] Whether it be a proper subject for amusement in a body so wise as this may be supposed to be, I leave to our constituents. In a proceeding like this, that ought to last for ages, some little thought and deliberation is due; and whether it is a proper subject for amusement or not, is for gentlemen to determine. We are engaged upon a proposition that is of vast importance to community. All that I ask now of the Convention is, that they will not in this hasty and inconsiderate way force upon the law-making power a measure guessed at, though with brow-bound discretion, without reflecting or seeming to regard what may be the ultimate result.

I am perfectly willing that the Legislature shall appoint, or that we shall provide for the appointment of one commissioner to take this matter up and report to the General Assembly upon it such suggestions as it may be thought proper for them to adopt; but I am not willing to say that they shall adopt this, or shall not adopt it; because, I repeat again, without any intention of wounding the feelings of any gentleman, this Convention is not in a condition to think or act upon the matter with the proper degree of deliberation and judgment. The

rules by which life, liberty, and property are to be disposed of should not be guessed at or adopted without a knowledge of what they are, or what they will bring about.

Mr. NILES. The gentleman from Crawford, I understand, sir, is willing to withdraw his amendment.

Mr. PEPPER of Crawford. I tried yesterday to get the floor for the purpose of withdrawing the amendment that I had offered, but was unable to do so. Having, on a former occasion, given my reasons for offering the amendment, I now ask leave of the Convention to withdraw it.

Mr. NILES. Mr. President, would it be in order now to move to amend the amendment?

The PRESIDENT. Yes, sir.

Mr. NILES. Then I move to amend the first section of the article, by striking out all after the word "State," in the fifth line, and by adding the following words:

"And who shall report to the General Assembly, for their action."

The section would then read as follows:

"The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules, and practice, pleadings, forms, and proceedings, both civil and criminal, of the courts of this State, and who shall report to the General Assembly, for their action."

If the Convention will indulge me, I shall be glad to submit a few remarks. [Cries of "go on, go on."] I am as solicitous as any other gentleman on this floor can be, to see the practice of the law simplified, but I am anxious to avoid everything like *destructive legislation* in the Constitution. A few wholesome and simple reforms in the practice of the law can be easily introduced, but they should not be attempted directly by this body. An hundred and fifty men assembled as we are, and naturally impatient of all delay, would be wholly incompetent to devise and perfect the necessary legislative details upon a subject of such great practical importance. My idea is, sir, that the necessary reforms could be secured by a single act of a few short sections, but such an act should be drawn with great care and well matured. It would not receive the necessary deliberation in the Legislature.

The section, as I propose to amend it, would require the appointment of commissioners, to simplify the practice, but, as it would contain no legislative provisions to which they would be compelled to conform, their duties would not be onerous. The idea of such commissioners has become associated, from the experiments made in New York and elsewhere, with that of a permanent office, and of great expense. But, sir, rather than see such commissioners fastened upon the country from year to year, at a salary

of some \$3,000, I would suffer the laws to remain as they are, or leave the whole matter to the action of the Legislature. Three discriminating and experienced lawyers could be appointed by the Governor, or by the Governor and the judges of the Supreme Court. They could mature the necessary reforms at leisure moments, in their own offices, during a single season, and by occasionally interchanging opinions, could agree upon a bill to be submitted to the General Assembly, at a very small expense to the State. Why may we not be satisfied with such a section without the legislative provisions contained in the section reported by the committee? Will the Legislature or the people be any less favorable to wholesome reforms than this Convention? What, then, the necessity for any legislation on the subject at our hands? It is highly probable that all distinction between actions, and much of the distinction between law and equity, may be abolished without any evil consequences. Such a reform would be useful to the people generally, and a decided convenience and benefit to lawyers. Certain gentlemen seem to think that lawyers oppose what are called reforms, from a fear that their craft will be endangered. It is not my office to vindicate the motives or character of the bar. But it is difficult to conceive what motive a lawyer could have for preserving useless and burthensome forms. Neither the amount of litigation, or of his fees, is affected by them. In this State, as is well known, he has no fees allowed by law, as costs in the case. The more concise and simple the forms, the less laborious will be his duties. Indeed, sir, so far as my knowledge extends, lawyers desire no exclusive privileges. [A voice—"no good lawyers do."] For one, I can say that I am willing that all bar rules should be abolished, and that any man of good moral character should be authorized to practice law. I am tired of the clamor against lawyers, and of being told that we have exclusive privileges, without being able to reply—you are a lawyer, too, sir. The lawyer and advocate under the Roman commonwealth needed no special license to practice his profession. Open the door wide to free competition; and integrity, learning, and ability, will be a sufficient certificate, and without such a certificate, a man will have but a poor practice. The law must be a vast and learned science, so long as it affords protection to the varied interests of civilized society. The idea of making every man his own lawyer, by simplifying the rules of practice, amounts to about as much as the scheme of some one who wrote a book, entitled "every man his own washer-woman."

But, sir, while I am a friend to simple and useful reforms, I feel great distrust of any sudden and sweeping innovations. The practice of the law is not the complicated system in this State, which many seem to imagine; and I protest against any wholesale system of codification.

I should look upon it as wholesale mischief. I should regret to see even a practice code adopted. The code of procedure, as it is called in New York, is a volume of considerable size, and all the courts are now busy in adjudicating upon its provisions. When their reports are piled up to twenty or fifty volumes, books of practice under their new code will be written, quite as large and complicated as Tidd or Graham, and, according to the idea of some reformers, it would then become necessary to get up another practice code to go through the same process.

But, sir, my strongest objection to the section as reported, is on the ground that it abolishes, unalterably, all distinction between the proceedings at law, and in equity, and I fear that its effect will be to abolish essentially the entire system of equity jurisprudence. Were such a provision to be adopted by the Legislature, it could be modified as experience might prove necessary; but when we propose to do it, we should look well to the consequences. It is one peculiar province of equity to take cognizance of matters too complicated, to come before a court of law, and where there are many parties in interest. In such a case, under the present system, depositions can be taken, and the whole case spread out upon paper, for the deliberate judgment of the court. But we propose to say that the most complicated case which ever can arise, should be conducted precisely in the same way as a simple action by one neighbor against another, to recover the value of a horse. When, in order that there be an end of litigation, a party files his bill of complaint against twenty different persons, having different and perhaps conflicting interests, will you compel them all to bring their witnesses into court, and keep them in attendance for weeks, and then have the twenty different interests all decided upon by one jury? or will you have twenty different juries empaneled to try one case? or will you—which I greatly fear—deny the remedy altogether, by abolishing whatever has heretofore been peculiar in the mode of conducting such a suit? I trust, sir, that we will not be over-anxious to pull down before we are prepared to build up.

Mr. HOWE. I have a proposition which I wish to offer as a substitute, and I think it concedes everything that a reasonable man can ask. [Cries of "read it, read it."]

The PRESIDENT. If the gentleman intends his proposition as a substitute for the entire section, it is not in order at present.

SEVERAL MEMBERS. "Read it any how."

Mr. HOWE read his proposition as follows:

"At the first session after the adoption of this Constitution, the General Assembly shall revise and simplify the rules, practice, and pleadings in courts of law, or shall appoint commissioners to effect that object."

Mr. HOWE. My proposition leaves with the Legislature the responsibility, and that is where it ought to rest. All that we ought to do is to empower the Legislature to act upon the subject. I think it is proper we should go thus far; that is, to declare that the Legislature shall have power to act upon the subject, but I do not think it is proper for us to prescribe to the Legislature what their action shall be. I am in favor of simplifying the practice and proceedings of our courts, because the whole objection to our system of jurisprudence rests upon this point. The whole objection in relation to the practice of our courts relates simply to the rules of practice and pleadings. It goes no further. I hold, then, we should be satisfied with remedying this evil. I am opposed to the idea of abolishing the distinction between the proceedings of law and in equity. I have no objection to allowing the Legislature, however, to make such provision as they think proper in reference to that subject. I have no objection to allowing parties, if they see proper to do so, to submit at one time all their causes of action as against the same parties. But the remedies are of distinct character, and the proceedings should therefore be different, and I here assert as my deliberate opinion, that if you sanction the idea of abolishing all distinctions between law and equity, you take away a component part of the system, and destroy its unity. I am in favor of retaining the practice of written or recorded evidence in certain kinds of chancery causes—that being frequently one of the most important objects—and I am only opposed to the abolition between law and equity proceedings, so far as that abolition may endanger the integrity of the equity system, and the practice of written depositions.

There is a manifest reason why there should be in by far the greatest number of equity causes a complete and perfect record of evidence. The reasons I will not now state.

Now one word as to the other branches of the section, which looks to a general codification of the laws, as well unwritten as written. I here affirm my deliberate opinion, that all attempts at codification of the unwritten law in this State will be vain. The thing is utterly impracticable. There never was but one codification that was carried out and perfected, and that occupied years and years of labor of the first lawyers of the Roman Empire. The code that I refer to is the Justinian code.

The greater part of our law, except the system of landed estates, had its source in judicial decisions, and the text of the civil law; but the principles which prevailed in the Roman courts were set forth in perspicuous terms in the answers and opinions of eminent lawyers. They were developments of principles of natural equity. Now, I ask you, is it possible for any one man or set of men in any code, to bring together all the principles and rules of our law?

I say it is not. In order to get up a code of this kind, you must embody abstract principles of jurisprudence. It will require men who have devoted their lives to the subject. The profound and philosophical mind of Bacon might have approximated to success in framing a code out of the discordant materials of the common law, but if you attempt a codification of your laws, I predict a signal failure. I am altogether opposed to the idea. I am willing in this matter of reform to go as far as I think the mischief goes, and there stop.

I hope, therefore, the pending amendments will be voted down, and something like the proposition which I have read will be adopted.

Mr. McCLELLAND. On this question, sir, I am instructed.

It has been remarked by some gentlemen that it is a matter which the people care nothing about; but, sir, my constituents feel a deep interest in the subject of the administration of justice.

I am aware that it is perfectly useless to make any remarks in relation to the subject at this time, as there appears to be a disposition in the Convention to have no more speeches. But, sir, I must be permitted to say a few words.

That some reform is necessary, is plainly to be observed from the fact that the people have called for it. Every delegate on this floor must know that some change is absolutely necessary. An eminent lawyer (Judge Wells) on this subject says:

“Controlling it is the fell spirit of law-craft which borrows its spurious wisdom from the age in which witches were burnt—in which judicial combats decided right—when kings held their office by *jure* divine. It has no affinity with common sense, candor is its aversion, and simple truth its enemy.”

The Law Magazine says in relation to law reform in Indiana:

“The question of reform and simplification has, however, been considerably agitated and discussed throughout the whole State during the late canvass to elect delegates to a Convention to revise the Constitution, and the proposition has met with general favor.”

In addition to the foregoing, we have the testimony of the able and experienced gentleman from Floyd, (Mr. Thornton,) who, after a practice of forty years at the bar, says that the present system is wrong, and reform is absolutely necessary.

Take the example given by the gentleman from Tippecanoe (Mr. Pettit) on yesterday. He ably exhibited some of the absurdities in an action of ejectment; but some, I think, he failed to point out to the Convention. He certainly satisfied all who heard him that reform is necessary.

Let us follow the proceeding a little farther: After John Doe complains of Richard Roe,

(who are fictitious persons,) the owner of the land receives a notice of the pendency of the suit, &c., and he is permitted to defend the case on certain conditions, namely, that he will acknowledge three positive falsehoods and one truth; he must acknowledge "that a lease was executed to John Doe," that "John entered on and took possession of the premises," and that "Richard Roe forcibly ousted the said John from his possession;" and the truth which he must acknowledge is, that he (the defendant) is in possession of the premises, and thereupon comes a jury, and returns a verdict "that the defendant is guilty of the trespass and ejectment," which is false, fictitious, and untrue in every particular.

The jury is sworn to render a *true* verdict according to the evidence. They are told by the court that John Doe and Richard Roe only exist in the imagination. It is admitted that the whole history of the matter is a fiction; nevertheless, under their oath, they say that the defendant is "guilty of the trespass and ejectment," when in truth and in fact they are trying whether A or B is the owner of the premises described.

I ask the gentleman from Wayne, (Mr. Rariden,) who tells us that if there is anything he is acquainted with and understands, it is the mode of administering justice, and the practice in our courts of law, to give me one single reason why it is necessary to have such absurd proceedings as this; why it is necessary to introduce such unmeaning fiction into the law proceedings? I ask for one single reason.

The jury are sworn to render a true verdict, according to the evidence given; yet, sir, you here compel them to give them a verdict that is untrue.

Would it not be as easy to say, A B complains of C D, because he has taken possession of a certain piece of land, and asks its recovery, so that all men can understand what you mean?

And there are other cases that are equally ridiculous.

The gentleman from Switzerland speaks in a contemptuous manner of my aged friend from Floyd—a man who has spent all his life in courts. The gentleman from Switzerland endeavors to make it appear that my friend from Floyd goes in favor of the proposition because he is going to be a candidate for a county judgeship, and is, therefore, a *pettifogger*. As to who is the sound lawyer, and who the *pettifogger*, I leave it to others to judge. I have no doubt the gentleman from Switzerland would much prefer meeting my friend from Floyd by wager of battle, than to meet him in a court of justice in an intellectual contest before a jury and intellectual court, as I presume that would be his only chance of success.

Mr. KELSO. I am a better lawyer than either of the gentlemen.

Mr. McCLELLAND. As to that, I leave the Convention to judge; however, the gentleman from Floyd stands A No. 1 at the bar of the Supreme Court.

It is said that this provision is not wanted. I tell those gentlemen who oppose it that it is wanted, and that I wish their votes to be placed upon the journal; let the people of this State see how you stand. I want your votes to go to your constituents.

The gentleman from Switzerland yesterday volunteered to make all necessary forms of proceedings in five lines. Why does he not favor the Convention with his plan? When I see the country paying thousands of dollars a year for keeping up fictitious proceedings between John Doe and Richard Roe, John Den and Richard Fen, simply to recover possession of certain land, which C unjustly holds from D, I am at a loss to discover the *utility* and *simplicity* of such a system. I am in favor of having a reform in this particular. I have an amendment which I intend to offer in case the others are voted down.

I voted against the proposition to appoint commissioners; the voice of the Convention was against me. I will vote for the section now pending; and, in case it is not adopted, I have an amendment which I intend offering, which will probably meet with a favorable reception. This amendment, it will be perceived, may suit the views of both parties. It leaves it discretionary with the Legislature to appoint commissioners or not. [Cries of "read! read!"]

It is as follows:

SEC. —. The General Assembly, at its first session after the adoption of this Constitution, shall revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings, both civil and criminal, of the courts of this State. And they shall provide for the abolition of the distinct forms of action at law now in use; and that justice may be administered in a uniform mode of pleading, all distinction between law and equity is hereby abolished. The General Assembly may, if they think proper, appoint commissioners for that purpose, who shall, from time to time, report the result of their labors to the General Assembly, with such recommendations and amendments as to said commissioners may seem necessary. Provision shall be made by law for filling vacancies, regulating and abolishing the tenure of office, and the compensation of said commissioners."

It would leave all those objections which are here urged against the measure to be settled by the Legislature hereafter, and still would secure the great reform which is so loudly called for by the country.

It is urged that a reform cannot be effected. One reason given by the gentleman from Hendricks (Mr. Nave) is, that it is dangerous to

"make innovations on the ancient land-marks." If that reason be true, then let us adhere to the ancient system, and have issues tried by wager of battle—by the fiery and water ordeals. It would be a beautiful sight, truly, in this enlightened age, to see criminals walking over *red-hot plow shares*, and cases decided by wager of battle.

In my humble opinion, there can be but little difficulty in making the necessary reforms, instead of a long fictitious narrative about John Doe with force and arms ousting Richard Roe, &c. A simple statement that A B complains of C D, who holds certain premises which belong to the said A B—a simple statement of the complaint, and of the defense, (if any,) is all that is absolutely necessary for the administration of justice.

MR. KELSO. I am very much disposed to accommodate my friend from Randolph. The amendment which he has read to the Convention is precisely similar to one which I proposed to offer yesterday. It covers the same ground and I will help to vote down all the propositions that are now pending, and then vote with him for his amendment. I will forego the right of offering mine, and he shall have what little reputation appertains to the offering of the proposition. He shall have the honor of offering the amendment, and I will aid and assist him in procuring its adoption. I must say, however, that the gentleman has suffered himself to be made the cat's paw of somebody else, in attacking me. I have never given him any cause to make the attack; he could not have made the attack for himself. I want him to have the honor of offering the amendment that his name may go down to posterity in connection with the names of Kent, and of Story, and Swift, Chief Justice Marshall, and all the other distinguished jurists of the day, that among those illustrious names, high in the niche of judicial fame, shall stand that of the Honorable Judge McClelland, Probate Judge of Randolph county.

MR. GIBSON said—

MR. PRESIDENT: I had not intended to have again occupied the attention of this body with any remarks; nor should I now do so, but for the fact that it seems by many to be assumed as true, that the bar, as a body, are opposed to legal reform.

The question before us naturally divides itself into two branches. First—is reform of any kind necessary? Second—does the section under consideration afford the most appropriate remedy for existing evils?

To both of these questions, I give an unequalled answer in the affirmative. I know that great and intolerable abuses exist in the practice and pleading of our courts; abuses of which nothing but habit could for a single day, reconcile court, bar, or people. I believe that it is our duty to take the initiatory steps in this

reform, and feel little hesitancy in saying, that the section under consideration presents the safest, the surest, and in all respects, the best means of effecting the desired reforms.

And here permit me to define clearly the position I occupy on this question. I desire to see a thorough and radical reformation of pleading and practice; just such a one as is contemplated by the imperative portion of the section under debate. I desire to see the old and antiquated forms and senseless fictions of the special pleader swept away; the useless and troublesome distinctions between actions abolished; to see justice administered by one uniform law, without inquiry into the fact whether the cause has come before the court by a bill in chancery or a declaration on the common law side of the court. Thus far do I go, but not one step further. I would not force upon the Legislature the codification of our statute law, much less the endless, I may almost say impossible task, of codifying the whole of the common law.

The great body of the common law may be aptly compared to some mighty temple, reared by the ceaseless labor of successive ages; its foundations deep in the past: its fair proportions and matchless symmetry challenging the admiration of the world; but its portals choked with the rubbish of ages, and overgrown with brambles and thorns, until it requires greater skill to thread their mazes than it does to master the intricacies of the labyrinth within.

While I would seek to throw wide open the doors of the temple, and remove every obstacle to its entrance, I would most sacredly respect the mighty pile itself; and never, either here or elsewhere, shall I by my vote be found assisting in the attempt to tear it down, for the purpose of erecting a more modern edifice upon its ruins and from its materials.

Sir, if there is in this country any one body of men more than another interested in this reform it is the lawyers themselves. Where does the student of law find his greatest difficulties? It is when the ponderous tomes of Chitty are first placed in his hands; and he finds his head bewildered, and his reason and common sense at fault, in endeavoring to master the distinctions between actions, and the senseless rules, or, as lawyers call them, "niceties" of special pleading. What most puzzles the young lawyer just entering the arena; and I might add sometimes the gray-haired veteran of the bar? What are the most perplexing questions for the judge on the bench? The experience of every lawyer will answer, those arising from the pleadings and rules of practice. Sweep away this worse than useless science, and the time now devoted by the student to its mastery, and the practitioner to its application in practice, can then be profitably employed in the study of the great principles upon which the whole fabric, alike of law and government rests

—principles too often lost sight of by the special pleader; too often sacrificed by courts to antiquated forms. Human intellect is finite in its powers; there are limits beyond which the most untiring industry will not enable it to pass; and I will here venture the assertion, that seldom or never has a thorough knowledge of special pleading, and a ready and discriminating judgment upon, and intimacy with the general principles of law, been found united in the same person.

You will frequently hear it said of particular lawyers that they are thorough special pleaders; but you will generally find the commendation stop there. A distinguished anatomist of the West was wont to remark to his class, that the man who thoroughly and minutely understood the anatomy of the fore arm could not possibly know anything else of the science of anatomy.

If any man doubts the extent of the evil, let him turn to the decisions of our own Supreme Court; let him there hunt up and trace out the various decisions upon these questions; let him see as he will there see, the numberless instances in which the real merits of the case are wholly lost sight of and forgotten in the discussion and settlement of questions of form alone, and he will doubt no longer.

It has been said truly by a distinguished law writer of New York, that no State in the Union has so closely adhered to the technicalities of special pleading, as Indiana. Sir, we are behind the age, behind our sister States, behind even England, the model which we profess to follow. Reforms to a considerable extent have already been effected there, and others are in progress.

The situation and interests of the legal profession in the two countries are widely different. Here, the bar can have no possible interest in maintaining the present system. In England, where the attorney is paid as we pay our clerks, according to the length of the declaration, bill, or plea, they have a direct interest in making the pleadings as verbose as possible; and it is to that cause that much of the verbage of legal forms is to be ascribed. No such cause operates here, and I repeat again, that no class of men in the State have as deep an interest in this reform, as the members of the bar.

After what has been said by the gentleman from Tippecanoe (Mr. Pettit) and others, and in the face of the experience of every member of this body, in times past, it seems to me almost unnecessary to add anything to the argument showing the absurdity of the present system. I will cite the Convention to but a single case. A client comes to me with two promissory notes, each drawn by the same payer, both due, and each for the sum of one thousand dollars, payable in current bank paper. To one of the notes the payer has, after his signature,

added a scroll or seal, making it what is technically called a "specialty," or sealed instrument. The holder of the notes wishes suit brought upon them.

Now, sir, I ask those who defend the present system to give us some reason, if such there be, why there should be two separate suits upon those notes? Yet such is the law. The defendant must be harassed with the costs of two separate actions, one called *assumpsit* and the other *covenant*. There must be two trials, two juries, two bills of costs, and two executions. Is this right? Can there be a shadow of a reason offered to sustain it? Tell me, ye veterans of the bar, who cling with such death-like tenacity to such forms and rules as this, upon what principle of reason, justice, or common sense do you rest them?

Give us some plausible show of reason for maintaining them—something beyond the mere fact that they have heretofore existed—or else quietly acquiesce in the sentence that dooms them to their proper place among the forgotten rubbish of the past. Show us, if you can, that the reform ought not to be made, but do not evade the question by telling us that the Legislature will have the power to make these reforms without the adoption of this section. It is true that they will have the power—true also, that they have had it for the last thirty-four years, and equally true, that during all that time they have never even attempted to exercise it. Local questions and party considerations govern the election of members of the Legislature. Upon a question like this, they do not, and they never will, reflect the wishes of the people. It is a question peculiarly proper for the action of this Convention. If this reform is necessary and proper, let us make it, and leave consequences to the future. Right or wrong, it is our duty to act upon it, according to the conclusions our several judgments may have arrived at, as to its necessity and propriety.

There are two ways, sir, of meeting a proposition in debate. One by fair, and open, and avowed opposition—that fights the ground inch by inch—that meets the question and its supporters face to face, and yields only when yield it must, to the force of numbers. So, sir, like knights of the olden time, with lance in rest, met us, at the outset, the gentleman from Hancock (Mr. Walpole) and the gentleman from Delaware (Mr. Kilgore). There is no mistaking their position—no fear of their stealing into our camp in the guise of friends.

But there is another and more dangerous, because more insidious, system of tactics, sometimes resorted to in debate, to defeat a measure, and it, too, has not been wanting here. I refer to that kind of opposition that assumes the garb of friendship—that can

"Smile, and smile, and murder while it smiles,"

—that with one hand proffers friendship, while

the other wields the secret dagger. [Applause.] It is from such friends of reform as this, that the amendment comes, requiring the Legislature to prepare the code, instead of Commissioners. Sir, the Legislature could not do it in a year. They would not attempt it. And this no gentlemen know better, than do those who propose such an amendment.

There is but one way, effectually to carry out the reform contemplated; and that is by means of Commissioners, as proposed in the reported section. How long, think ye, this Convention would have to sit, before they could prepare and agree upon a code of pleading and practice? I apprehend that the millennium would find us still in session. And yet this body could do it with more facility than a Legislature, because, though equal in number to the aggregate of the Legislature, it yet possesses the great advantage of being constituted a single body.

Another gentleman has told us that a common sense Legislature can, in five lines, provide for all the reforms contemplated by the friends of the section. What those wondrous five lines would be, we can only conjecture from the amendment which the gentleman from Switzerland (Mr. Kelso) has told us he intends offering, declaring by the act of this Convention, that all distinct forms of action, and all distinction between law and equity shall henceforth be abolished.

It is not the part of wisdom, sir, to tear down the house which shelters us, however much we may be dissatisfied with its accommodations, until we have provided another. And yet this is precisely what the amendment of the gentleman from Switzerland (Mr. Kelso) proposes to do. It would blot out of existence all rules and precedents of pleading and practice, without providing any substitute whatever. We should be left without any system, good, bad, or indifferent. Instead of rendering access to our courts more easy, we should close their doors entirely. The ablest lawyer in your State would be without chart or compass to guide him, in prosecuting the rights of his clients.

Each lawyer would be forced to adopt a system of his own. It would then be the province of your Circuit Courts to decide which one of the various modes of commencing suits which different lawyers might adopt, they would approve. Therefore different Circuit Judges, acting without concert, would in all probability adopt thirteen totally different systems of practice, and out of this chaos your Supreme Court would perhaps in the course of ages be able to fashion some sort of a misshapen, disjointed, rickety, system, such as the world never has seen, and I hope never will see.

Sir, before such a system could be perfected by such means, we should not only be in our graves, but the very inscriptions on our tomb-

stones have become illegible from time. Such a proposal is the merest midsummer madness; and the lawyer who proposes it can have no other object but the defeat of all attempts at reformation.

Sir, we have had too much judicial legislation. It is one of the popular delusions of the day, that your courts only expound and enforce them. Every lawyer in the land knows that for one law made by your Legislature, ten is made by your courts. Under pretence of giving construction to a statute they fritter away its meaning, as in the case of the statute abolishing the distinction between case and trespass; or repeal the law entirely, as in the case of the statute of eighteen hundred and twenty-four, relative to the effect of a collector's deed. I have had occasion once before to advert to the repeal of the statute of eighteen hundred and twenty-four by the Supreme Court, and I then, as I do now give it as my solemn conviction that it was one of the most high handed acts of judicial usurpation that any free country ever tolerated. By the act of 1824 providing for the sale of land for taxes it is provided that "the collector's deed shall be *conclusive* evidence of the regularity of the sale." If there is one word in the English language the meaning of which is clearly and unmistakably settled, both as an ordinary and as a legal word, it is the word *conclusive*. Under that statute thousands and tens of thousands of acres of land were sold and the purchasers relying upon the plain, unquestionable language of the law, supposed their title indisputable. That law the Supreme Court repealed. It would be an insult to common sense, to call a decision which declares "*conclusive evidence*" to mean only "*prima facie evidence*" by any other name than a repeal of the statute.

I have been told that a long opinion was written out in support of the decision. If so the reporter showed his good sense by suppressing its publication.

A meagre statement of the points decided, without the slightest attempt to sustain the decision by argument or authority, is all that the report contain.

I mention this, sir, only in elucidation of what I mean when I speak of judicial legislation, and not because it has any particular bearing upon the question under consideration.

In conclusion, sir, I would say to the friends of reform in this body, that if you wish to carry out effectually the changes you desire, stand firmly to the section as reported; it is the result of careful deliberation and compromise in the committee, and will assuredly effect all that we desire. Abandon it for the cunningly devised amendments of its enemies, and my word for it you will find that you have thrown away the substance to grasp the shadow.

[Mr. WALPOLE next addressed the Convention, but his remarks are withheld for revision.]

Mr. MARCH. I do not desire to occupy the time of the Convention on the present occasion in making what is here commonly called a speech; for time, I apprehend, is becoming much more valuable than speech-making, even in the opinion of those who have heretofore been most prodigal of it. Contrasting, also, the votes taken with the speeches made upon many questions in this body, one would be led to conclude that speaking, like blank discharges of artillery, was much more effective in uncovering and disclosing the weak point in the position of the party employing it, than in damaging that of an antagonist. I propose, therefore, simply to give in my adherence most strongly in favor of legal reform. So far as relates to a system of practice and pleading, I am for no partial, half-way reform, but for a thorough re-building from the foundation. I am for reform, not in that spirit which says: "Well, if you will have reform, take it; you will get enough of it; it will only increase litigation, and put money in the pockets of the lawyers;" but in that other spirit, which goes to work in good earnest to ascertain what and where are the existing defects, and to remove them and supply their place with new and simple provisions. Whilst we are advancing with such rapidity in reforming the whole process of making laws, why should not something be done in the administration of them? And, sir, with all due deference to gentlemen, I think that the only way in which it can be accomplished is by the proposition contained in the section, making it imperative upon the Legislature to appoint commissioners, and pointing out the duties of those commissioners.

It is admitted on all hands that there is need of reform. I have heard no member speak who has not admitted the fact; and the question is, how can it be best accomplished? The gentleman from Hancock (Mr. Walpole) says that, under this section, the commissioners are to hold their office as long as the Constitution exists—there is to be no termination to it. Is it so? I believe, sir, that it is not. "Provision shall be made by law for filling vacancies, regulating the tenure of office, and the compensation of said commissioners," &c., &c. What is the meaning of "regulating the tenure of office," if it does not give the Legislature the power to say how long the commissioners shall hold their office? When their duties are terminated, and the work assigned them is satisfactorily completed.

Mr. WOLFE (interposing). We have regulated in regard to the tenure of all our offices. Could not these commissioners sit one, two, three, or even five years?

Mr. MARCH. I will answer the gentleman. We have decided in the Constitution what shall be the tenure of the office of Governor, judges of the courts, &c., &c., &c. These commis-

sioners, however, we leave to the Legislature to determine as to their term of office; and the reason why it is left to them is, because it is impossible for the Convention to determine how long it will take to accomplish the work. It would be utter folly for the Convention to say how long these officers shall be employed in simplifying the rules of pleading. They may be occupied but six months, or one or two years, or perhaps even longer. Whatever time it requires, it will be money well expended. It was well said by the gentleman from Posey (Mr. Owen) yesterday, that, if the framers of the present Constitution had placed but five lines more in it, millions squandered in fruitless undertaking might have been saved to the States. So a vast amount of expenditure, compared with which the cost of these commissioners will be as nothing, may be avoided by a simplification of the rules of pleading. Look at the report of the Auditor lying upon our tables, and see the expense of litigation in Indiana, arising under our present system of practice and pleading. It is a relic of a barbarous age, and is well calculated to foster the spirit of litigation. It breeds and keeps up a feeling of contention and strife in the community. A large portion of the time of courts and lawyers is taken up in discussing and deciding points and questions which have nothing to do with the merits of a case.

If you really desire reform, you must throw away all this old rubbish—these relics of the feudal times. I would as soon think of building a granite fortress upon a log cabin foundation, as imagine that the Legislature could erect, upon the narrow, contracted forms of the common law, a correct system of administering justice. You might as well undertake to fashion a well proportioned and finished statue like the "Greek Slave," by patching over a rude heathen idol with chips of marble, as to construct a simple and consistent method of administering the law, when tied down by the arbitrary rules of the special pleadings of the common law. These old forms must be swept away, and the foundation of our system of practice and pleading laid broad and deep as justice itself. I believe it can be accomplished, and in no other way but by making it imperative upon the Legislature to appoint these commissioners. Let them be able men, appointed without reference to politics, or their profession or business; and, above all, let them be men who have at heart the success of the cause in which they are enlisted. I think such men can be found in Indiana; if not, let us send abroad and get them. Let gentlemen beware of the counsels of those who pretend to be the friends of this measure, but at heart are its enemies. Of all opponents, as was well said by the gentleman from Clark, (Mr. Gibson,) those who pretend to be the friends of a measure are the most dangerous. Now, sir, this report is a

compromise report. For one, I am in favor of the three propositions contained in it, and of another one not contained in the report. This report proposes to abolish all distinction between forms of action at law. It proposes, also, that all distinction between law and equity shall be abolished; and, in addition to that, to simplify or arrange the statute law of the State. I am in favor, in addition to that, of laying the foundation of a codification of all the general principles of the common law. I believe it is perfectly practicable, and until it is done, "the glorious uncertainty of the law" will be a by-word in the mouths of all. It has been truly said by the gentleman from Clark, (Mr. Gibson,) that our courts enact more laws than our legislative bodies; and if the proposition made by the gentleman from Dearborn had prevailed, we would have twenty-four Legislatures sitting all the year, enacting not only general, but local, and special, and individual laws. If this system is ever to be reformed, and a correct system established in its place, we must begin at the foundation, so far as regards the administration of the law, and reduce into a concise and systematic code, all the great outlines of the law.

I did not rise for the purpose of going into a detail of the arguments in favor of this measure. I do not deem it necessary. I believe the people of the State have become convinced that there is need of reform. I believe that a majority of the Convention are in favor of it, and are prepared to act. Look at the position we occupy for a moment. We have assembled here as a Reform Convention; we commenced with the bill of rights, and have gone through and reformed that, according to the latest and most improved fashion. We even tried the hazardous experiment of knocking the soul out of it, in the shape of the first section, and then re-placing it again, though somewhat mutilated and shorn of its former proportions. With the keen, bright cimeter of the gentleman from Posey flashing in the van, we have made a grand excursion into the fairy region of woman's rights, where our alternate success and defeat have gone far to establish the truth of the saying, that the winds which blow from that quarter are rather fickle and uncertain; but it has not been altogether "love's labor lost;" for a new interest has been awakened in relation to the subject of woman's rights, which will eventually be productive of much good. Under the guidance of the gentleman from Tippecanoe, with his good broad sword, "marshaling us the way we were going," we have taken a tilt at the Grand Jury system, and it bent before us like a reed in a tempest, though backed by the usage and sanction of a thousand years. If still suffered to stand, it is indebted to the discretion and clemency of its opponents, rather than its own strength in this Convention.

With numerous leaders, we made a rushing

charge upon the old State Bank, and though we were forced to make a slight detour round it, yet it is certain that the money changers of Indiana will no longer dwell apart in their "marble halls," but will hereafter be found standing at every corner of the street. [Laughter.]

We have now approached this antique structure of special pleading standing like a feudal castle of the middle ages, with its formidable array of demurrers, rejoinders and sur-rejoinders, rebutters and sur-rebutters frowning in the distance. At this critical moment, I regretted to hear the voice of my colleague, the gentleman from Delaware, calling a halt, and others with ominous looks advising a retreat, and intimating that the old pile is filled with ghosts and all kinds of hidden dangers, and that we had better let it alone.

Sir, would it look well for this Convention, composed of one-half or one-third lawyers to reform everything else and leave this system of administering justice untouched? [Cries of "no, no."] Would it look well for the "lay gentlemen" who compose the majority of this body, to go home to their constituents and say "we have reformed everything else, but have left this system of special pleadings standing in full force and effect, just as it was before?" For one, I do not desire to bear any of the honor that may attach to the profession in taking such a course. I am for reform and the section as it now stands, and also an additional proposition that will bring before the Legislature the subject of codifying the general principles of the law.

The codification of the common law or any portion of it has been denounced as a dangerous, foolish, and impracticable scheme, calculated to produce litigation and increase the uncertainty of the law. The strength of this kind of dogmatical reasoning depends very much upon the superiority of the information and judgment of those who use it, over all others who have given their attention to the subject, and differ with them in opinion.

This naked assertion is refuted by the nature of the thing itself, by history, and the authority of men quite as eminent in their knowledge of the law as any of those who oppose the measure. Law is "a rule of civil conduct prescribed by the supreme power in a State." It is also a maxim of the common law that "ignorance of the law excuses no one." Law then being the rule for the government of the conduct of persons in all the varied relations of life, and each individual bound to understand it at his peril, it is of the highest importance, that it be placed in such a form that its general principles, at least, may be accessible to and known by all. It should be reduced to determinate propositions and settled and fixed, so that the administration of it may be uniform in all the courts throughout the State. If any

principle of law is so far settled that it can be ascertained by a court and applied and declared in the decision of a cause, it can as easily be expressed in a code, and receive the sanction of the Legislature. Let the code be an affirmation of what the common law now is, and not in derogation of it, and be used and applied in the same manner that the principles of the common law are now used and applied. The objection that because we cannot have a perfect code, therefore we should have none, may be made with just as much force to every human production. A good code must be the gradual work of years. We ought now to make a beginning. A common objection to a code is that it will give rise to a great deal of judicial construction in ascertaining its meaning. This objection is just as strong to the common law, when floating through a hundred thousand volumes of treatises, opinions, and reports, as after it is reduced into a code. A proposition of law when distinctly expressed in a code cannot give rise to any more litigation or be more difficult of construction than when enunciated by a judge from the bench.

A good code would bring a knowledge of the general principles of the law within the reach of all reading and reflecting men, an object of vast importance in any free and enlightened nation. It would lessen the labor, and consequently the expense of counsel and litigation in the community. It would avoid a great many mistakes which are now occasioned by the uncertainty, obscurity, and vast amount of rubbish with which the law is surrounded. It would settle and fix beyond judicial control, and so as to be relied upon, a great many propositions, upon which there are at present a multitude of conflicting opinions and decisions, constantly leading the best counsel astray and, upon which no opinion can be said to be correct, until the highest court has given its final and irreversible decision. The codification of the law, has to sustain it, the highest historical authority. The civil code of Justinian was the law of a vast empire for centuries. It has been substantially adopted by nearly all of the modern civilized nations of Europe. And it is the fountain from which the boasted common law of England has stealthily drawn many of its best principles, thus in itself affording the strongest argument in favor of that measure, which its ardent admirers spurn with so much contempt.

France, also, in her civil code, has a monument of the genius of her Napoleon far more enduring than the giant statue cast from the cannon captured on the field of Austerlitz. A few propositions briefly and perspicuously stated, have supplied the place of cart loads of commentaries and decisions. We have also in favor of the measure, the opinion of many of the ablest lawyers in our own country. The following is an extract from a report made to

the Legislature of Massachusetts, on the subject of codification, by Judge Story, Theon, Metcalf, Professor Greenleaf, Charles E. Forbes, and Luther S. Cushing, all eminent lawyers bred in the school of the common law:

"The commissioners are of opinion that it is expedient to reduce to a code those principles and details of the common law of Massachusetts in civil cases, which are of daily use and familiar application to the common business of life, and the present state of property and personal rights and contracts, and which are now so far ascertained and established as to admit of a scientific form and arrangement, and are capable of being announced in distinct and determined propositions."

"The commissioners are in the next place of opinion, that the law of evidence, as applicable both to civil and criminal proceedings should be reduced to a code." "Among these contracts the commissioners would especially recommend as the subject of a code the following titles, viz.: the law of agency, of bailment, of guarantee, of suretyship, of bills of exchange, of promissory notes, of insurance, and partnership."

On the score of authority this would seem to be sufficient, but let one more be added on the general subject of legal reform. Within the past year the Solicitor General of England has used the following language in the House of Commons: "I must warn the House if they attempt legal reforms, that they must not allow lawyer after lawyer to get up and tell them that they were not capable of understanding the subject. The House may depend upon it, if they could not reduce a legal proposition to the plain principles of common sense, comprehensible to persons of ordinary intelligence, the defect was that it was a technical system, invented for the creation of costs, and not to promote the due administration of justice." These are some of the arguments and authorities which may be produced in favor of codification, but as the subject is not directly before us I will not further consume the time of the Convention.

Mr. NEWMAN. I would ask the gentlemen from Tippecanoe and Clark, and the grave gentleman from Delaware, if they think there is neither honesty or integrity in any gentleman who ventures to differ with them in the mode or manner of effecting a reform in our course of legal proceedings? It would appear to me as though gentlemen expected to carry a measure by denunciation, and to deter other gentlemen from doing their duty in the face of this Convention. For one, I hesitated for some time whether or not I should address the Chair. But I will state, directly, that I have no opposition to any salutary, legal reform. And, so far as these gentlemen are concerned, I have no personal objection to their making a

code, if they choose, either of practice or of the general law, for it will not interfere with the profit or the convenience of my position. I have no fear of it; for every time you make a change in the existing laws of the land, you call for adjudication upon the legislation that has been used in making the change, and that necessarily makes more business for the lawyers, and the greater the profit. No doubt some of the gentlemen will have as great a share in the profits as those whom gentlemen denounce as being opposed to a salutary reform. But the objection to this measure lies not against it as a measure of reform, but because of its imperative character. I am met, however, by gentleman in advance, who say that if any one does not march up to the line they have marked out, he is an insidious enemy of the proposition—that there is no integrity in those who oppose it, and that no one shall dare to stand up and say there is anything right but what these gentlemen have advocated. This sir, is but the language of declamation and not I presume, the language of those gentlemen's hearts. It is merely a speech, and sounds well—it will go abroad to their constituents, and they will thus be hailed as the exclusive friends of law reform.

There is a minority report from the Convention on "Law Reform" which provides that the Legislature may, at its first session, after the adoption of the Constitution, or at any subsequent session, make provision for the appointment of commissioners to make a revision similar to that proposed in this section. The only difference between the two reports is, that one makes it imperative upon the Legislature to appoint this commission at its first session after the adoption of the new Constitution, while the other says at its first, or any other subsequent session. The reason which induces me to favor the minority report, is on account of the expense to be incurred by the authoritative obligation on the Legislature to appoint the commissioners at its next session. Let me call attention to the facts surrounding the calling of this Convention. When our constituents went to the ballot box to deposit their votes in favor of calling the Convention, did they suppose, for one moment, that they would have to pay \$100,000 for the revision of their Constitution? Did any one entertain such a supposition? If they had they would have refused to call this Convention, and have been willing to live on under the old Constitution that has so long sheltered us during the storms of time, and brought us securely, with our rights and liberties unimpaired, down to the present day. Yes, sir, I have no doubt but that they would have chosen to continue under the old instrument, rather than to put their hands in their pockets and pay out \$100,000 to this Convention, to do what may be very questionable—improve the Constitution of the State.

After incurring all this vast expense, are we now to put an additional burden upon the shoulders of the people by the appointment, of these commissioners coming upon the very heels of her other burdens?

The salaries of these officers cannot be merely nominal, for if you want men competent to the discharge of the duties appertaining to the commission, you must compensate them for abandoning their business. The compensation, sir, must be ample, because these commissioners will be obliged, when they have terminated their labors, to go once more into the professional arena, to compete for the business they have abandoned. Then, again, the Legislature must be in session a considerable length of time in order to take action upon the report of the commissioners—another item of expense.

It is said that this commission is not to be continuous. I hope not; but in New York, in 1846, they appointed commissioners for a purpose similar to that contemplated by this section, and I understand they have not as yet concluded their labors. I would inquire of the gentleman from Allen (Mr. Borden) if such is not the fact?

Mr. BORDEN. The gentleman is mistaken. Last fall the commissioners on the Reform of the practice of the Law completed their labors and were discharged. I am not mistaken in the statement I make in regard to the matter.

Mr. NEWMAN. I had supposed that they were still in session. What compensation did they receive?

Mr. BORDEN. I do not know as to that.

Mr. NEWMAN. They each received three thousand dollars a year. Add to that the necessary expense of Legislation, of printing, and the contingent expenses always attending such a commission, and then the distribution of the report among the people of the State, and my word on it, if you add to the other enormous expenses of the State an item of no trifling amount; if gentlemen are prepared to shoulder this additional, and they think the people will be satisfied under the infliction, then, in all conscience, let them do it. But if they want to leave a little discretion with the Legislature to ease the people of the burdens imposed upon them by the calling of this Convention, leave it discretionary with them to appoint this commission at the first, or if they prefer, some subsequent session.

Mr. STEELE. There is a doubt arising in my mind, as to how I shall give my vote on this question. Having to vote, however, I am inclined at least, to present my views briefly on this measure, to this Convention.

I ask the gentlemen of the bar this question, who is to derive advantage from this law reform?

A VOICE. The Lawyers.

Well, gentlemen say that the lawyers are

the parties interested; it may be so, perhaps, but, sir, will the lawyer's fees be reduced? I presume not. If there be no reduction of their fees—and I am one of the laity and have always employed counsel—I ask what advantage I will derive from the reform? None, sir. The yeomanry of the country—the great mass of the community are to derive no benefit whatever, after they have incurred the expenditure attending these commissioners, to be appointed under this section. If the gentlemen of the bar will reform in regard to fees, and come down and work for half the money they now receive, I will go in and vote for the section. No, sir, they won't do it.

Now, I wish to say a few words in regard to this matter called reform. We have now been near four months engaged in reforming the Supreme Law of the land. I will here say, however, to my friend from Ripley, who has appeared among you as a reformer, that with the purest motives and best intention, he has reformed one man out of office and another man in. It is only a lousy dog out and another dog in. [Loud laughter.] And let me tell you that a great portion of the reform made here, is of the same character. I have no doubt about it. And if the gentlemen from Allen can get a place upon this commission, he will have to cage the most troublesome red headed wood pecker that he ever tried to cage in his life. [Much laughter.] [The course of the speaker's remarks was here interrupted by the loud and continuous barking of a dog in the lobby of the Hall. This created much confusion and merriment, and amidst loud cries of "hear him, hear him,"]

THE PRESIDENT said: The Sergeant-at-Arms will remove the dogs from the lobby. [Laughter.]

MR. STEELE. Mr. President, it appears to be one of my greatest misfortunes that every time I have obtained a right to this floor, I have been involved in greater difficulty than any other man among you. But I am decidedly of opinion that all which transpires is in the best of feeling.

A VOICE. Yes, sir.

And I hope when the time comes for me to leave you, I shall leave you all in this good feeling. [Cries of "consent."]

Let me say in conclusion, gentlemen, that when I compare your new with your old Constitution, I am decidedly of opinion that we have to some extent, reformed the old one; and have prepared a better Constitution for the people than the one they are now living under. No one can get up an instrument of this kind, which will suits every man's views and feelings. I know I could not do it.

But I wish before I sit down, to notice the position taken by some gentlemen, in regard to making it imperative on the Legislature to appoint this commission. Among others I

would notice the position of the gentleman from Tippecanoe (Mr. Pettit). [Cries of "give it to him."] How does it happen that these leading men at one time are in favor of leaving important matters to be decided by the Legislature, and then upon the turning of a needle's point, the Legislature, in their opinion, is entirely disqualified to settle any question—no confidence should be placed in them, or the least liberty given them for the future? If you leave this great question of the "Grand Jury," to the Legislature, to continue or abolish it at their pleasure; or if you leave with them the power to establish probate and other inferior courts as they may desire, why not leave this matter, in the same manner?

What is the good of this reform if it only reforms the practice of the law, so as to enable a man to become a lawyer in one-half the time required now, and they to continue charging the same fees as at present? It would just put so many more dollars in the lawyer's pockets. If this be all the people have to obtain from the reform proposed by this section, we had better vote it all down. But I am willing to leave the whole matter with the Legislature, for them to act in the premises as they may think fit and proper. I want all these ancient forms stricken out, and the useless technicalities used in deeds should be swept away. I know that when a deed is originally lodged in my office, it will not cover over half a page of a common blank book. But, however, these small matters are all dressed up by the gentlemen of the bar, until they become ridiculously voluminous, and overlaid with useless technicalities. I say let us leave this subject to the Legislature so that the people can get all the reforms they require in this respect, through the medium of their representatives.

[**MR. MATHER** then proceeded to address the Convention—his remarks will appear hereafter.]

MR. FOLEY moved the previous question, which was agreed to.

The main question was then ordered to be put by consent, and the main question being on the amendment offered by the gentleman from LaPorte, to the amendment by the gentleman from Perry, it was decided in the negative.

The question then recurred upon the adoption of the amendment offered by the gentleman from Perry, and it was decided in the negative.

THE PRESIDENT. The question now is, Shall the section be engrossed for a third reading.

On this, the yeas and nays were demanded, and being ordered and taken, the Secretary reported the following result—yeas 92, nays 30:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Bascom, Beeson, Berry, Borden, Bourne, Bryant, Butler, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermill-

ion, Dick, Dobson, Dunn of Perry, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Goozee, Gordon, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Johnson of D., Johnson of O., Jones, Kent, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Washington, Mowrer, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Scott, Tague, Tannehill, Thornton, Trimble, Wallace, Wheeler, Wiley, Work, Wunderlich, Yocum, and Mr. President—92.

NAYS.—Messrs. Barbour, Beach, Beard, Blythe, Bowers, Clements, Davis of Madison, Dunn of Jefferson, Duzan, Farrow, Graham of Miami, Hovey, Howe, Huff, Mather, McLean, Moore, Nave, Newman, Niles, Rariden, Smith of Ripley, Spahn, Steele, Stevenson, Thomas, Walpole, Watts, Wolfe, and Zenor—30.

So the section was ordered to be engrossed for a third reading.

The **PRESIDENT**. The next thing in the order of the day, is section No. 35, on its second reading.

Mr. DUNN of Jefferson. Would it now be in order to make the motion of which I gave notice upon yesterday, in reference to the thirty-seventh rule?

The **PRESIDENT**. Yes, sir.

Mr. DUNN. Then I move that the thirty-seventh rule, for the government of this Convention, be rescinded. I will here state the rule requires that resolutions, if of an imperative character, if objection be made, shall lie over one day.

The question was put and decided in the affirmative.

On motion,

The Convention adjourned.

AFTERNOON SESSION.

NOTICE OF MOTION.

Mr. OWEN gave notice that on to-morrow, he would move to amend the rules by proposing the following additional rule:

"That, when an article is disposed of, it shall be in order to move an additional section."

The Convention then resumed the consideration of the

ORDERS OF THE DAY.

The first thing in order being an additional section reported from the committee on the legislative department.

The **PRESIDENT**. The pending question is on the motion of the gentleman from Marion, to re-commit the section with instructions to add the following words: "Under a general law."

The section and instructions are as follows

"The Legislature may confer upon the board doing county business in the several counties of the State, such powers of a local, legislative, and administrative character, as they shall from time to time prescribe."

Mr. PETTIT. That section was laid upon the table long ago.

The **PRESIDENT**. The Chair would remark that this section was reported by the committee, with a recommendation that it be laid upon the table.

Mr. PETTIT. And it has never been taken up from the table.

The **PRESIDENT**. It never was laid upon the table. The question is, Shall the report of the committee be concurred in?

The reading of the report being called for, it was read by the Secretary.

Mr. DUNN of Jefferson. As we have now commenced the article on local legislation, I think we had better lay that report upon the table until we get through with the article. I, therefore, move to lay the report upon the table.

The motion to lay the report upon the table was not agreed to.

Mr. DOBSON. I hope that this section will either be re-committed or adopted. It should be remembered that the Legislature are to have no power of passing local laws; yet the power should be vested somewhere, and it should be done under a general law.

Mr. PETTIT. I protest, Mr. President, that there is no necessity for any such section as this. If any gentleman will point out to me one single thing which needs local legislation, or for which there need be local legislation, they may pass as many local laws as they please. But I say that no such thing is at all necessary. Why not, then, at once say that your laws shall be general and uniform. The gentleman from Allen, (Mr. Borden,) the other day, said, we ought to have some local legislation to protect cranberry patches and fish ponds.

Sir, in God's name, let me ask if legislation is necessary in this respect, why not have a general law to protect your cranberry patches and your goose ponds? [A laugh.] The gentleman said it was necessary to have laws for the protection of fish in your waters, and the killing of game in your forests and prairies. Why not do this by a general law, saying that wherever fish shall be found, the law in regard to catching them shall be so and so, and that deer and other game shall not be killed between such a month and such another month? I hold, sir, that the laws should be general in every instance. Sir, if this is not done, you are just leaving undone the very thing which, most of all others, we are sent here to do—to cut down this whole system of local legislation, so that a man, in stepping over the boundary line of one

county into another county, might not be under the painful uncertainty as to whether he was living under the same system of laws. Why, sir, what is more easy than to say that, wherever there is a cranberry patch, the berries shall not be picked, except within a given time. If you do not do this, you will make ninety-nine local laws, where one law would answer the purpose.

Mr. BORDEN. The gentleman from Tippecanoe does not, with his usual ability, discriminate what I said the other day. Now, in one part of the State, the people may not wish to pick cranberries at a particular season, while in another, that may be the very season in which they wish to pick them. In some parts they may wish to pick them when they are ripe, and in others when they are green. The object of the proposition is to invest the county boards under a general law, to regulate all these little matters, so as to suit the wishes of the people of such county. In most of the new Constitutions of the different States, there is a provision of this kind. Where laws can be general, I hope we will have such a clause as will effect that object; but the reason why we want a regulation of this kind, is, to prevent the Legislature from spending its time in legislating upon these little matters.

Mr. DOBSON. From the remarks of the gentleman from Tippecanoe, I should judge that he entertains the opinion that no county can have any regulations which another county should not also have.

Mr. PETTIT. They never ought to have.

Mr. OWEN. If the gentleman from Tippecanoe had traveled as much after cattle, and horses, and hogs, as I have traveled, he would think very differently to what he appears to think, in regard to this matter, and, I think, could not fail to see the necessity of some such regulation as that proposed.

Mr. PETTIT. There can be no necessity for it.

Mr. DOBSON. Sir, in one part of the State the people want their hogs, and sheep, and cattle, to run at large, while in another part of the State, it is desirable that they should be kept within inclosures; and if the people of the south find it to their interest to have the matter one way, and the people of the north desire to have it another, can that possibly do any harm to either party?

As to your fish ponds and cranberry swamps, everybody knows that in one part of the State the cranberries are ripe much earlier in the season than they are in another, and I suppose the gentleman from Tippecanoe wants to change the whole seasons, and to swear that there shall be but one summer time and one winter time all over the United States; that it shall commence on one given day, and end on another; and that when it snows or rains, it shall do so at the same time all over the Union. [Great

laughter.] This might, perhaps, be a very glorious thing if it could be done; or it might, perchance, happen to be very inconvenient.

Now, we have many things to do in regard to fences and roads, and the working of roads, which, in the south could be done at one time, and which could not be done in the north at the same time. There is a difference in the climate, the customs, and the manners of the people, and in the products, and, indeed, in everything else; and many regulations may be required in one part of the State, which would not answer at all in another. There is a difference in the seasons too. The dog blossoms are blown two months earlier in my county than in some other parts of the State; and it must be manifest, when all things are considered, that there may be many matters in every county, which may, from the location, the character of the soil, and, indeed, everything else, require a different regulation to that which may be required in another county. We cannot make the seasons the same. We cannot change our prairies into forests, or our forests into prairies. We cannot change our mountains into plains, or make corn-fields on the surface of our rivers. When we can do all these things, then we may, perhaps, be able to adopt that general system in regard to all our legislation, which the gentleman from Tippecanoe appears so much to desire.

Mr. PETTIT (in his seat). Do you want a law to regulate the dog-wood blossoming? [A laugh].

Mr. DOBSON. Independently of the blossoming of the dog-wood, I contend, Mr. President, to be serious, that the people of the south, having different manners and pursuits, and being surrounded by different circumstances, require, in many respects, different laws from those of the people of the north. If the people of the north want to have their cattle kept up, they can do so, and the people of the south will not feel aggrieved. On the other hand, if the people of the south want theirs to run at large, why they can do so without injury to the people of the north. The county boards must have some legislative power. They always have had it, and I suppose they always will have it, where there are county boards. We want to delegate this power under a general law, and not under any special law.

Mr. OWEN. In my judgment, Mr. President, the true principle in regard to this matter may be comprised in a very few words. In regard to any matter of such a character as that which has been referred to, I entertain no doubt that under the present system if a single county applied to the Legislature to have an act passed for that county, the Legislature would, as a matter of course, grant it. But under our new Constitution, no such matter could come before the Legislature at all. Now, sir, it will perhaps be impossible to have uniformity in all the regulations throughout all the counties of the

State, and I am therefore satisfied that it will be necessary to delegate some powers to the county boards.

Mr. PETTIT. Now I repeat to the gentleman from Owen, (Mr. Dobson,) and the gentleman from Posey, (Mr. Owen,) that in no single one of the propositions or positions they have taken or supposed have they named a Legislative object or idea—not one. They are every one ministerial or judicial. They are merely to carry out what the law is to say. The gentlemen say now that the various county boards of the State have Legislative authority. I say that they have not in one single instance. There are none of their powers that are Legislative; none of them that are creative of law, but administrative of law or executive of it. The law says now that a board of county commissioners being petitioned by certain persons that they want a road laid out, or where they need one altered, the board shall appoint reviewers, and if the reviewers shall report favorably, then the commissioners should order the road to be opened if in their judgment it is necessary. Now, sir, there is not one bit of legislation in that. It is only carrying out the directions of the Legislature. There is no law making power there. So it is with everything else.

And now to return to the cranberry patches. The gentleman from Allen says that in some counties the people may want to pick them when they are green, and in others when they are ripe. Now I protest against the necessity for anything of this sort. These cranberry patches do not belong to the State at all; they are the lands of the United States Government, and the people of California have just as much right to come upon them and pick cranberries, or to come for that purpose from Illinois or Michigan, as any citizen of Indiana. [A voice—"You are wrong there."] I am not wrong, sir. These are the public property of the United States, and the citizens of any other State are not excluded from picking berries on them any more than we are.

Now here is precisely what I want: you take a line dividing two counties, and in one county the gentleman says they do not want them picked until they are ripe. Now here is a man living close upon the borders of a cranberry patch, and another ten or fifteen miles away, and he has as much right to go and pick cranberries whether ripe or green as the man who lives upon the border of the patch; or if a man wants to start from the south in the fall and take hands and his wagon with him to get cranberries in the north, he has a right to do so, and might want to do so; and ought he not, in such case, to have an opportunity of knowing what the general law upon the subject is, and not be subject to be governed by a law made in a township?

Sir, there is no necessity for this local legislation—none whatever. To be sure your coun-

ty boards are authorized to open roads and to do many other local matters, but all this can be done under the regulation of a general statute. There is no legislation in it; there is no creative power at all. It is all ministerial, and is the mere carrying out of the provisions of the Legislature. You need no such laws as those that have been suggested here; and even if you had them, what would be your position? If you are to have these little local Legislatures, you will have as many laws as there are forty acre lots in every county in the State. Sir, if one Legislature here at the centre has made so many odious local legislatures which have been a cause of so much complaint throughout the State, how many more of such laws will be made by ninety local Legislatures? You have come here, have you, to abrogate local legislation, and you are to have ninety Legislatures to make laws for every county!

Sir, our object ought to be to make our laws uniform, so that wherever a man treads the soil of Indiana, he shall have the same rights and privileges, and stand in all respects surrounded by the same laws, and be governed by them.

Mr. BADGER. I think, Mr. President, that we have spent time enough upon this subject, and I therefore move the previous question.

The call for the previous question was sustained, and the main question was ordered to be now put.

The question being on re-committing the section, it was decided in the negative—ayes 37, noes not counted.

The PRESIDENT. The question now is on concurring in the report and recommendation of the committee, namely, that the section be laid upon the table.

The yeas and nays were demanded and ordered, and being taken resulted as follows:

YEAS.—Messrs. Alexander, Beeson, Bowers, Brookbank, Butler, Clark of Tippecanoe, Clements, Coats, Crawford, Davis of Madison, Dick, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Helm, Helmer, Huff, Johnson of O., Jones, Kelso, Kent, Kendall of White, Kinley, Lockhart, Mathis, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Sharron, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Thomas, Thornton, Trimble, Wallace, Wheeler, Wiley, Wunderlich, and Mr. President—68.

NAYS.—Messrs. Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Bicknell, Biddle, Blythe, Borden, Bourne, Carter, Chapman, Chenerwith, Clark of Hamilton, Cole, Colfax, Cookerly, Davis of Parke, Davis of Vermillion, Dobson, Frisbie, Haddon, Harbolt, Hardin, Hawkins, Hendricks, Hitt, Hugin, Holman,

Hovey, Howe, Johnson, of D., Logan, Maguire, March, May, McClelland, McLean, Miller or Clinton, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Washington, Owen, Pepper of Ohio, Prather, Sims, Spann, Stevenson, Toda, Wa. pole, Watts, Wolfe, Work, Yocum, and Zenor—53.

So the report of the committee was concurred in.

LOCAL AND SPECIAL LEGISLATION.

THE PRESIDENT. The next business in the orders of the day is report 35.

This being a report from the committee on local and special legislation, it was read by the Secretary as follows:

"Sec. —. The General Assembly shall not pass any local or special laws in any of the following enumerated cases, that is to say:

"Regulating the jurisdiction and duties of justices of the peace and constables.

"For the punishment of crimes and misdemeanors.

"Regulating the practice at law and in chancery.

"Providing for granting divorces and changing the venue in civil and criminal cases.

"Changing the names of persons.

"For laying out, opening, working on, and repairing highways, and the election or appointment of supervisors.

"Vacating roads, town plats, streets, alleys, and public squares.

"Summoning and empanneling grand and petit juries, and providing for their payment.

"Regulating county and township business.

"Regulating the election of county and township officers, and their compensation.

"For the assessment and collection of taxes for State, county, township, and road purposes.

"Providing for maintaining common schools or the preservation of school funds.

"In relation to fees or salaries.

"Providing for opening and conducting elections for State, county, or township officers, and where electors may vote.

"Providing for the sale of real estate by executors, administrators, or guardians.

"For the creation of private incorporations.

"For the incorporation of colleges, seminaries, schools, churches, religious, scientific, or benevolent societies.

"Providing for the incorporation of railroad, plankroad, turnpikeroad, canal, and bridge companies.

"In relation to municipal corporations, such as congressional townships, school districts, cities, boroughs, towns, and villages.

"And all laws in all such cases shall be general and of uniform operation throughout the State.

"And in all other cases where a general law can be made applicable, no local or special law shall ever be passed.

"And every statute shall be a public law unless otherwise declared in the statute."

Mr. MILROY proposed to amend the article by striking all out after the word "laws" in the first line. [Cries of "no, no, no."]

Mr. HELMER. A motion to amend by perfecting the original section having precedence of a motion to strike out, I move the following as an amendment:

"And in all other cases where a general law can be made applicable, no local or special law shall ever be passed."

The yeas and nays being taken on the amendment, it was agreed to.

The question then recurred on the motion to strike out the section.

Mr. CRUMBACKER moved to lay the motion on the table.

Mr. MILROY demanded the yeas and nays.

The yeas and nays were not ordered, and the question being taken, the motion to strike out all the article after the word "laws" was agreed to.

Mr. NEWMAN moved to amend by inserting between the twenty-first and twenty-second lines the words—

"In relation to the interest on money."

The amendment was adopted by consent.

Mr. CHAPMAN moved to amend the article by adding, in the proper place, the following words:

"All laws regulating licenses of every kind."

[Loud cries of "Consent! consent!" and "No! no!"]

Mr. DUNN of Jefferson. I am not prepared to say precisely what would be the effect of the adoption of that amendment; but if it is to give to the people of the State the freedom of the dram-shops, then I am opposed to it. Sir, a wholesome reform has been effected in the State of Indiana on the subject of temperance; and it owes much of its progress to the fact that, to the people has been given the power to say whether or not these infecting establishments shall be maintained in their vicinity. Now, this is a matter which I am fully disposed to leave to the people. If they are willing to have no dram-shops within their towns or counties, and a majority of the voters so decide at the ballot-box; I say it is right that they should have the power to correct so great an evil. If I understand the effect of the amendment of the gentleman from Marion, it is, that no laws shall be passed that will give the people the right to say whether or not grog-shops shall be established among them. If that is done, sir, then we cannot suppress grog-shops in any portion of the State without the consent of the whole people of the State.

Now, I ask whether the people in any part of the State have complained, or are complaining that this question of licensing or not licens-

ing grog-shops is left to them? Sir, whenever we do anything that will interfere with the progress of temperance in Indiana, we are making a retrograde movement. It has done more good for us, as a people, than perhaps any other moral movement; and I would not throw one straw in the way of its onward progress. I wish to leave this matter where it has been for years past. If a majority of the people in a town or county say that they will not have dram-shops, let them have the right to abolish them; and, on the other hand, if a majority are willing to have them, then give them the power, trusting to the effect of public opinion, in the hope that the time may come when these places will be as much placed under the ban of law as your gambling-shops.

Mr. CHAPMAN. I did not introduce this amendment for the purpose of eliciting speeches either for or against the cause of temperance, but to show the Convention that cases might arise in which it might be wise to give certain powers of legislation to the county boards. The Convention has refused to confer any powers of that kind; although I would be willing that the county boards should legislate according to the sentiment of the counties on that subject, as in others, where a majority of the people were disposed to prohibit the sale of liquor. But if we are to have no powers of that kind vested in our county boards, then we should settle the matter by a general law, for the purpose of preventing the question from being agitated as a political one. Although this is a question which ought to be regarded as a moral one, and only as such, yet it has been used as a political question. I present it, however, simply for the purpose of creating an issue on the question we have just voted down. I have never seen any evil grow out of a restricted degree of local legislation given to the county boards. I have seen its good effects in the Eastern States, where they have always had the power in their townships, by their twelve select men. No difficulty ever occurred there, where the people had the power of acting through their own immediate agents in their own neighborhood, by which the Legislatures of the States have been relieved of the necessity of legislating on a great many questions that would have come before them. Now, we should require a settlement of that question by a general law, to give power to the county boards to settle these matters according to the opinions of the people of their several localities.

Mr. OWEN. I am opposed to this amendment, since its effect will be, that either a law permitting licenses shall be passed for the whole State, or there shall be no license in any county. The people will not have power to determine for themselves what shall be done in regard to it in their several localities. Now, I consider that no such general law, either on the

one side or on the other, ought to be passed. If there should be a majority in one part of the State against license, let them have the power to forbid it; on the other hand, if, in the other localities, public opinion is not so far advanced as to refuse license, so let it be.

If you make a law notoriously adverse to public opinion, it will become a dead letter; nor is that the end of it; for any law becoming a dead letter has a demoralizing tendency—a tendency to induce disrespect for other laws which the public mind approves. On the other hand, if a law should be passed that there shall be license throughout the State, then you deprive those counties where the temperance cause is strong of the right to exclude this traffic from among them. In either case, I think a general law is wrong, and that public opinion in regard to this matter ought to be allowed to follow its own course. As the gentleman from Marion has truly said, there are some matters—and this is one—which might well be left to regulation by the county boards.

Sir, I hold the true principle to be this: whatever a State can as well do as the General Government, ought to be left to the State; whatever a county can as well do as the State, ought to be left to the county; whatever the township can as well do as the county, ought to be left to the township; and, finally, whatever the individual can properly determine for himself, ought to be regulated neither by township, county, State, or General Government. The less the power is removed from the individual, the better. The further you remove it from him or from his township, or from his county, the more is it liable to abuse. Sir, I conceive that to be a safe, and sound, and important democratic principle.

In regard to this matter of license, I am confidently of opinion that it ought to be left to the sentiment of the people in the different parts of the State.

Mr. BADGER. What part of the section does the gentleman propose to amend?

Mr. CHAPMAN. The first paragraph.

Mr. BADGER. I would like to offer an amendment to the section, so as to make it read as follows—

The PRESIDENT. It is not now in order.

Mr. CHAPMAN. I will withdraw my amendment, having accomplished the object I had in view in offering it.

Mr. NEWMAN offered the following amendment:

"And every statute shall be a public law, unless otherwise declared in the statute."

The amendment was adopted by consent.

Mr. BADGER. I now offer my amendment. I propose to insert, after the word "cases," the words "but may confer such power by general laws on the boards doing county business."

Mr. GIBSON moved to lay the amendment on the table.

Mr. WOLFE demanded the yeas and nays on the motion.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beeson, Bourne, Brookbank, Carter, Chapman, Chenowith, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Foley, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Huff, Johnson of Orange, Jones, Kelso, Kent, Kendall of White, Kinley, Lockhart, Maguire, March, Mather, Mathis, May, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Owen, Pepper of Crawford, Pettit, Prather, Jariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Trimby, Wallace, Wheeler, Wiley, Wunderlich, Yocum, Zenor, and Mr. President—96.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bicknell, Biddle, Blythe, Borden, Bowers, Butler, Clark of Hamilton, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Fisher, Gootee, Haddon, Hardin, Hogin, Holman, Hovey, Johnson of D., Logan, McClelland, McLean, Milroy, Morrison of Washington, Pepper of Ohio, Tague, Walpole, Watts, Wolfe, and Work—35.

So the amendment was laid upon the table.

Mr. MATHER moved to amend the section by adding the following:

"Provided that nothing herein contained shall be so construed as to prohibit the Legislature from conferring, by general laws, on the boards doing county business, such powers of a local, legislative, or administrative character, as they may deem expedient."

[Cries of "No! no!" and "Consent! consent!"]

Mr. GIBSON. I move the previous question.

Mr. PETTIT. The sense of the Convention has been taken on the same amendment several times over—substantially the same—and been every time rejected.

The PRESIDENT. The Chair is of opinion that the amendment is not in order, being substantially the same as the amendment which was offered by the gentleman from Putnam, (Mr. Badger,) and which the Convention has just voted down.

Mr. KELSO. I have a small amendment which I wish to offer. It is to strike out of the fourteenth line the words "and townships," so

as to have the provision to relate to county business only. The reason why I ask for the adoption of this amendment is this: As far back as 1825, a law was passed specially for Dearborn county, allowing them to adopt a particular mode of doing county business by three trustees, and the election of a township clerk. Switzerland county was included; and in 1844 Ohio county was placed under the same law. Now, they have adhered to that mode of doing their township business ever since, and it is found to be a great saving of expense. It might so happen that the Legislature would not choose to make such a regulation for the whole State—

Mr. DOBSON (interrupting). Let me ask the gentlemen if that is a local law?

Mr. KELSO. It is a local law.

Mr. DOBSON (ironically). Then it ought to be abolished.

Mr. KELSO. I differ with the gentleman from Owen; there are some very good local laws that ought to be continued in existence; and if the State generally is not willing to adopt them, those who have long tried them ought to have an opportunity of retaining them. Now, sir, I know that I would not speak out of bounds, when I say that nine-tenths of the votes in these three counties will be against the new Constitution, if this law regulating township business is not to be left them.

Mr. PETTIT (in his seat). Very well; make all the laws in all the other counties like this.

Mr. KELSO. But we are not sure that the Legislature will do this; and therefore, I offer my amendment.

Mr. BASCOM. I am opposed to local legislation, but like the gentleman from Switzerland, I am anxious that our township arrangements should not be interfered with. The counties of Adams and Wells are governed by the same laws in relation to their township affairs, as the counties of Switzerland, Dearborn, and Ohio. We should be happy if we could have the law made general; but as there can be no certainty of this, I trust the amendment of the gentleman from Switzerland will prevail and that these words may be left out, so that we may be permitted to enjoy our present mode of conducting our township business as we have heretofore done. We like the township trustee mode better than any other, and for this reason I go for striking out these words.

Mr. PETTIT. I would rather for my part, say that the Convention should put into the Constitution a clause saying that the law now existing in the counties of Dearborn, Ohio, Switzerland, Adams, and Wells, in relation to township business, should forever be the law, than that any exception should be made in regard to local legislation. Yes, sir, I would rather that the law as it is adopted in those

counties should be the law of the State, than that there should be any exception. Sir, we are one people from the Ohio to Lake Michigan; and we should have but one system; and I am willing, rather than have any exception in regard to this matter, that the Legislature should say they will pass no other laws in reference to township business, but that they would consider the law as it exists in the counties of Adams, and Wells, and Dearborn, and Ohio, and Switzerland, as the law of the whole State. Let them tell the Legislature that this system has worked well, and they will perhaps extend it all over the State. Sir, if local legislation is to be preserved in regard to township matters, the same kind of argument would apply to everything else. Now that is the whole error—the whole incongruity—the whole oppression of our law, and almost the whole necessity of calling this Convention, was to do away with this local legislation. I would much rather say that the *lex loci* of any particular township or county should be the law of the whole State, than to vote for making any exception north or south. All that is most necessary is to have uniformity in our laws.

Mr. HOLMAN. As has been remarked by the gentleman from Switzerland, the townships of Dearborn county were incorporated by an act of the Legislature. That system has been extended to the county of Switzerland—the county of Ohio still retaining their original township organization when separated from Dearborn. Each township being organized under an act of incorporation, with trustees possessed of certain corporate powers, it is not possible that the article incorporated into the Constitution would protect the right heretofore granted to these townships.

Now, sir, I undertake to say that in the counties in which this system has prevailed, if there was a reasonable probability of that system being hereafter repealed by legislative enactment, it would militate more in those counties against the adoption of the new Constitution than any other provision that could be incorporated in it.

Mr. PETTIT. Well, that is easily avoided. If the system is such a good one, extend it at once over the whole State.

Mr. HOLMAN. It never will be extended over the whole State. The question has been repeatedly before the Legislature, and no other county (excepting the two northern counties which have been named) has adopted the policy. Our people are attached to it; and I do not see how the county of Tippecanoe can in any way have suffered from the mode in which we have done our township or county business. And so long as the people are attached to it, let me ask who is injured by it? Why, sir, it appears to me to be tyrannical to say that the people in their primary organization shall not control their own matters as may seem good

to them. I am satisfied, Mr. President, that if we carry this matter to the extent proposed by the gentleman from Tippecanoe, instead of enlarging the arena of liberty, we shall but limit, and curb, and bridle the exercise of the powers of the people—a thing which they by no means sent us here to do. [Applause.]

Mr. WOLFE. I am not at all satisfied with the section in the way it is about to pass. If we pass this section as reported, and infringe on all the rights of townships, I think we shall do more harm by it, than by anything we have done since the Convention met. I contend, Mr. President, that we are going too far in regard to this matter—that we are restricting the people entirely too much. The gentleman from Tippecanoe seems to think that what suits one county must necessarily suit another.

Mr. PETTIT. I give up mine. All I ask for is uniformity.

Mr. WOLFE. Sir, it is impossible to have uniformity in these matters. It will not suit the people. Now in my county we have large levees, which are necessary to be kept up for the purpose of keeping the water from overflowing the land. How are you going to protect these, if you have uniformity in your township taxation? In one township a slight amount of labor will do all that is necessary in keeping the roads in repair, while in another, it may cost an amount of tax equal to fifteen cents on every hundred dollars worth of property. Sir, you might just as well come upon my farm and tell me that in all my operations I shall do just exactly as another individual does; that when he cuts his grass, I shall cut mine too; and that when he draws his corn, I shall draw mine also. [Laughter and applause.]

Sir, I want to have some liberty left to the people. The way that we are going on here is just like tying a man up hand and foot, and throwing him into the water, and then civilly telling him to swim for his life. [Applause.]

Mr. WATTS. I know that the gentleman from Tippecanoe is of too generous a nature to throw obstacles in the way of the people of any township, unless there can be some reason either on the part of himself or his constituents, or of the people in some other portion of the State. If he can show that the privileges we have enjoyed in a portion of the counties for nearly thirty years, have injured any other portion of the State, then most assuredly that would be a good reason for withholding these privileges hereafter. Let me tell that gentleman that in 1825, when this law was enacted allowing Dearborn county to organize its townships under the present system, I was a representative from that county, and assisted in framing the first law that was passed on this subject. It was first presented to the Legislature as a general law; but we

ascertained that the people of Indiana, then as now, were some of them from North Carolina, some of them from Kentucky, some from Tennessee, some from Pennsylvania, and some from Massachusetts and other States; and they all had their peculiar method of doing county and township business, and the Legislature consented to allow us because we desired it, to try the experiment and to organize our townships in the manner we then proposed. Since that time we have practiced the same system; and I believe there is no portion of the people of any other county, which has enjoyed these privileges, willing to surrender them. Why then prevent us from enjoying them, if they do nobody else any damage! I hope that gentlemen will be generous enough to leave our township laws alone where we carry them out without interfering with any other interests.

Mr. MILLER of Gibson. I do not like, Mr. President, to move the previous question, but it really appears to me that this matter has been sufficiently debated, and I feel under the necessity of calling it.

The motion for the call of the previous question was sustained on a division—ayes 50, noes 40.

The main question was then ordered to be put.

And the question being first on the amendment of the gentleman from Switzerland it was decided in the negative—ayes 40, noes 59.

The question then recurred on ordering the section to be engrossed for a third reading, and it was decided in the affirmative.

MOTION TO RE-CONSIDER.

Mr. LOCKHART. I believe, Mr. President, that a great number of delegates voted under a misunderstanding, this afternoon, on a motion to concur in the report of the committee on the legislative department, recommending a section which had been re-committed, to be laid upon the table. In order that the Convention may have an opportunity of fully understanding the question on which that vote was taken, I move that the vote be re-considered.

Mr. WALPOLE demanded the yeas and nays.

The yeas and nays were not ordered.

The reading of the report was called for, and it was again read.

Mr. OWEN. Mr. President—

The **PRESIDENT.** The question is not debatable.

Mr. OWEN. I only wish to say—

The **PRESIDENT.** The Chair cannot allow the gentleman from Posey to say anything on the subject. The report was concurred in under the operation of the previous question.

The question being taken on the motion to re-consider the vote, and a division being called for, there were—ayes 74, noes 53.

So the motion to re-consider was agreed to.

The **PRESIDENT.** The question now is on concurring in the report of the committee.

Mr. RARIDEN. I do not desire to make a speech, but—

The **PRESIDENT.** It is not in order for the gentleman to make a speech.

Mr. RARIDEN. Is it not in order to read an article?

The **PRESIDENT.** It is not in order to read an article. It is not in order to do anything but vote. The question is on concurring in the report of the committee which recommends that the section be laid upon the table.

The yeas and nays were demanded and ordered, and being taken, resulted as follows:

YEAS.—Messrs. Ballingall, Beeson, Biddle, Bowers, Brookbank, Butler, Clark of Tippecanoe, Clements, Coats, Crawford, Crumbacker, Dick, Dunn of Jefferson, Edmonston, Foley, Garvin, Gibson, Graham of Miami, Hall, Hamilton, Helm, Helmer, Huff, Johnson of Orange, Jones, Kent, Kendall of White, Kinley, Miller of Fulton, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Pettit, Rariden, Read of Monroe, Read of Clark, Ristine, Ritchey, Shannon, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Thomas, Thornton, Trimble, Wheeler, Wiley, and **Mr. President**—57.

NAYS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beach, Beard, Bicknell, Blythe, Borden, Bourne, Chapman, Chenoweth, Clark of Hamilton, Colfax, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Farrow, Fisher, Frisbie, Gootee, Gordon, Graham of Warrick, Had-don, Hawkins, Hendricks, Hitt, Hogg, Holman, Hovey, Howe, Johnson of Dearborn, Kelso, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McLean, Miller of Clinton, Milligan, Milroy, Moore, Morrison of Washington, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Sherrod, Sims, Spann, Stevenson, Todd, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—69.

So the report of the committee was not concurred in.

Mr. DOBSON. I believe the previous question is now exhausted. Is it in order now to move to amend?

The **PRESIDENT.** No, sir; it is not in order to amend. The previous question is not exhausted. The question is, Shall the section be engrossed for a third reading?

Mr. PETTIT. The section is certainly open to amendment?

The **PRESIDENT.** The Chair believes not. We are under the operation of the previous question.

Mr. DOBSON demanded the yeas and nays. The question was then taken on ordering the section to be engrossed for a third reading, and

a division being called for, there were—ayes 56, noes 58.

So the section was not ordered to be engrossed.

Mr. WALPOLE. The gentleman from Owen demanded the yeas and nays.

The PRESIDENT. The Chair did not hear him.

Mr. WALPOLE. I voted with the majority, and I move to re-consider the vote just taken on ordering the section to be engrossed, and I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. RARIDEN. Are we still under the operation of the previous question?

The PRESIDENT. Yes, sir; as a matter of course.

Mr. MOWRER moved that the Convention adjourn.

The Convention refused to adjourn.

The question was then taken on the motion to re-consider, and it was decided in the affirmative—yeas 67, nays 58.

The PRESIDENT. The question now is on ordering the section to be engrossed.

Mr. DOBSON. I ask for the yeas and nays on the engrossment.

The yeas and nays were ordered, and being taken, resulted as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Bicknell, Blythe, Borden, Bourne, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Davis of Madison, Davis of Parke, Dobson, Dunn of Perry, Farrow, Fisher, Friable, Gootee, Gordon, Graham of Warrick, Haddon, Harbott, Hawkins, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Johnson of Dearborn, Kelso, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McLean, Miller of Clinton, Milligan, Milroy, Moore, Morrison of Washington, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Sherrod, Sims, Spann, Stevenson, Todd, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, and Zenor—69.

NAYS.—Messrs. Anthony, Beeson, Berry, Bowers, Brookbank, Butler, Clark of Tippecanoe, Clements, Coats, Crawford, Crumbacker, Dick, Dunn of Jefferson, Duzan, Edmonston, Foley, Garvin, Gibson, Graham of Miami, Hall, Hamilton, Helm, Helmer, Huff, Johnson of Orange, Jones, Kent, Kendall of White, Kinley, Miller of Fulton, Miller of Gibson, Mooney, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Pettit, Rariden, Read of Clark, Read of Monroe, Ritchey, Shannon, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Thomas, Thornton, Trimble, Wallace, Wheeler, Wiley, and Mr. President—57.

So the section was ordered to be engrossed for a third reading.

STATE LIBRARIAN.

The PRESIDENT. The next business in the orders of the day, is article No. 36.

The article was read by the Secretary, as follows:

"There shall be elected by the qualified voters of this State, a State Librarian, whose powers and duties shall be prescribed by law, and who shall hold his office two years, and until his successor be elected and qualified."

Mr. HELMER moved to amend by striking out all after the word "be" in the first line, to the word "State," inclusive, and to insert the following: "appointed by the Governor, by and with the advice of the Senate."

Mr. MATHER moved to lay the section and amendment on the table.

A division of the question was called for, and the question was taken first upon laying the amendment on the table, which was agreed to.

The question being then upon the motion to lay the section on the table, it was decided in the affirmative.

The PRESIDENT. The next business in order is article thirty-seven on its second reading.

The article was read by the Secretary as follows:

"SECTION.—All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may at any time remain in the Treasury derived from taxation for general State purposes, after the payment of the ordinary expenses of the Government, and the interest on bonds of the State, (other than bank bonds,) shall be annually applied, under the direction of the General Assembly, to the payment of the principle of the public debt."

Mr. HALL said, I have been instructed by the standing committee on the State debt and public works, to offer for the consideration of the Convention an additional section. But before doing so, I will lay before the Convention a statement, prepared prior to the fifteenth day of November last, when the above article was presented, together with a report, asserting that our public debt would be paid off within eighteen years, by a continuance of our present rate of taxation. The returns of the taxable and number of polls for the year 1850 had not been fully made to the auditor's office when this estimate was made.

[Basis of report of Committee on the State debt and public works, by Judge Hall Chairman, showing that the entire debt of Indiana will be paid off in sixteen years, or at farthest, in eighteen years.]

It is assumed that the revenue for the years 1850, 1851, and 1852, after paying the ordinary expenses of government and the interest on the State debt, will pay off the balance of

our domestic debt, put down November 1849, at two hundred and fifteen thousand five hundred and thirty dollars.

Of the 11,048,000 dollars foreign debt, which the State owed, at the time the arrangement was made with the bond-holders, there had been surrendered in bonds of the State under that arrangement, prior to the first of July 1849, nine millions, three hundred and twenty thousand dollars. One-half of which sum is chargeable to the Wabash and Erie Canal. The other half to the State of Indiana. There remained, then outstanding, one million seven hundred and twenty-eight thousand dollars. It is understood that a portion of that sum has been since surrendered; and that it will all be brought in under the arrangement made with the bond-holders, as no other provisions has been or will likely be made by the State for the liquidation of that debt. When surrendered, one-half of the amount will also be charged to the Wabash and Erie Canal, leaving the other half to be paid by the State.

[N. B. The above does not include the sum of one million three hundred and ninety thousand dollars, which the State nominally owes on which the State Bank pays interest, and is to redeem the principal.]

The State also owes one million six hundred and fifty-six thousand two hundred and seven dollars, which is denominated two and a half per cent. stock, the principal of which is payable at the pleasure of the State, the interest on which commences in the year 1853. As this stock bears but two and a half per cent. interest, it is worth but little more than half as much as the five per cent. stocks. Its market value being a fraction over forty cents to the dollar, while the five per cents. are worth eighty cents to the dollar. In the estimate which follows, for the sake of convenience in making calculation, this debt is put down at *one-half of the gross sum*, to wit: eight hundred and twenty-eight thousand six hundred and four dollars, and *five per cent.* interest cast thereon—instead of casting two and a half per cent on the whole sum—which brings about nearly the same result.

On the first of January 1853 our foreign debt may be put down at six millions seven hundred and fifty-two thousand six hundred and four dollars, which is made up of the following items, to wit:

Amount of five per cent. stock issued on bonds surrendered prior to July 1st. 1849, under the provisions of an act of the General Assembly passed on the 19th day of January 1846, and the act amendatory thereto, passed on the 27th day of January 1847. \$4,660,000.

Amount of bonds outstanding on the 1st. of July 1849, \$1,728,000. But as these bonds will undoubtedly

be surrendered under the provisions of the acts above referred to, and, when surrendered one-half thereof will be chargeable to the Wabash and Erie Canal, and the other half will be chargeable to the State of Indiana, amounting to

864,000

Probable amount of interest on these bonds chargeable to the State.

400,000

Amount of two and a half per cent. stock \$1,656,207, the market value of which is equal to, say 828,604 dollars of five per cent. stock.

828,604

Making \$6,752,604

The interest on this debt for the year 1853 will amount to the sum of three hundred and thirty seven thousand six hundred and thirty dollars.

Assuming that a re-valuation of the taxable property of this State will be provided for by the Legislature in the year 1851, or at farthest by the year 1852, it will be a safe calculation to put down the total valuation of taxable property for the year 1853, at two hundred millions of dollars. And it will be equally safe, to fix the number of taxable polls for 1853, at one hundred and seventy-three thousand seven hundred and twenty.

The taxable property for the year 1849 exceeded that of 1848, nearly four and a half million of dollars. It is conceived that it will be a low estimate, to fix the annual increase of taxables, after the year 1853 at five million of dollars, which is a little more than three and a half per cent. per annum.

The polls of 1849 exceeded the number for 1848, seven thousand four hundred and fifty-five—it will be fair to estimate the annual increase (at least for a number of years to come) equal to that of 1849 over 1848.

The State will receive in dividends from the Madison and Indianapolis Railroad Company, commencing in the year 1853, at least fifty thousand dollars—some think seventy-five thousand dollars.

There will be paid into the State Treasury, annually, until the year 1857, on account of tax on individual bank stock about five thousand dollars.

The following calculations are based upon the foregoing data, and upon the assumption that the existing rate of taxation, (to which the faith of the State is pledged,) that twenty-five cents on each one hundred dollars worth of taxable property, and seventy-five cents on each poll, will be continued, until the State debt shall be finally paid. It may then be reduced more than fifty per cent.

The plan proposed for paying off the State debt, is, to apply the surplus remaining in the

State Treasury, after paying the ordinary expenses of government, and the interest on the State debt, to buying up our outstanding bonds, or stocks, at their *market value*. This will annually lessen the amount of interest to be paid, and consequently, annually increase the sum to be applied to the payment of the principal.

The Domestic debt being provided for as before stated.

The Foreign debt may be put down on the 1st of January, 1853, at.....

Valuation of taxable property for 1853..... \$200,000,000
No. of polls for 1853 173,720
25 cts. on the \$100 taxable amounts to..... \$500,000
75 cts. on each poll..... 130,290
Tax on individual bank stock 5,000
Dividends on the Madison and Indianapolis Railroad stock..... 50,000

\$6,752,604

\$685,290

N. B. The ordinary expenses of the government have hitherto been fixed at about \$75,000 per annum, and it is thought that biennial sessions of the Legislature may lessen the expenses. However, to be safe in the calculations here made, the ordinary expenses of Government are put down at \$90,000 per annum until the year 1861, when they are placed at \$100,000.

Ordinary expenses of Government..... \$90,000
Cost of Collecting... 33,000
Delinquencies..... 40,000

163,000

Interest on public debt for 1853

522,290

337,632

This sum, to-wit, \$184,658, appropriated to the purchasing of State stocks, will buy up at the rate of 80 cts to the dollar this am't

\$184,658

230,822

\$6,521,782

Amount of State debt on the 1st of Jan., 1854..... \$6,521,782

Valuation of taxable property for 1854..... \$203,000,000

No. of polls 1854 181,175

25 cts. on the \$100 taxables, amounts to..... \$512,500

75 cts. on each poll..... 135,881

Tax on individual B'n'k Stock 5,000

Dividend on the Madison and Indianapolis Railroad Stock 50,000

50,000

\$703,331

Deduct ordinary expenses of Government..... \$90,000

Cost of Collecting... 34,000

Delinquencies..... 42,000

166,000

537,381

326,089

Interest on public debt for 1854

\$211,292

This sum, to-wit: \$211,292, appropriated to the purchasing of State Stock, will buy up, at the rate of 80 cts. to the dollar, this am't

264,115

\$6,257,667

Amount of State debt on the 1st of Jan., 1855..... \$6,257,667

Valuation of taxable property for 1855..... \$210,000,000

No. of polls 1855 188,630

25 cts. on the \$100 taxables amounts to..... \$525,000

75 cts. on each poll..... 141,472

Tax on individual B'n'k Stock 5,000

Dividends on the Madison and Indianapolis Railroad Stock 50,000

50,000

\$712,472

Deduct ordinary expenses of Government..... \$90,000

Cost of Collecting... 35,000

Delinquencies..... 44,000

969,000

\$552,472

Interest on public debt for 1855

312,883

\$239,589

This sum, to-wit: \$239,589, appropriated to the purchasing of State Stocks, at the rate of 80 cts. to the dollar, will buy up.....

299,486

\$5,958,181

Amount of State debt on the 1st of Jan., 1856..... \$5,958,181

Valuation of taxable property for 1856..... \$215,000,000

No. of polls 1856 196,083

25 cts. on the \$100 taxables amounts to..... \$537,500

75 cts. on each poll..... 147,063

Tax on Bank Stock..... 5,000

Dividends on the Madison and Indianapolis Railroad Stock 50,000

50,000

\$739,563

Deduct ordinary expenses of Government..... \$90,000

Cost of Collecting... 37,000

Delinquencies..... 47,000

174,000

\$565,563

Interest on public debt for 1856

297,909

\$267,654

This sum, to-wit: \$267,654, appropriated to the purchasing of State Stock, at the rate of 80 cts. to the dollar, will buy up.....

334,567

\$5,623,614

Amount of State debt on the 1st of Jan., 1857..... \$5,623,614

Valuation of taxable property for 1857..... \$220,000,000

No. of polls 1857 205,040

25 cts. on the \$100 taxables amounts to..... \$550,000

75 cts. on each poll..... 152,655

Tax on Bank Stock..... 5,000

Dividend on the Stock in the Madison and Indianapolis Railroad..... 50,000

50,000

\$757,655

Deduct ordinary expenses of
Government..... \$90,000
Cost of Collecting... 39,000
Delinquencies..... 50,000

179,000

\$578,655

Interest on public debt for 1857

281,180

\$297,475

This sum, to-wit: \$297,475,
appropriated to buying up
State Stock, at the rate of
80 cts. to the dollar, will
purchase

371,843

\$5,251,771

Amount of State debt on the
1st Jan., 1858..... \$5,251,771

Valuation of taxable property
for 1858..... \$225,000,000

No. of polls 1858 210,995

25 cts. on the \$100 taxables, \$562,500

75 cts. on each poll..... 158,246

Dividends on Stocks in the
Madison and Indianapolis
Railroad 50,000

\$770,746

Deduct ordinary expenses of
Government..... \$90,000
Cost of Collecting.... 41,000
Delinquencies..... 52,000

183,000

\$587,746

Interest on public debt
for 1858.....

262,588

\$325,153

This sum, to-wit: \$325,153,
appropriated to buying up
State Stock at the rate of
80 cts. to the dollar will
purchase

406,447

\$4,865,324

Amount of State debt on the
1st of Jan., 1859..... \$4,845,324

A revaluation of the taxable
property of this State will
probably be had in 1858,
which will increase the value
of taxables from twenty-
five to fifty millions. That
amount is assumed in this
estimate.

Valuation of taxable property
for 1859..... \$250,000,000

No. of polls 1859 218,450

25 cts. on the \$100 taxables, \$625,000

75 cts on each poll..... 63,837

Dividend on Stock in the
Madison and Indianapolis
Railroad..... 50,000

\$838,837

Deduct ordinary expenses of
Government..... \$90,000

Cost of Collecting.. 45,000

Delinquencies..... 55,000

190,000

648,837

Interest on public debt for 1859

242,266

\$406,571

This sum, to-wit: \$406,571,
appropriated to buying up
State Stock at the rate of
80 cts. to the dollar, will
purchase

508,213

\$4,337,111

Amount of State debt on the
1st of Jan., 1860..... \$4,337,111

Valuation of taxable property
for 1860..... \$255,000,000

No. of polls 1860 225,905

25 cts. on the \$100 taxables, \$637,500

75 cts. on each poll..... 169,428

Dividend on stock in the
Madison and Indianapolis
Railroad..... 50,000

50,000

\$856,928

Deduct ordinary expenses of
Government..... \$90,000

Cost of Collecting... 46,000

Delinquencies..... 57,000

193,000

663,928

Interest on public debt for 1860

216,855

\$447,073

This sum, to-wit: \$447,073,
appropriated to buying up
State Stock at the rate of
80 cents to the dollar, will
purchase

558,841

\$3,778,270

Amount of State debt on the
1st of Jan., 1861..... \$3,778,270

Valuation of taxable property
for 1861..... \$260,000,000

No. of polls.... 233,360

25 cts. on the \$100 taxables, \$650,000

75 cts. on each poll..... 175,020

Dividend on Stock in the
Madison and Indianapolis
Railroad 50,000

50,000

\$875,020

Deduct ordinary expenses of
Government..... \$100,000

Cost of collecting... 48,000

Delinquencies..... 60,000

208,000

667,020

Interest on public debt for 1861

188,913

\$478,107

This sum, to-wit: \$478,107,
appropriated to buying up
State Stock at the rate of
80 cts. to the dollar, will
purchase

597,633

\$3,180,637

Amount of State debt on the
1st of January, 1862..... \$3,180,637

Valuation of taxable property
for 1862..... \$265,000,000

No. of polls for 1862, 240,815

25 cts. on the \$100 taxables, \$662,500

75 " on each poll..... 180,611

Dividend on stock in Madison
and Indianapolis Railroad
Company,

50,000

\$893,111

Deduct ordinary expenses of Government.....	\$100,000	
Cost of collecting.....	50,000	
Delinquencies.....	62,000	212,000

	681,111	
Int. on public debt, for 1862, ..	159,031	
		\$522,080

This sum, to wit: \$522,080, appropriated to buying up State Stock, at the rate of 80 cts. to the dollar, will purchase

652,500

\$2,528,037

Amount of State debt on the 1st of January, 1863.....	\$2,528,037
Valuation of taxable property for 1863.....	\$270,000,000
No. of polls for 1863, 248,270	
25 cts. on the \$100 taxables...	\$675,000
75 cts. on each poll.....	186,202
Dividend on stock in Madison and Indianapolis Railroad Company	50,000
	911,202

Deduct ordinary expenses of Government	\$100,000
Cost of collecting.....	52,000
Delinquencies.....	64,000
	216,000
	695,202
Int. on public debt, for 1863..	126,401
	\$568,801

This sum, to wit: \$568,801, appropriated to the purchasing of State stock, at the rate of 80 cts to the dollar, will purchase

711,001

\$1,817,036

Amount of State debt on the 1st of January, 1864.....	\$1,817,036
Valuation of taxable property for 1864.....	\$275,000,000
No. of polls for 1864, 255,725	
25 cts. on the \$100 taxables,	\$687,500
75 cts. on each poll.....	191,793
Dividend on stock in Madison and Indianapolis Railroad Company.....	50,000
	929,293

Deduct ordinary expenses of Government	\$100,000
Cost of collecting.....	54,000
Delinquencies.....	66,000
	220,000
	709,293
Int. on State debt, for 1864..	90,851
	\$618,442

This sum, to wit: \$618,442, appropriated to buying up State stock, at the rate of 80 cts. to the dollar, will purchase

773,052

\$1,043,934

Amount of State debt on the 1st of January, 1865.....	\$1,043,934
Valuation of taxable property for 1865.....	\$280,000,000
No. of polls for 1865 263,180	
25 cts. on the \$100 taxables,	\$700,000
75 cts. on each poll.....	197,384

Dividend on stock in Madison and Indianapolis Railroad Company.....	50,000
	\$947,384

Deduct ordinary expenses of Government	\$100,000
Cost of collecting.....	56,000
Delinquencies	68,000
	224,000
	723,384

Int. on State debt, for 1865...	53,199
	\$671,185

This sum, to wit: \$671,185, appropriated to buying up stock, at the rate of 80 cts. to the dollar, will purchase

838,981

\$205,093

According to this calculation, the entire State debt will be paid off in the year 1866.

If the State stocks should even be estimated at ninety cents to the dollar, (a sum altogether above their present market value,) even then the revenue of 1868 will pay off the entire balance of our public debt.

It may be added that if the General Assembly shall continue the present rate of taxation for benevolent purposes, there will be a surplus arising from that source, which may be applied to the payment of our State debt.

It is not pretended that the sums and dates used in this calculation are correct, to a fraction. But it is believed that, for all practical purposes, they are so nearly correct as to justify in the main, the conclusions arrived at.

It may be urged that, as the outstanding bonds of the State shall be reduced in amount, their market value will advance. But this will not be the case. These bonds, after twenty years from date, are payable at the pleasure of the State. So long as the State pays the interest thereon, the principal never becomes due. The value of them will always depend on the amount of the dividends they yield, or rather the interest paid thereon. And so long as money is worth six per cent. interest, the utmost extent of the value of these bonds will be a fraction over eighty-three cents to the dollar. If money shall become so abundant as not to be worth six per cent. interest, then the value of those stocks will be enhanced. But, on the other hand, if money shall become scarce, and demand more than six per cent., then their market value will be reduced.

Indiana is indebted for the arrangement, by means of which her indebtedness will ultimately be paid off, to Charles Butler, Esq., of the city of New York, aided and assisted, as he was, by several distinguished citizens of our own State. Before that arrangement was made, our prospects were gloomy in the extreme. Indiana had, in fact, practically repudiated her foreign debt—not from choice, but from necessity—her utter inability to meet her engagements. To have levied a tax on her citizens to raise a sum suf-

ficiently large to pay the annual interest on the enormous debt then hanging over her, would have been more than her citizens could have borne. In consequence of the non-payment of interest, the debt against the State was increasing over a half a million of dollars per annum. At that dark hour of her existence, the plan that was ultimately agreed upon, was concocted, and the honor and credit of the State thereby saved; and, at the same time, the interest of our creditors was secured by the transfer to them of a public work, (the Wabash and Erie Canal,) which, in the course of time, it is hoped and believed, will amply remunerate them to the utmost extent of their claims.

Indiana is now flourishing far beyond the most sanguine hopes then entertained by her most zealous friends. With a redeemed credit as a State, and a happy, industrious, and enterprising people, she occupies a high position with her sister States, and is destined, in a few years, to rank in population, as the fourth State in the Union.

The concession which was so promptly made by our creditors to the embarrassments and weakness of the State, in accepting the terms of the compromise, and from which such beneficial results have flowed, will ever be appreciated by the citizens of the State; and while realizing its benefits and blessings, in a redeemed credit, and a solid prosperity, they will protect that credit henceforth with sacred regard to the pledged faith and honor of the State, and by the application of the taxes supplied by the people, pay off the debt at the earliest practical period.

Mr. HALL then offered the following additional section:

"The faith of the State being pledged for the payment of all its existing indebtedness, in order to provide therefor, the present rate of taxation, to wit: twenty-five cents on each hundred dollars of taxable property in this State, and seventy-five cents on each poll, subject, by the existing laws, to taxation, shall be continued until such indebtedness shall be fully discharged."

Mr. SPANN. This appears to me to be a matter particularly appertaining to legislation; for it strikes me that this Convention has no control over the revenues of the country; for I cannot see how we could, by any section, of whatever nature it might be, control them. The only thing that is proposed by this additional section, is to pledge the faith of the State of Indiana for the redemption of the bonds. That, sir, has already been done; and the faith of the State being once pledged, it is as much pledged as it can be by a repetition of that pledge in our new Constitution. This is a matter which most fitly belongs to the Legislature, and I do trust the Convention will not take it in hand. The explanation of the gentlemen from Gibson only goes to show that the taxation now levied should continue to be levied for eighteen or

twenty years. This, in my opinion, would be a most extraordinary step, and I think it would be quite proper to lay the section on the table, or to make some other summary disposition of it.

Mr. GRAHAM. I move to amend the amendment by striking out the words "seventy-five cents on each poll." As I wish to reply to the remarks offered by the gentleman from Gibson, (Mr. Hall,) and as it is now the usual hour for adjournment, I move that the Convention adjourn.

The question being taken, the Convention refused to adjourn.

Mr. GRAHAM (proceeding) said: It must be obvious to every gentleman in this Convention, on a moment's reflection, that injustice will be done to the people of Indiana, if the latter part of the amendment proposed by the gentleman from Gibson should be adopted. It is neither more nor less than this: It says that every citizen of Indiana, no matter what may be his circumstances in life, shall be taxed in an equal amount, for the payment of the debt of the State. This, sir, will operate very injuriously upon the poor citizen. We all have an interest in the wealth and prosperity of the State; and when the State is involved in debt, we should tax the property of the State to pay that debt, and not the citizens themselves.

Now, sir, by this proposition, a man, however poor, however hard run, however indifferent his circumstances may be, is called upon, in addition to his ordinary taxation, to pay the annual sum of seventy-five cents, for the liquidation of the State debt. I trust no such proposition will be incorporated in the Constitution. As, however, the Convention are tired of speaking, and as I have but little to say, feeling that the amendment has merits in itself, I will say no more, but submit it to the consideration of the Convention.

Mr. KELSO. I want to inquire whether the proposition last submitted proposes to double the present poll tax?

The PRESIDENT. The proposition of the gentleman from Gibson proposes to continue the present rate.

Mr. BASCOM. I move to lay the additional section and the amendment on the table.

The question being taken, the motion was decided in the affirmative.

The PRESIDENT. The question now is, Shall the section be engrossed for a third reading?

Mr. HALL. I think the Convention has not voted in the way they intended to vote, by laying the additional section on the table. They will see that the faith of the State is pledged, by an arrangement with the stock-holders, to pay a tax of twenty-five cents on every hundred dollars of property, and seventy-five cents poll tax; and this pledge having been given, it

should be continued, until the debts of the State are paid off.

The PRESIDENT. The Chair would remark to the gentleman from Gibson, that the amendments are not now before the Convention.

Mr. HALL. Then I hope that some gentleman will move to re-consider the vote.

Mr. SMITH of Scott moved to lay the section on the table.

Mr. HALL demanded the yeas and nays.

Before the yeas and nays were ordered,

On motion, by Mr. DUNN of Jefferson,

The Convention adjourned.

SPEECH OF MR. ROBINSON,

On the subject of Banking, delivered Wednesday morning, January 8, 1851.

It is with a great deal of diffidence, Mr. President, that I attempt to say anything upon this subject. I had intended, when this discussion was first entered into, to have been only a silent listener to it, and I would not now take part in it, were it not that an institution that I believe called for by the country—that has given to the people a sound currency and a circulating medium—on which they have and I believe can safely rely—was in danger of being put down. I am not, sir, a practical banker; I know but little of the manner in which they should be managed. So far as concerns the practical operations, however, I know that the wants of the community demand that we should have a paper currency—something that is the representative of specie. That such a circulating medium is indispensable and cannot be done without, is a question, I think, that is not susceptible of discussion. I know it has been said, and I know that gentlemen on this floor have assumed the ground, that banks should not exist, and that gold and silver is the only currency that should be in circulation. Sir, the idea that a specie currency can subserve the wants of the people at this enlightened and commercial age, certainly to my mind is a very absurd and unsound one.

I, sir, am a State Bank man. I am in favor of the present State Bank, with some modifications; but if I have to choose between the present State Bank as it is, and the free banks which it is now attempted to be thrust upon us, rotten, too, as I believe them to be, I am for the State Bank as it is. I would rather have no banks than those banks on which the country could not rely, and which would furnish a sound currency. Sir, we are compelled to have a currency that is the representative of gold and silver, and the question to be decided by this Convention is, what kind of a currency shall we have? The wants of the people demand that we should have a currency on which to rely, and the question presents itself between

the currency afforded by the State Bank as it is, and the currency that will be afforded by the free banks, if they go into operation as their friends propose. I contend that there is no feature in the operations of the State Bank which gives it more credit than the name, State Bank of Indiana; the fact that the State has an interest in the bank gives to her paper a credit and a stability which would not otherwise exist. There is a charm in the very name of State Bank; the fact that the State Bank of Indiana is a bank in which the people have an interest, and the State government also, and that its bills are endorsed by the State, gives to its currency a stability which nothing else can give; it attaches to its circulation a confidence which will make its paper current at home and abroad, and thereby make the institution useful; and, sir, I now venture the assertion, if bills issued by free banks find their way into circulation, there would not be a delegate on this floor who would not select the bills issued by the State Bank in preference to the bills of the most safe free bank in existence. Why is this? Inquire into the reasons of it! It is because the word State Bank is there; because the credit of the State is attached to it. I know there was a time when a party war was made upon the U. S. Bank—when it was said that it was not a solvent institution. I know there was a time when the doctrine was preached, that State banks were the only banks connected with the interests of the people—that the United States Bank was unsafe, and ought to go down. One thing I found, however, by experience, and that was, at the time this very tirade was raised against the U. S. Bank—when it was spoken of as insolvent, and unable to pay the demands against it—there was not a man who made those charges who would not have taken her paper in preference to any other paper in circulation. It was the name of being connected with the General Government that gave that bank influence and credit, and gave currency to its paper and confidence to its issues; and I believe that the only way to give stability to your currency is to have it regulated by a State bank, which the State and the people have a pride in sustaining, and which, if properly regulated, will furnish a paper currency that can be relied upon by the community, and will meet the wants of the people in regard to their agricultural and commercial operations.

But I have been told out of doors, and it has been said on this floor, that no man who is a friend of the State Bank has attempted to defend her, and that she cannot be defended—that her conduct has rendered her defenseless. Now, sir, I have only to say, in reply to this, that I am one of those who have attempted to defend her, and will continue to do so; and I believe she can be defended successfully, and that it can be clearly proven that the State Bank furnishes a better system of currency to the people than

can be furnished by any other system of banking that can be adopted by this Convention, at least on the free bank plan.

In the first place, I say, in defense of the management of the State Bank, that from the very moment its charter was granted, and it sprang into existence as a bank, up to the present day, it has had to contend against the greatest difficulties of which we can conceive, owing to the pecuniary embarrassments under which the State has had to suffer since the explosion of the internal improvement system; yet, sir, except a short suspension, she has been prompt, and met her engagements without default. The State Bank was not chartered by a party vote—it was not, at the time, a party measure; it came into existence at the time the U. S. Bank went down, when all parties, whigs and democrats alike, stood shoulder to shoulder, and united their efforts in securing something to supply the loss of their circulating medium, occasioned by the withdrawal of the paper of the bank of the United States. They then hit upon the expedient of a State Bank, gave her a charter, and she went into existence.

Now, I ask delegates under what circumstances the State Bank went into existence. It is well known that she went into existence at the darkest time in the pecuniary affairs of the State. It was a time when general distress was pervading the country—when the agriculturist and the trader were alike suffering for want of a more extended and stable circulating medium. What have we experienced under the administration of that bank? It took but a short time for it to furnish to the country, a circulating medium, and it was not long before that medium entered into all the avenues of trade and commerce. The farmer obtained a market and money, or at least current paper, for his wheat and pork, and the trader the money due him for his goods, and the consequence has been, Indiana stands forth redeemed and prosperous—rising in point of wealth and increasing in greatness almost beyond conception. Sir, where has she got her means if not from the State Bank System? Will it be pretended by any delegate here, that she has drawn them from the mines of California?—that it has been a gold and silver currency that has enabled her people to raise from the state of embarrassment, want, poverty, and suffering, and above all the difficulties that then surrounded them, until prosperity crowned the efforts of the farmer and the merchant every where? Where, then, has the means come from? Certainly, sir, from the State Bank of Indiana and its branches, and other States in the Union. How does it operate? I know how it operates in many sections of the country, and from experience and observation, I am satisfied that the farmer has a deep and abiding interest in banks, and in the soundness of their circulation—he cannot get along without them.

The farmer who raises wheat, corn, oats, and other products, would have his crop rot upon his hands unless he finds a market for his produce where he can dispose of it and convert it into money. There must be a circulating medium in order that he may receive pay for his labors. How have other State Banks operated? The traders and those who wish to buy up the products of the country and the stock of the farmer have went to those banks—I mean, sir, the branches of the State Bank—for the money wherewith they have bought up much of the products of our State, and the products of our farms, much, sir, to their accommodation and the general good. Withdraw from circulation, then, the paper of the bank now filling up every avenue of trade and commerce in your State, and in place of a people prosperous and happy, the State of Indiana would be involved in general distress and ruin. One of the most serious evils that ever fell upon a commercial and agricultural people, would follow in the wake of a withdrawal of bills of the bank now in circulation, representing as they do, gold and silver. It is admitted, sir, that we must have a currency.

I hear in this Convention, many objections to the State Bank of Indiana, and hear many charges made against the bank, and it is much easier to make charges, Mr. President, than to substantiate them, and those gentlemen who have made charges here, have not followed the legal mode of proving them. I have always understood the rule of jurisprudence was that on him who makes the charge rests the burden of proof. Since this discussion has been going on, I have heard the State Bank of Indiana charged with being corrupt, insolvent, fraudulent, and unworthy of credit. But the proof of these charges is yet to be found, and I ask every member who is willing to come forward with such charges, if it is not fair at least to require them to bring with them evidence of the facts which they allege as existing in the management of the State Bank, or abandon them.

I propose for a few moments, to consider what I lay down to be incontrovertible and undeniable in the history of the bank, that there never was a State Bank went into existence whose charter was better drawn and more completely calculated to guard the rights of the citizen and the rights of the community, than is the present State Bank. And, sir, I desire in this connection, to refer to one or two provisions in the charter to support the truth of this assertion and show that the complaints are not well founded, and, sir, I think I hazard nothing in saying that since the State Bank has existed in Indiana, it has been the business of the Legislature to lay new burdens upon it, instead of lightening the weight it has had to carry in sustaining itself. It has been made to carry the pecuniary burthens of the State, and to aid and

assist the State in her darkest hour of the embarrassment brought on by the system of internal improvement. It is said, however, that the State Bank is a monopoly fraught with mischief and, therefore, ought to go down. Sir, I cannot concede the truth of this argument. By the fifth section of her charter, it will be found that she is subject to the claim of the most humble individual—that the most humble citizen having a claim against the bank, may bring suit against her, whenever she fails to meet her engagements or fails to comply with her contracts, and, sir, any individual, if they have just cause, may bring suit against it. It is just as amenable to the laws of this country, as any delegate on this floor, and as much bound by the courts of justice. This section contains a further clause, which appears to be very objectionable to some gentlemen, and that is it authorizes her to deal in bills of exchange. Surely, sir, there is no reason why a privilege should be allowed to a private individual, which in principle ought not to hold good with corporations. Sir, why not allow them in their corporate capacity, all the privileges you allow a private citizen, and no more. If this principle is true, then this provision which confers upon the bank the privilege conferred upon individuals, is neither dangerous nor unsound. Will gentlemen who oppose this provision tell me where there is a law in existence which prevents the citizen from dealing in bills of exchange, or buying promissory notes at their value real or supposed? You cannot find such a law, and yet this is one of the grounds of hostility to the bank and its existence. Sir, such objections are without satisfactory foundation, either in theory or practice.

But we are told the bank is a monopoly, and will accumulate power and property to itself—that it will become a large property holder, and wield an improper influence. Now, sir, by the sixth section of the charter there are restrictions imposed upon the bank which will prevent it from becoming a monopoly so far as accumulating property and becoming a large property holder, and thus exercising an improper influence, as some gentlemen have predicted. The right to hold real estate by a corporation, and dispose of the same, is a power looked upon by all governments as one to be feared as a monopoly. But no such danger can exist in regard to the bank. By the sixth section of the charter of the bank it is provided that the bank shall only be allowed to hold real estate for certain specific purposes that would not be denied to an individual, and which are inseparably connected with the interests of the bank, to enable her to prosecute and carry on her business. She is allowed to hold property in real estate in the following manner, and for the following purposes: the houses in which she banks; and, also, to hold property on mortgage for money loaned on promissory notes, or

otherwise to secure what is due her. She has, also, the liberty to take and hold property given to her in discharge of a debt that is justly due her, and to purchase, in property, where the same is sold on judgments due the bank. Here, then, are no privileges but such as the citizen can claim. He may own the house in which he transacts and does his business, or he may take, in payment of the debts due him, real estate or any other security, or he may loan money on bond and mortgage. I see no privilege conferred upon the bank in relation to property that carries with it, in any way, any thing unfair or unsafe. She may hold real estate when she obtains it by purchase at a judicial sale, for her own debts which might otherwise be lost, or in any way in which her rights are at stake, but the section concludes with placing the bank under a certain obligation—such, too, as will forever prevent her acquiring any powers of a monopoly in real estate—and that is, that real estate thus acquired shall be put in market and offered for sale once a year, thus guarding against the accumulation of real estate.

There is another feature in this charter which goes a great way to sustain the right of the citizen; it is that contained in the eighth section. It must forever put the citizen on safe ground with the bank. It was put there to guard the interests of the people, and it does protect them, and guard their rights, in my estimation, most effectually.

What, sir, is the reading of the eighth section of this bank charter, which it is now attempted to cry down, and have supplanted with the New York system of banking, untried, as yet, in this part of the Union. It is provided that whenever a citizen of Indiana has a bill on the bank, and presents it at the counter of the bank, and it refuses to cash it, he can recover his money and obtain twelve per cent. for every hour that payment is refused, thus compelling the bank, by interest, to be prompt. Gentlemen talk about selling bills of exchange, and call the bank an odious monster, for loaning money at ten per cent., and yet, the very moment she fails to redeem her paper, you compel her to pay her billholders twelve per cent. This, sir, seems to be only viewing one side of the question, making that a crime in the bank which you allow a private individual to practice with impunity. But, sir, these kind of feelings grow out of a desire to speculate, and unite that speculation with the New York free bankers, and the Rothschild of England.

Another feature in this charter—and I would like to know if such a feature can be inserted in the charter of any of these beautiful birds of passage called free banks—is a feature which, in times gone by, and which, in times to come, will keep the State Bank of Indiana solvent; that is the feature of mutual liability and interest. It is a feature I admire, that every

branch of the State Bank is mutually bound for each other. I care not what their losses may be, they are mutually bound to stand by each other; they stand as a unit or fall as a unit. If there is a branch that fails to meet the demands upon her the balance of the branches step in between the failure and the people, and redeem every dollar of her paper, or if there is a failure they all fail together. There is another feature in the charter of this great monster monopoly, as it is called, which I very much fear would be greatly depreciated by the free banks. It is a feature drawn in favor of the citizen. It is the facility with which the citizen can compel the bank to meet her engagements, by sale of her property without valuation. You have extended to your citizens since 1840, the right to stay laws, and the right to the benefits of the appraisement laws, and they have the right and privilege to put these laws into immediate operation, and claim these benefits when sued by the bank, when the bank cannot collect her debts unless under peculiar circumstances, without giving to the citizen the benefit of the relief laws, though it may operate on the bank in the most deleterious manner. There is also an obligation imposed on her by the twelfth section of the charter which operates harshly on the bank, and much in favor of the citizen of Indiana. If a citizen sues the bank and recovers a judgment, she must submit to a sale of her property without the benefit of the stay law, while the citizen, on his debt due the bank, is allowed a stay of six months, in some instances, and, sir, in all instances the length allowed by law.

The PRESIDENT. The Chair would inform the gentleman from Decatur that his half hour has expired.

Mr. COOKERLY. In order that the gentleman may be allowed to proceed with his argument, I move that the rules be suspended.

The motion was agreed to.

Mr. ROBINSON. Mr. PRESIDENT: I do not design abusing the courtesy which the Convention has conferred upon me; and I shall occupy their time but a little while longer. Restrictions have been thrown around this institution which have never been violated. Sir, since the granting of the charter, she has always redeemed her notes in specie, only on one occasion, when she was permitted to suspend, from the necessity of the times, and I would here say that I look upon the charges which have been brought to bear against this bank, without any proof to sustain them, as a craven and cowardly attack upon the institution. Our Legislature, sir, has its duty to perform in this matter. The bank is bound to report the yearly proceedings of its business and accounts every year, to the Legislature; and if it has been receiving the interests of the State, pecuniarily, I ask gentlemen why they have not called upon their legislators to investigate and examine into its conduct, and if

it were found dishonest and corrupt, compel the Legislature, as they would be bound to do, by joint resolution of the two houses, to put an end to its existence. If the bank is violating any of the principles of its charter, I ask gentlemen why they do not call upon the Legislature to attend to its duty in the premises. Cause *ascire facias* to issue according to her charter, and wind her up, and seize her franchises into the hands of the State. It is evident, sir, that gentlemen are only indulging in declamation, not in the relation of facts, as they connect themselves with the history of the bank. The books of the institution are open at any time, to the inspection of an examining agent, and if its business affairs are in confusion and embarrassment, its business can be wound up by the proper officers and legislators of State.

Sir, to talk about free banking—and that the system will be open to all, is perfectly ridiculous; for, unless the Legislature chartering these banks, can furnish the poor man with funds, and means on which to bank, how, sir, I ask, can he become a banker?—it is idle thus to talk; it may sound well in theory, but it must and will fail in practice. It must turn out to be a mere humbug, an idle tale—a mere whim of the brain, amounting to nothing but visionary notions of things that cannot exist.

There is another restriction in this charter of which I will speak briefly. We are told here and out of doors, that the officers of this bank are at this time corrupt, and not making true reports, and that the bank, if the truth were known, would be found to be insolvent. Now, there is an antidote to this evil, if it were true, to be found in the one hundredth section of the charter. If the officers are corrupt, the very moment that corruption is made tangible, brought to light, exposed, made known, and the light of day falls upon it, and it is shown that any officer is making false reports, it becomes a felony, and they are liable to be incarcerated in the penitentiary for their infidelity and unfaithful conduct. The truth of it is, sir, all these charges originate, in my opinion, in a desire to break down this State Bank of Indiana; and I believe, if we could get at the truth of the matter, it would be found that a good many capitalists care not so much for the interests of the people, in declaiming against the State Bank, as they do about lining their own pockets with the fruits and speculations by them anticipated in the process of free banking.

There are other restrictions imposed upon the State Bank, which I think free banks would not submit to very readily, or at least very cordially, which is of profit to the people. One of them is, that the Legislature levies a tax on the stockholders, and upon the profits of their dividends, which goes towards the expenses of government, and aids the State in bearing the burden imposed upon it by the internal improvement system of taxation. If there is a private bank—

er here from New York, or elsewhere, who would be willing to pay this taxation, I would like to know it. I, sir, would like to hear from him an open avowal of his liberality.

But the Legislature did, at a certain time and on a certain occasion, grant to the bank a privilege much talked of by some, and who, on that account, raise objections to the bank, to wit: the privilege of issuing small notes and circulating them—notes of a less denomination than five dollars. This privilege was granted for the good of the bank, and the people and the Legislature, in granting it, provided for a tax of one per cent., to be paid by the bank as a bonus for this privilege, and the fund thus raised went to assist in furnishing means to pay off the taxes of the State government. Permit me here in this connection, to allude to a remark made by the gentleman from Tippecanoe, (Mr. Pettit,) in regard to our trust funds, held by this bank. He stated that these funds had been unfairly given to the bank by legislative provision; but, sir, why were they placed there? I do not know but that the gentleman was in the Legislature at the time when a large portion of these funds were scattered in loans, over the State, in private hands, some of which never have, and I fear never will be recovered, but are, in all probability, forever lost. It was under these circumstances the Legislature thought the best policy was to call them in, and place them in safe hands; and, sir, by act of the Legislature, these funds were placed in bank, since which time they have been considered safe, and, sir, they are now considered safe, and for managing those funds we gave the bank the right to issue small notes, as the sole and only compensation for this trust, which some gentlemen speak of as a great favor to the bank.

Then, sir, when gentlemen come here with these objections, and say that the bank is monopolizing the trust funds, we point to the Legislature of the State, and say, that, by a special act of the Legislature, they were placed there at the instance of the people's representatives for security, and where it was thought they would be most safe, and where they have been safe until this day.

We find at another time, something to the credit of this bank; for certainly I think she ought to have all the credit she is entitled to, and if she is to cease to exist on the termination of her charter, she should carry with her the mention of her good deeds. We find, by the report of the State Bank, that she had on hand, as a debt due her by the State, a considerable amount of Treasury five and six per cent. notes. Did the bank ask us to issue them? Were they put in circulation at the instance of the bank? If gentlemen will look to the history of the past, they will find that the bank took these treasury notes on credit, and paid the money for them, out of her vaults, to aid the State of Indiana in sustaining herself under the heavy

burthen imposed upon her by her system of internal improvements, at a time when the revenues of the State fell short, and she was not able to meet her engagements. Sir, was it not creditable to the bank, at this time, and under such circumstances, to come forward to sustain the credit of the State and help her out of her difficulties, though at the present time she has, perhaps, nearly half a million of these stocks in her vaults, for which she has not yet realized the money? I believe it was much more creditable and politic for the State to borrow the money of the bank, to meet the exigency, than to have gone abroad for the same, and surely it was much to the credit of the bank to furnish the means.

There has been a great deal of legislation, Mr. President, in days gone by, which has not been of the most wholesome character. Banks, and almost every institution in the State, have been, at times, attacked, set upon, and assailed by the Legislature, to bolster up the whig and democratic parties—not for the true interests of the people. But I trust in God, this will not be the case again. I hope, sir, the action of legislation will hereafter be directed to the welfare of the country, and not so much to party organizations and party ends.

But, sir, we hear the cry, this bank 'must go down; she is to be persecuted. And, sir, for what? For furnishing our people a currency, safe and sure—for aiding the State in the payment of her debts, instead of taxing the people—for doing her duty as a faithful agent. But, sir, this is not strange, for we are taught in the Scriptures, that the righteous are persecuted. [Laughter.] She is to be persecuted and hunted down like a partridge on the mountain. For what, sir? For the crime of furnishing a sound circulating medium to the country, and for advancing money to pay the debts of your State. If she is to be put to death, and sacrificed to open the way for private speculation and private bankers, I suppose some able free banker will openly preach her funeral sermon, though I shall not attend it, or be present to witness the ceremonies. [Laughter and applause.]

If this bank goes down, what shall we have in place of it? To use a sentiment put forth by the gentleman from Tippecanoe, (Mr. Pettit,) banking is to be open to every man, "from Dan to Beersheba." All may become bankers. How, sir, is this to be accomplished?—how brought about on the plan of free banking? Free! how free? Free, sir, to none but the wealthy. Free to him who is willing to invest his capital in a bank of his own, and become a sharper—a Shylock. Sir, is it free to a man who has not a dollar in his pocket? Is it free to the farmer, who can bring a certain number of hogs to market and sell them for money sufficient for his immediate wants; or who, with his cattle and the products of his farm, can

barely obtain a supply. Such men as these be bankers!—these men, the bone and sinew of the country, go to banking! Sir, this is all poetry—a humbug. No, sir, it would be a set of shavers and brokers, more to be dreaded than the plagues with which God cursed Egypt, in the days of Pharaoh. Sir, I would almost as soon see the country infested with those plagues, as to see such institutions as these things called free banks, thrust upon the country as monied institutions.

Sir, if you put in operation these free banks, in whose hands will you find them? You will find them in the hands of a few stockholders—a few corporations—a few English nobles. It will be free to a set of New York bankers and Wall street brokers and speculators, who have got the bonds of the State into their hands, at thirty-seven cents to the dollar. These bonds will be turned upon you as bank capital, and while our people will be taxed year after year, to pay the interest on those bonds, the holders will be operating on the country, with the same bonds as bank capital; thus, sir, playing off on us a double game, based, as it will be, on your own bonds and stocks. And if these banks should fail, as I honestly believe they must, then, sir, with their paper abroad, in the hands of the farmer, the mechanic, and the day laborer, the loss must fall on their hands; while the free banker is living in luxury and splendor. Sir, I pray God to protect the country from the infection of such an evil as the system of free banking—such, at least, as the one here proposed.

In almost every argument that I have heard on this floor in favor of free banks, we are referred to the free banks of New York, and we are told that it works well in that State. Sir, if this Convention will look back over the history of this State—look at the faithless and rotten corporations that have swindled your State out of her bonds, by failing to meet their contracts, by not paying us the money justly coming to us, and then, sir, you have a sample of those beautiful republican institutions, free to all, as some gentlemen say. You, sir, have a sample of free banking, or rather, I should say, free swindling.

Sir, in providing a currency for the people I here have the honor to represent, I shall not take, as my guide, the policy of any State, unless such policy accords with my own judgment. Sir, gentlemen on this floor may look for examples to New York, but, sir, in regard to that State I must say, that although that State is a powerful and wealthy State, yet it has been guilty of more folly, in regard to this subject of legislation, than ever Indiana thought of. Sir, I have only to say, that if you engraft upon this Constitution free banking, it will be condemned and voted down by the hardy yeomanry of the country, as in justice it ought to be. I speak

boldly on this subject. I say the people will do it, and I will help them to do it.

Sir, when this free banking system went into operation in New York, provisions were made like the one we propose here—ample security for payment of the bills and also for an individual liability clause to the amount of the bills issued. According to the system in New York, if gentlemen's argument be true, these banks ought to have been solvent and trustworthy to have furnished a safe and sound currency, good at every point in the Union, redeemable at all times, when presented by the holders. But, sir, how was it. In the years '47 and '48, there came into existence in that State, some one hundred and nine of these beautiful free banks with a capital of near a million or perhaps a million and a-half of dollars, and when they went into operation they had to furnish this ample security for the redemption of their paper, and what kind of security was it? Why, with the exception of near forty-eight thousand dollars in specie, the balance was State stocks and real estate mortgages. What was the result? Why, in Dec., '48, out of the one hundred and nine banks, forty-eight of them went down, and owing to some unaccountable disease having got hold of them, closed their doors and left the people to get along the best way they could with their protested bills, worthless and unpaid. In the face of all this, we are told that this is a good currency to be depended on. Sir, suppose this money had been offered to one of your farmers for his wheat, his beef, his pork, what, sir, would he have said? He would have told the man who offered it him for his stock, to go back from whence he came with it. The stocks on which those free banks are to be based, are too uncertain and too fluctuating on which to base a currency for the people. But, sir, when these celebrated free banks, of which I have been speaking, exploded and blew up—when they went by the board—their stocks on which they had been banking, sold in market at a rate not higher than sixty-three cents, and some as low as eighteen and three-quarter cents to the dollar. And this was the free banking capital now so loudly commended in our hearing.

Mr. President, I believe if there is another word necessary to say, it is in refutation of the charge that the State Bank is not solvent. The condition of that bank is made known yearly to the Legislature, and if it can be clearly shown that it is not solvent, and that it is a swindling institution, I go for inflicting the highest penalty the law guaranties upon its officers, for a neglect of their duty and improper conduct. How stands their account now? What, sir, is her condition as to solvency? By their last report made by her, to the Legislature, made in '49, if we can give it any credit, and it is not likely that this report would be false, when the penalty is so severe, the liabilities

of the bank amounted to six million one hundred and ninety-nine thousand six hundred and forty-nine dollars and sixty-three cents. How has she to meet it? If she has funds or means to meet it, and if those means are as good as New York stocks, I cannot see any good reason for making the change. I will tell you how she meets it. She had discounted notes amounting to one million six hundred and seventy thousand and eighty-eight dollars and fifty-one cents, and what kind of notes are they? They are notes signed by the farmers of the country, and signed by the best security in the country. If I am wrong I trust some gentleman will correct me, and I do not think that such notes in the hands of the bank, signed as they are, can be very dangerous securities. But, sir, I think they are as good and reliable as State bonds at least. Sir, as further means, the bank has got one million nine hundred and eleven thousand nine hundred and forty-two dollars and fifty cents, in bills of exchange. But if gentlemen do not desire that bills of exchange should be dealt in by the bank, let the Legislature, when it re-charters the bank, provide for that emergency. I know but little in a practical sense, of bills of exchange, not having dealt much in such paper, but I do know that it is the most popular commercial paper in existence, and, also, that it will go as far in sustaining the issues of a bank, and keeping her right in point of solvency, as any paper the bank can hold as evidences of debt, and as easy converted into money for the purpose of meeting the demand against her.

The bank has a suspended debt of two hundred and seventy-two thousand dollars; and I understand that this debt, called the suspended debt, consists of debts not paid at the time they fell due, and hence called the suspended debt. I would much rather take this debt, with the endorsers, and risk their final collection than to take the same amount in any of these new fangled stocks on which those new banks are to be founded, and which we are told is to produce money for the people.

The next thing to which I will allude as the resources to meet her indebtedness is one hundred and seventy-five thousand, seventy-three dollars in banking houses. This species of real estate is necessary to be owned by the bank, and of course good and solvent security for that amount. And, sir, I find among all men engaged in money speculations, that real estate of this kind is always looked upon as good security on which reliance can be placed at all times. At least, sir, I should think them as good as stocks which may be up-to-day and down-to-morrow, which rise and fall with every change in the market, and which are so uncertain that you cannot tell this week what they will be worth next week. Sir, base free banks, as they are termed, on such securities as these, and the people will have a

currency, but what kind of a currency? A currency that will not pay your tavern bill out of your own State, and perhaps not at home. Sir, I find that the State Bank in real estate other than what I have above given, holds securities to the amount of one hundred and ninety-nine thousand two hundred and eighty-seven dollars and eighteen cents, and bank furniture to the amount of four thousand nine hundred twenty-nine dollars fifty-six cents. She has in her vaults eastern funds to the amount of four hundred and seventy thousand three hundred and sixty-two dollars, fourteen cents. She has due from other banks two hundred and seventy-four thousand five hundred and one dollars seventy-three cents. She has branch balances due of twelve thousand twenty dollars twenty-three cents. She has due her from remittances, deposits, &c., two hundred five thousand five hundred and eighty-six dollars, one cent. She holds United States and Indiana bonds to the amount of seventy-one thousand dollars. She has one hundred and thirty-one thousand four hundred and ten dollars in five per cent treasury notes of the State of Indiana. She holds thirty-four thousand eight hundred and five dollars in six per cent treasury notes of Indiana. She holds the notes of other banks to the amount of one hundred and one thousand nine hundred and seventy dollars; and, sir, at the time of making this report, which was submitted to the Legislature December 1849, she had in her vaults gold and silver to the amount of one million two hundred and eighty-five thousand four hundred and six dollars, and ninety-three cents; thus showing her means equal to her liabilities, and if she was compelled to wind up would, as I believe render her solvent, and, sir, I believe she will prove to be so. But, sir, we are told that the reports made by the officers of the State Bank are not practically true—that if we could get at the bottom of the institution it is rotten to the core—that it acts upon the principle of favoritism—that it will accommodate one man and refuse accommodation to another—that she is acting unfaithful—that she is swallowing up the trust funds and will never be able to pay them back—that they are lost to the State. These charges are put forth in this Hall and out of it. But, sir, who makes these charges? From what source do they come? Not from the honest farmer, who, on account of the currency furnished by the bank, finds a ready market for the products of his farm, and a reward for his industry. But, sir, these complaints come from the enemies of the State Bank. They come, sir, from men who wish to break her down, and on her ruins establish what some call free banks, but what I fear would be free speculation and free swindling.

Sir, I am opposed to the change. We have tested the State Bank system—we have found

it work well—have found under its operation your country has prospered—the farmers have advanced from poverty to wealth and opulence—the country has thrown off her embarrassments, and the farmer, the merchant, the mechanic, and the day laborer now stand erect. Sir, with these facts before us uncontested and incontestible, we had better let well enough alone. Yes sir, in the language of a wise and good politician of our Hoosier State who is no more, we had better let it be. But, sir, put down the State Bank, deprive the State of the advantages that she draws from the Bank, deprive the people of a sound and reliable currency, establish free banks, based as they are, or will be, on stocks, and, sir, who will be your bankers? Who will manage the currency of the country? Will it be the State of Indiana? Will it be the farmers, the mechanics, and merchants of your own State? Sir I say it will not. It will be the stock jobbers, the Wall Street brokers, and speculators of New York. The speculators of England who have got your State bonds at thirty-seven cents on the dollar, the bonds, sir, out of which the State has been cheated and swindled, and for which your children and mine will have to labor for years and years to come, will be turned upon you as bank capital, and these men will be your bankers; they, sir, will manage the exchange of the country, and govern the trade and commerce of our people, and regulate the price of wheat, beef, corn, pork, and products of the State. This policy, sir, will never be sanctioned by the people. Tell the yeomanry of Indiana that their own bank must go down—that the institution that has been brought into existence by our own legislation without distinction of party—built up by our own people—managed by our own citizens, until it has become the pride of every individual, and must go down, driven out of existence, and its place filled by free bankers composed of English noblemen and stock jobbers, New York brokers and speculators; and, sir, the people, the freemen of Indiana will rise in their power and strength at the ballot box, and consign your Constitution to the shade of death.

But, Mr. President, the system of free banks attempted to be thrust upon the State of Indiana, presents to speculators one of the most stupendous and magnificent schemes of speculation ever beheld. No wonder, sir, that the agents of our bondholders are now hanging on these lobbies, exerting every nerve to fix on us this odious free banking system. Why, sir, look at the process first. Sir, they have got our bonds for little or nothing—for a price merely nominal. The people are taxed to pay interest on these bonds yearly, and finally to pay the principal. These bonds are now proposed to be converted into bank capital, on which to base free banks on which to issue paper two dollars for one. Sir, what is the worst and most la-

mentable part of this scheme and this banking project is, that by the time that they have got fairly under way in complete operation, the paper scattered broad-cast over the land, in the hands of the honest and unsuspecting people, like the celebrated banks of New York, of which I have been speaking, they will go down and blow up in rapid succession, leaving their paper in the hands of the community, to be redeemed, if redeemed at all, at a large discount, the loss to be borne by the people, whose only sin and folly has been to be thus cheated and imposed on by such rotten, false, and faithless institutions.

Sir, these kind of institutions have heretofore been disastrous in the extreme, and, sir, like cause will produce like effect. Pass a section and put it into your organic law, by which you authorize those banks to grow up at pleasure in the hands of foreigners, stock jobbers, and mean speculators, whose only feeling and desire is to plunder and impoverish your people; whose highest motive is self aggrandizement, whose interest is opposed to each other, who will always be at war with each other and at war with your people. Establish, sir, such a class and clan of monsters in the shape of banks, and fix and seal them on the country, and you will find by miserable experience that more has been done to baffle and prostrate the energies of the people, and break down the spirit of enterprise at this time displaying itself in the bosom of almost every Indianian, than one half century can remedy. Sir, these are my notions and opinions, humbly and honestly entertained. In my humble manner I give them to the Convention for what they are worth. If they are worth anything, I hope they will have their desired effect: if they are worth nothing, they can only be passed by. Sir, in regard to the State Bank of Indiana: during her whole history she has never suspended specie payment but on one occasion, and then only for a short period, and that, sir, by the advice and consent of the people, expressed in and through their representatives, and under a class of circumstances which will long be remembered by the people of Indiana.

Sir, in regard to the many charges made in and out of this Hall against the bank, the management of the bank, and the conduct of her officers, that in political matters as well as legal jurisprudence, it is a just and well settled rule that he that prefers charges takes on himself the burthen of proof. And sir, as a friend of the State Bank system, I have listened, I have expected an attempt to prove some of the charges true; but, sir, I have listened in vain—no such attempts have as yet been made—and, sir, I now call on the enemies of the State Bank system to bring the proof—show their hands—establish the truth of those charges—or, like honest and charitable men, abandon them. Sir, I do not say that another bank should be chart-

ered precisely on the same basis of the present. If anything in the present charter is not right, the wisdom of the Legislature that grants another charter will correct those errors and those wrongs which experience has shown to be wrong. Sir, that we must have banks of some sort to supply the wants of the people, is certain; and if we must have banks and use bank paper, we should have those of the best, and which will furnish for the people the best circulating medium. And, sir, time and experience has proven State banks to be more reliable and useful than any private institution which has been tried, at least within my knowledge. For these reasons, and not from any private motives of my own, I prefer a State Bank on a sound basis, and well guarded.

In conclusion I have only to say, that upon a correct settlement of this question depends not only the interests of this but of the next generation. I earnestly ask gentlemen to pause and reflect before they undertake to overthrow an institution which has furnished the people with a sound circulating medium—has relieved the State in time of pecuniary embarrassment when help was most needed—which has aided in paying off the debts of the State, and which has tended mainly to the prosperity and redemption of our glorious State and her fallen credit, and not to substitute in its place a system based on a sandy foundation, and which, when tried by other and more wealthy States than ours, has proved the ruin of thousands, and periled even the solvency of their governments.

Sir, on this occasion I have felt it my duty to say this much, and in doing so I believe I have spoken the sentiments of my people, and in my humble manner tried to advocate their rights. And, sir, by returning to the Convention my sincere thanks for the patient hearing with which I have been favored, I will not further detain them.

THURSDAY, JAN. 23, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. ———

The journal of yesterday was read and approved.

Mr. LOCKHART presented a petition, signed by Truman Nelson and fifty-nine other citizens of Posey county, expressing their strong disapprobation of the action of this Convention upon several subjects. They express, said Mr. Lockhart, the opinion that the people of this State should not be deprived of the privilege of declaring at the ballot-box, whether they will use the credit of the State to promote such objects of public utility, as to them shall seem just, profitable, and expedient; of which right this Convention has debared them, if the new Constitution should be adopted. They insist that it is impossible to foresee the emer-

gencies which may render the aid of State credit desirable. In short, sir, the petitioners sustain the action of that portion of their delegation who have asked nothing more upon this subject than they promised when candidates. As a petition in the same words was read to this Convention the other day, I move that the petition be laid upon the table.

The motion was agreed to.

Mr. MORRISON of Marion, from the committee on the Executive, reported back the section in relation to the veto power of the Governor.

The question being, Shall the section pass?

On motion, by Mr. CLARK of Tippecanoe,

The rule which requires the yeas and nays to be taken, on the final passage of a section, was suspended, and

The section passed, and was referred to the committee on revision.

Mr. DOBSON, from the committee on salaries, compensation, and tenure of office, reported a section, providing that the Governor shall be allowed an annual salary of fifteen hundred dollars; the Secretary, Auditor, and Treasurer of State, one thousand dollars each, with such perquisites as the Legislature shall, from time to time, allow; the Judges of the Supreme Court, fifteen hundred dollars each; the Judges of the Circuit Court, twelve hundred dollars each; the members of the General Assembly, three dollars per day each, and three dollars for every twenty-five miles travel, on the most direct route, in going to and returning from the seat of government. No law shall be passed to increase the pay of members of the General Assembly, which shall take effect until after the close of the session at which such law shall be passed.

The section was read a first time, and passed to a second reading.

NEGROES.

The section prohibiting negroes and mulattoes from coming into and settling in the State, being the special order for this day, was taken up on its second reading.

Mr. HALL moved to strike out "and" and insert "or," so that the section would read, "coming into or settling in the State."

Mr. H. remarked, that as the section now stood there was nothing to prevent a negro from coming into and passing through the State, and thus eluding the pursuit of his owner.

The amendment was agreed to.

The question being on the engrossment of the section,

The yeas and nays were demanded, and they were ordered.

Mr. DUNN of Jefferson moved to amend by adding the following:

"And that members of this Convention be required, whenever they see a negro in the State, to catch him and take him out."

Mr. DAVIS of Parke moved the previous question.

The previous question was seconded, and the main question ordered to be now put.

The question being upon the amendment of the gentleman from Jefferson, it was, by ayes 15, noes 114, decided in the negative.

The question then being on the engrossment of the section,

The yeas and nays were taken with the following result—yeas 94, nays 36—as follows:

YEAS.—Messrs. Alexander, Badger, Barbour, Blythe, Bourne, Bowers, Butler, Carter, Chapman, Chenowith, Clements, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Helmer, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kelso, Kent, Lockhart, Logan, Maguire, Mathis, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—94.

NAYS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Borden, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Dunn of Jefferson, Foley, Hamilton, Hawkins, Hogin, Howe, Kendall of White, Kinley, March, May, McClelland, Milligan, Mowrer, Newman, Niles, Smith of Ripley, Todd, Trimble, Work, and Wunderlich—36.

The section which provides that "all contracts made with negroes and mulattoes coming into this State, contrary to the provision of the first section of this article, shall be void; and all persons who shall employ, or otherwise encourage such negroes or mulattoes to remain in this State, shall be fined in any sum not less than ten nor more than five hundred dollars," was read a second time.

Mr. SHOUP moved that the section be laid upon the table.

Upon this motion the yeas and nays were ordered, and being taken resulted thus—yeas 48, nays 85:

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Borden, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Dunn of Jefferson, Duzan, Foley, Frisbie, Hawkins, Helm, Hitt, Hogin, Howe, Kendall of White, Kinley, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Morgan,

Mowrer, Murray, Newman, Niles, Rariden, Shoup, Smith of Ripley, Thomas, Todd, Trimble, Watts, Work, and Wunderlich—48.

NAYS.—Messrs. Alexander, Badger, Barbour, Blythe, Bourne, Bowers, Butler, Carter, Chapman, Chenowith, Clements, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Helmer, Hendricks, Holman, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kelso, Kent, Lockhart, Logan, Maguire, Mathis, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Wallace, Walpole, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—85.

So the section was not laid upon the table.

Mr. HOLMAN moved to strike out all after the word "void."

The object, he said, was to leave it to the Legislature to make the necessary provision to carry out the principle embraced in the section. In the first place, it was desirable that the Constitution should be as brief as the necessary degree of perspicuity would admit; and in the second place the provision contained in the latter clause of the section was a matter which was purely legislative in its character, and which should not be introduced into the Constitution. The imposition of penalties was clearly legislative business.

Mr. GIBSON moved to amend the amendment by inserting in the place of the words proposed to be stricken out the following, viz.:

"Any person who shall suffer a negro or mulatto to occupy any real estate, shall forfeit the same for the use of common schools."

Mr. RITCHEY. I approve of the principle of the amendment of the gentleman from Dearborn, because I think it unnecessary to provide in the Constitution for these severe penalties. As a separate proposition it might do no harm, but I am opposed to the amendment of the gentleman from Clarke, and I therefore move that it be laid upon the table. [Cries of "no, no."]

Well, if gentlemen wish to talk about it, I will withdraw the motion.

Mr. DUNN of Jefferson. I have one remark to make in relation to the amendment of the gentlemen from Clark. I understand that when a hog is dead it becomes pork, but when a negro is dead I suppose he is a negro still, and I think the gentleman ought, in such case, to allow him to be buried. If a negro should come into the State and die here and be buried, it

should not occasion a forfeiture of the land in which the body may be deposited.

Mr. KELSO. I voted for the first section of this article, viz.: the one which prohibited negroes and mulattoes from coming into or settling in this State.

The next branch of the matter, which is a part of the second section, gentlemen are highly pleased with. That is, that all contracts made with negroes, shall be void. But singular as it may seem, they cannot bear the idea of a white man being put under a penalty for assisting or encouraging a negro to come here in violation of the law. Now, I maintain that the downright abolitionists are more troublesome to us than the negroes themselves. I go for making the restriction upon the man who encourages the negro to come into the State, more severe than upon the negro himself. I am in favor of fixing the penalty as in the section that has been reported: That after we have passed the law and made it a part and parcel of the laws of the State, that no negro shall come into the State and settle here. I then say that the white man who induces him to violate the law, is worse than the negro, and the penalty should be more severe upon him. I am decidedly in favor of the amendment of the gentleman from Clark. I hold that he who willfully encourages the negro to violate the law, is more culpable than the negro himself, and if he will encourage him to come among us in violation of the laws of the State, by furnishing him a home, he should forfeit the property which he transfers to the negro, and let it go to the common school fund. There is no sense in prohibiting negroes from coming into our State, unless we prohibit white men from inducing them to come.

Mr. CLARK of Tippecanoe. I have heretofore declared my intention to vote against these sections, in all their phases and forms, and perhaps it were prudent for me now to express my vote without further remark. Yet, sir, I cannot forbear a few words in reply to the gentleman from Switzerland. Although that gentleman may be generally right in his opinions, the sentiments which he has just now expressed do not seem to me to be in unison with the spirit of humanity and benevolence, which he usually manifests.

The amendment proposed, punishes a man with forfeiture of goods and lands for the *crime* of benevolence and charity.

If a negro should come into this State, and be found sick and destitute, or if they were women and children, and some humane person should provide a shelter for them, and supply their wants, certainly this does not appear to me to be such a crime as to justify the extraordinary penalty which is proposed—the forfeiture of the land.

I have read something of the history of nations, and I will venture to say that from the beginning of the world to the present hour, with

the exception of China, no nation has passed law so preposterous as this.

They have a law in China, which makes any person responsible for the life of a wounded man, if taking charge of him, and the unfortunate individual should die within forty days after receiving the hurt.

The consequence is that surgery is practically prohibited in that Empire. The wounded man is left to his fate. None are willing even to take him into their houses, lest they be liable to the penalty affixed to the crime of murder.

If it be proper that any provision like this should be made, it ought to be left to the Legislature, that a discrimination at least may be made, between those who entice negroes here, and those who, from a sense of humanity, seek to relieve persons who may be perishing from want.

We ought not to decree by an unalterable constitutional enactment, that the man who, from humanity, may shelter a negro fleeing into this State, in his house or his out-house, or his barn, that he may not die of cold, or disease, or perish with hunger, I say that for this we ought not to decree a forfeiture of the man's property to the State. I can conceive of no greater barbarity than this—no greater outrage upon humanity.

Mr. DOBSON (interposing). I would ask the gentleman what he expected the negro to do here. We have prohibited him from coming?

Mr. CLARK. Well, sir, the negro is forced from Kentucky, or driven from Ohio, running for his life, trying to escape from his pursuers—fleeing from slavery, if you choose—he reaches our State exhausted, he can go no farther. Worn with fatigue, fear, and hunger, he falls down by the road side. Some humane man finds him, and like the Good Samaritan, goes not to the other side, but cares for him and ministers to his necessities. Shall we, a christian people, punish a man who performs the duty of a christian, with the confiscation of his property? If this be the spirit of our progressive christianity, I pray God to deliver us from such a dispensation. I pray for the humanity of Mahomedanism, to deliver us from barbarism such as this. Borrowing the language of the great poet of our race, I may ask, What! Have we turned Turks, and do that which heaven hath forbid the Ottomite!

When the oppressed Hungarians repulsed from christendom, fled to Mussulmen for an asylum, for security, for refuge—when they found that protection in the land of the Turk, which had been denied by their christian brethren, the voice of humanity resounding through the christian nations of the world, cried out, christianity has fled from christendom and taken her abode in the breast of the followers of Mahomet!

Sir, barbarians shall teach us lessons of humanity, and the heathen instruct us in the principle of religion!

Now, sir, I will say one word on the motion of the gentleman from Dearborn, which is to strike out a part of the section, and which motion I think ought to prevail. This part of the section provides that if any one employ a negro, who may have come into this State, after the adoption of this Constitution, he shall be fined not less than ten dollars. If he unwittingly employ such a negro as a barber, to shave him, he is subject to the severe penalty of the law.

All of these penalties may be properly and far more safely left to the Legislature. If the people of the State shall adopt the Constitution and determine to carry out the intention of this article, they will elect men to enact the necessary laws. Or if their sober thought shall show them such harsh laws are unavailing and useless, they will repeal them. And I admonish gentlemen who advocate these penalties, that the more barbarous and unjust they make them, the more will they be opposed, and the more certainly will the people of the State reject them or refuse to enforce them.

Mr. DOBSON. I would not have said a word upon this subject, had it not been that the gentleman from Tippecanoe has advanced a sentiment that ought not to go unanswered—a sentiment that is in opposition to the provisions of the Constitution of the United States. The gentleman seems to think it preposterous that an individual should be punished for doing an act of charity to a human being—to a negro who comes into the State. I made the inquiry of the gentleman what business the negro had here? He answered that *he might be chased by his master*. I answered the gentleman by saying that when the negro is chased by his master into this State, we are bound to give him up. The Constitution of the United States binds us to do so, and no provision we can adopt would discharge us from that obligation.

Now I undertake to say that when we adopt a provision prohibiting negroes from coming into this State, that but few will come here without they are enticed so to do by white men. Therefore the penalty should be greater upon the white man who induces the negro to come into the State, than upon the negro.

All this cry about humanity is intended *ad captandum*.

I undertake to say that it is impossible to blend the two races and make one of them. Their physical organization is different, and you cannot blend them if you would, and make them become one. The stronger race will keep itself clear of the weaker and thereby keep the blood pure.

It is to accomplish a benefit for them both that I am in favor of this proposition. But gentlemen say that an individual may be punished innocently, if he entertain and provide for a negro who has escaped from his master in another State. Suppose a man should receive

and protect a horse thief, not knowing him to be a felon, would he not be liable to be punished? Will any one say that there should be a penalty imposed upon that man, because, from motives of humanity, he had protected a fellow being, or, if he receive stolen goods and is not able to account for having them in his possession, he would be liable and ought to be sent to the penitentiary?

The gentlemen from Clark, Floyd, Vanderburg, and the other border counties, are not afraid of the section. Then why should the gentlemen representing northern and north-western counties object? If negroes are chased by their masters into this State, they would have to pass through the southern counties before they could reach Tippecanoe or any county north of it.

But gentlemen want to leave the whole matter to the Legislature. Well, sir, we might with the same propriety leave almost everything else to the Legislature. The gentleman thinks it barbarous in the extreme, that we prohibit negroes from becoming citizens. I ask the gentlemen if those already here are on an equality with the whites? Look at your statistics on the subject. They would tell a different tale. No, sir, they are not now nor never can be on an equality with the whites. Then why deceive them by holding out the idea that if they come you will make citizens of them? We have the right to say who shall and who shall not become citizens of this country. All countries have that right, and exercise it, too.

The gentleman may go to any of the old countries and ask to become a citizen, and they will tell him—you cannot become a citizen,—and yet he thinks it is a very preposterous thing that we should assume the power to say who shall and who shall not become citizens.

Mr. President, I am not in favor of encouraging negroes to escape from their masters and come to this State. I feel as much for the negro as any gentleman here. But you never will let him become a citizen if you try to do so forty times over. And if all the people consented to it, it would never be accomplished any more than the cross of the horses and jackasses could ever be anything else than mules. It is an inviolable law of nature, and you cannot repeal it or avoid it. You cannot blend two races of men, and make a new race that will endure or remain as a distinct race more than one or two generations. The Jew is now what he was in Jerusalem—the Celtic race has not changed—the Gipsy is the same now that he was when we first heard of him. You cannot make a new race of men and perpetuate it.

I ask those who talk so loudly and so long about inhumanity to the negro, to look back to the treatment that the Pottawatomes and the Shawnees have experienced at the hands of

the white man. Go and pay them for the lands you live upon, if you are so conscientious. You say you bought them? Yes, your *puritan* fathers bought the African with rum and gums and sold them to the planters. One was near about as fair a sale as the other.

Is there a possibility of amalgamation of those tribes with the white race? Not at all. They are as distinct as two opposite principles can be. It is a part of their destiny to be treated as they have been by the white race. They cannot be amalgamated with the whites. They are one of the dark races, and all the dark races are weaker mentally than the white races, and when the two come in contact, the dark race must give way; our race will cover this continent sooner or later—the other race must give way. It is their destiny. Other races gave way to them, and now they must give way to us. Who will occupy it next, I cannot tell!

Mr. READ of Clark demanded the previous question.

The demand for the previous question was, upon a division—ayes 60, noes 35—seconded, and the main question was ordered to be now put.

The question being upon the amendment of the gentleman from Clark, (Mr. Gibson,)

The yeas and nays were demanded, and, being ordered and taken, were—yeas 35, nays 94—as follows:

YEAS.—Messrs. Alexander, Bourne, Butler, Chenowith, Dick, Dunn of Perry, Edmonston, Fisher, Gibson, Gootee, Hall, Hovey, Johnson of O., Jones, Kelso, Kent, Lockhart, Logan, Mathis, Miller of Clinton, Milroy, Mooney, Moore, Morrison of Washington, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clarke, Ristine, Sherrod, Spann, Tague, Tannehill, and Wolfe—35.

NAYS.—Messrs. Badger, Ballingall, Barbour, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Blythe, Brookbank, Bryant, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Farrow, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Howe, Huff, Johnson of D., Kinley, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Morgan, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Pettit, Rariden, Read of Monroe, Ritchey, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—95.

So the amendment was not adopted.

The question recurred upon the amendment offered by the gentleman from Dearborn.

The yeas and nays being ordered and taken, there were—yeas 57, nays 74.

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dick, Dunn of Jefferson, Duzan, Foley, Garvin, Gordon, Hamilton, Hawkins, Helm, Hendricks, Hitt, Hogin, Holman, Howe, Johnson of Dearborn, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Morgan, Mowrer, Murray, Newman, Niles, Rariden, Ritchey, Shoup, Sims, Smith of Ripley, Thomas, Todd, Trimble, Wallace, Watts, and Work—57.

NAYS.—Messrs. Alexander, Badger, Barbour, Berry, Blythe, Bourne, Bowers, Butler, Carter, Chapman, Chenowith, Clements, Coats, Cookerly, Davis of Vermillion, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Helmer, Hovey, Huff, Johnson of Orange, Jones, Kelso, Kent, Lockhart, Logan, Mathis, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Shannon, Sherrod, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Walpole, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—74.

So the amendment was not adopted.

The PRESIDENT. The question now is, Shall the section be engrossed for a third reading?

The yeas and nays were taken, and the result was—yeas 77, nays 56—as follows:

YEAS.—Messrs. Alexander, Badger, Barbour, Berry, Blythe, Bourne, Bowers, Butler, Carter, Chapman, Chenowith, Clements, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Helmer, Hovey, Huff, Johnson of Orange, Jones, Kelso, Kent, Lockhart, Logan, Mathis, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Wallace, Walpole, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—77.

NAYS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Borden, Brookbank, Bryant, Clark of Ham-

ilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Duzan, Foley, Garvin, Gordon, Hamilton, Hawkins, Helm, Hendricks, Hitt, Hogin, Holman, Johnson of Dearborn, Kendall of White, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Morgan, Mowrer, Murray, Newman, Niles, Rariden, Ritchey, Sims, Smith of Ripley, Thomas, Todd, Trimble, Watts, Work, and Wunderlich—56.

So the section was ordered to be engrossed for a third reading.

Mr. HOVEY. I would inquire of the Chair whether it is now in order to offer an additional section?

The PRESIDENT. It is.

Mr. HOVEY. I would then offer the following section:

"That sections number one and two shall be submitted to a separate vote of the people in this form: 'Exclusion—yea or nay,' and section number three shall be submitted to a separate vote of the people in this form: 'Colonization, with an annual appropriation derived from taxation—yea or nay.'" A word in explanation. I would vote for section number three, provided it be submitted to the people as a distinct question. If however you bind the two questions together, that is "exclusion and colonization," I will vote against them. In the southern part of the State if the two questions be joined together to be voted upon as a whole, the entire article would be in danger of being rejected.

Mr. OWEN. If it be right to do a thing at all, it is proper to do it effectually. I recently voted in a comparatively small minority for what I regarded as an effectual method of excluding, in the future, from our State, all negroes and mulattoes. When I consider a thing right in itself, I do not shrink from its consequences. If justice and expediency alike declare that the African race should not be permitted to come in from other States and increase among us, we are quite as competent as any future Legislature can be, to declare by what means this shall be done.

But, sir, I am not prepared to vote for the amendment introduced by my colleague (Mr. Hovey). Whatever we do in this matter, should be done in accordance with the dictates of true humanity. I believe it to be a principle essential to the well-being of both the races, that they shall be separated. If they be not, what, I ask you, are the alternatives? Either that the negro race shall remain among us in their present condition; or else that their blood shall gradually mingle with ours, until all traces of Ethiopian descent finally disappear.

Shall they remain, as now, a race legally and socially excommunicated, as the Helots of Sparta—as the Pariahs of India—disfranchised outcasts; a separate and degraded caste, to whom no honorable career is open; hopeless

menials; the hewers of wood and drawers of water of those among whom they are tolerated, not received? Shall this state of things last for ever? I, for one, am not willing, if by any proper means I can avoid it, that my children should grow up side by side with men like themselves, yet without the rights of freemen. I am not willing we should encourage, by any act of ours, the growing up, in our midst, of what corresponds, in all its worst features, to the mob of Europe; men who are taxed, but not represented; men upon whom laws and burdens are imposed, but who have no voice in determining how those laws shall read, or what those burdens shall be.

Am I told by those who speak as the especial friends of the African, that the public feeling, whence arises such a state of things, ought not to exist? So be it. But it *does* exist. Can you alter it? Look around and answer the question. Can you change the hearts and feelings of our people, that they shall permit a negro to sit down beside them, an equal at the social board—a colleague in the legislative hall? Call this prejudice, tyranny, what you will, can you eradicate it? Settled, deep-rooted public opinion is one of the facts which a legislator must ever recognize and respect. It constitutes an essential element in all laws. It must govern the decisions of the law-giver, or his statutes will be but as waste paper, or worse.

Look into your statute book, and see what marks public opinion has left upon its pages. A negro shall not be a witness, in any case whatever, against a white man. Think of the gross injustice which, under such a law, may arise. Some villain, so his skin be not black, may penetrate by night into the dwelling of the negro; may there, in the presence of witnesses, commit crimes of the blackest dye—murder, rape, arson; and if these witnesses are all negroes and mulattoes, the murderer, the ravisher, the incendiary, goes free and unpunished; perhaps to repeat, with similar impunity, similar crimes. Is that a state of things that ought to endure in a civilized land? Is it to last, through all time, among us? Ought any good man to desire the continuance among us of a race to whom we are not willing to accord the most common protection against outrage and death?

But is the remedy to be sought in gradual amalgamation? Turn once more to your statute book, and what do you find there? A law declaring that, if a white person intermarry with a negro, or with any one having but an eighth of African blood, the parties contracting such a marriage shall be confined in the penitentiary for not less than a year, and shall, in addition, be fined not less than a thousand dollars. All persons abetting or counseling such a marriage incur a fine of a hundred dollars; and upon the issue of any such union is stamped the brand of illegitimacy. Who, with such laws before him, will talk of amalgamation as

the ultimate result? How, except by wholesale violation of public morality, can it take place?

Since, then, public opinion is as it is, what is the ultimate remedy? Separation—colonization. To those whom we are not willing to treat here as men ought to be treated, let us afford the chance of seeking a free home elsewhere. Let us say to the negro: "Equal rights, social and political, you cannot have here; but we will give you the means of going where no prejudice against your color finds place—where you will meet but equals—where all occupations will be open to you—where you may aspire to any station, even the highest.

There is a section, to come up by and bye, which provides that no negro, after the year 1860, shall acquire real estate, except by descent. That is a provision of a very effectual character to produce separation of the races; but I cannot vote for it, except in conjunction with a provision for colonization. The provision should be, that, between this time and the year 1860, a sufficient amount should be raised to take to Liberia every negro and mulatto—man, woman, and child—now within the State of Indiana, who may choose to go. And then, if they elect, even under the disabilities imposed upon them, to remain here, it is their affair. We shall have done an act of justice. We shall have afforded them an alternative. If the Convention refuse this, I must vote against the enacting of any additional disabilities, to be imposed upon negroes now among us.

The sum necessary to colonize our negro population is not a startling amount. The naval committee of the United States House of Representatives recently reported a project, which will doubtless be carried out, to run a regular line of large steamships between New York and Liberia; and their estimate is, that thirty dollars a head will pay the entire expense of transportation. There are about sixteen thousand negroes now in the State, which, at thirty dollars a head, would make the total of four hundred and eighty thousand dollars. A tax of about thirty-five cents on the hundred dollars would raise the amount. This, spread over seven years, would be but five cents a year. Even should the amount prove to be double that sum, it would be money well spent; well spent in doing an act of humanity and justice; well spent for the interests of our children.

It is to be remembered that I propose to colonize those only who may be willing to go. And it is very doubtful whether one-half of those now among us, even when the means are offered them, will avail themselves of the offer. They do not estimate, as we do, the blessings of liberty, of equality, and of political rights.

Each gentleman must judge for himself, whether his constituents are willing to be taxed for such an object. I am satisfied that those I

represent are ready to do their share in this good work. I know they are in favor of colonization. For the sake of their children, they are willing to pay that which is necessary to remove from among us a proscribed race, the influence of whom, while they remain in their present degraded condition, must of necessity be demoralizing.

I think, therefore, that the committee did well when they united with the provisions to exclude, the means to colonize. When the people vote on this subject, I desire to see them vote on "exclusion *and* colonization." Justice, alike to ourselves and the unfortunate race that was brought among us without their agency, demands it.

The PRESIDENT here remarked that the proposition of the gentleman from Posey (Mr. Hovey,) was not in order. It was not an original section, and the article already contained a section on the subject.

Mr. HOVEY. But I offer it as an additional section.

The PRESIDENT. That does not make it an additional section.

Mr. HOVEY. I will ask permission of the Convention to offer a few remarks in answer to my colleague. ["Consent, consent."]

It is either right or wrong to exclude negroes and mulattoes from this State. If wrong, no amount of money paid for colonization, or any other purpose, can justify the exclusion. If it be right, I ask my colleague what authority this Convention has to say to the people that they shall colonize those that are here, or that they shall not be permitted to close the doors against further immigration? If exclusion is right, let it stand upon its own basis. If colonization is right, let it stand there, too, and do not make one the condition upon which the other may be adopted. The article reported back by the committee would compel the people to pay an annual tax of twenty or thirty thousand dollars for the privilege of protecting themselves against that unfortunate though reckless and abandoned class of immigration. Truly, this is rather dear for self-protection! It seems to me that every reflecting man would spurn such a proposition with contempt. The friends of colonization, I should think, would not wish to carry their point by thus forcing the southern counties to *purchase* the right of exclusion. But my colleague says that he has no doubt his constituents will be willing to embark in this scheme of colonization. I am willing to let them answer for themselves, by submitting it to them as a separate question; but I say, with all due deference, that neither he nor I has the right to fix upon them an annual tax of this kind, without their consent. I regard the whole article reported back by the committee thus coupled with colonization, as an insidious attempt against negro exclusion, and I now tell my colleague that the whole article will fail, if it should be adopted as

reported by the committee. He says he knows his people. He is older and more experienced than I am, but, sir, in this instance, I must say he has come to a wrong conclusion. I can vote for a section submitting the question of prohibiting negro immigration into the State, but I will not vote for a section of that kind, coupled with colonization. As my section is ruled out of order, I shall vote for all that part of the article which relates to exclusion, and against the other sections.

The third section was then read as follows:

"There shall be an annual appropriation set apart by law for the gradual colonization of negroes and mulattoes, and their descendants, who may be in this State at the adoption of this Constitution."

The PRESIDENT. This is the second reading of the section. The question is, Shall the section be ordered to be engrossed for a third reading?

Mr. STEVENSON moved to amend by striking out the section, and inserting the following:

"All fines which may be collected for the violation of any of the sections of this article, or of any law hereafter passed by the Legislature, for the purpose of carrying out the provisions of this article, shall be set apart for the colonization and emigration from this State, of all negroes and mulattoes."

Mr. NEWMAN moved to amend the original section in this manner: by inserting after the word "appropriation," in the first line, the words "of not less than ten thousand dollars."

The question being upon the amendment of the gentleman from Wayne,

Mr. PETTIT. Is it in order to amend the amendment, by naming a less sum?

The PRESIDENT. The gentleman has the right to amend the amendment of the gentleman from Wayne.

Mr. PETTIT. Then I move to amend by substituting "two thousand" for "ten thousand."

The question being on the amendment to the amendment,

Mr. PETTIT. I certainly shall not undertake to debate, at this late stage of our session, the entire question of negro exclusion and colonization. I shall merely say a few words in relation to this report, the third section of which is now under consideration. I understand this report to have come from the committee with a recommendation that it should be submitted to a vote of the people. I was in hopes that the whole report would have been taken up and voted upon at once, and submit the entire question for the adoption of the people. I must say that, whether the remainder of the report shall pass or not, I cordially approve of the two sections that have been engrossed. The first section provides that no negro or mulatto shall

come into or settle in this State, after the adoption of the new Constitution. The next section declares all contracts made with negroes or mulattoes coming into the State after the adoption of the Constitution, void. For the violation of the injunction that negroes shall not come into this State, penalties are imposed where I believe they ought to be—where humanity and reason directs that they should be placed—on the white man, or white resident of the State, instead of on the black man. Now, sir, upon the amendment, as proposed by myself, or that proposed by the gentleman from Wayne (Mr. Newman)—because I shall be willing to go for his, if mine cannot be adopted—depends my voting for this third section, and, also, for the fourth.

I made some remarks, a few days ago, upon the subject of encouraging all persons in the State, to hold property, believing that it would tend much to prevent mobs, riots, and incendiarism. Then, if you prevent negroes, &c., in 1860, nine years hence, from acquiring property otherwise than by descent, and do not hold out any inducement—in other words the *cornucopia*, or horn of plenty—to leave the State, I cannot vote for the fourth section. I never will withhold from any person, black or white, the right to hold property of any kind in this State. On the contrary, I would encourage him by all reasonable means, to acquire property, for the reason that he would then be the more readily disposed to protect mine—that he would be the less ready to engage in mobs and riots, for fear his own property might be laid waste and would thus, through motives of self-interest, become a better friend of law and order.

If the section, with the proposed amendment, pass, so that we may say to the negro, "here are the means to convey you to the land of your forefathers, the place of their nativity a climate adapted to your constitution and your health," then I will vote for it. But, sir, I will not vote to make a pauper class amongst us of any kind whatever: rather would I afford this unfortunate race the means to obtain property easily and cheaply.

Let us impose a direct tax for the purpose of carrying out this emigration plan. In the name of all that is just—no, I will not appeal to your sense of justice, but to your own considerations of humanity, and of personal interest—is there any inducement for these men to protect our property, if there be no means afforded them to emigrate out of the State?

Mr. NEWMAN. As I offered an amendment to this section, I wish to be permitted to say a few words. The gentleman from Tippecanoe cannot have made any calculation as to the number of negroes the sum of \$2,000 can transport yearly.

Mr. PETTIT (in his seat). I have said of not less than \$2,000.

Mr. NEWMAN. If you said not less than \$10,000, how long would it take to rid the State of the negroes now in it? If the statement of the gentleman from Posey (Mr. Owen) be right, that it will take nearly half a million of dollars to colonize them, \$10,000 a year would not transport them from here in fifty years; it would scarcely take away the increase in fifty years. Then, sir, if gentlemen meant to meet this evil in the face, let them stand up to it. I have heard no gentleman speak upon this question who did not profess to be a friend of the negro race. If gentlemen be in earnest about it, let them evidence their humanity by an appeal to their pockets; that is the place which will give the most striking proof of the truth of the declarations they make on this floor. I say, let this unfortunate class have a sufficient sum to transport them to the land of their fathers. If you will exclude them from the enjoyment of any privilege—from the enjoyment of a little “holding”—if, in fact, you will cut them off from the possession of all the enjoyments and sources of happiness that other people have, it is at least the part of justice to hold forth to them the inducement that the State will lend a helping hand in order that they may leave this for a land more adapted to their condition. I am no fanatic, sir. I regret the existence of the colored race in this country, and would hold out to them every inducement to go. And, if you make an ample provision for their emigration and settlement in comfort in a genial climate, the land of their forefathers, I could view with some toleration the strong feeling to get rid of them which so extensively obtains. Undoubtedly if you that say you are the friends of the separation of the two races, you will put your hands in your pocket and say, “here is the wherewithal to leave this State,” and to send them away paupers; not make them a race of beggars, of thieves, and of robbers within your borders, without allowing them to acquire or affording them the means to return to their own proper home.

Is the sum I propose too large? In all conscience it is not. A number of gentlemen to whom I showed the proposition before submitting it, said the sum should be \$20,000. If you hope to rid the State of the number of negroes in it in twenty years, then the appropriation should be \$20,000 or \$30,000.

Are gentlemen in earnest when they say they are the friends of the separation of the two races? Will they make a decent appropriation, or “a mere song?” Two thousand dollars! How many negroes will that transport?—how many of this race that you so much dread will that rid us of?

If you want to leave to the Legislature (as was remarked by my friend over the way) this question as to the amount to be appropriated to the cause of humanity, let us leave the entire question of “exclusion” to the Legislature,

and provide that when they pass a law for the exclusion of the negro race, they shall also make an appropriation to meet the emergency. I do not desire to farther occupy the time of this body at this late period.

Mr. STEVENSON. Having offered an amendment to the section now under consideration, I desire to offer a remark or two on this subject. I look upon the question of prohibiting the emigration of slaves from slave States into this State, and the question of making an appropriation for the purpose of removing them from here, as very distinct questions. The two questions have scarcely any connection, the one with the other. We must certainly have the right to say to the slave States, if you intend to perpetuate the evils of slavery, you must keep your negroes to yourselves, and that we will not open our doors to receive them. Yes, sir, we have that right, and it is not connected in any sense with the question of removing negroes to Liberia.

I say that though we may be disposed to treat that race properly and humanely, we are not compelled in anywise to make an appropriation to remove them, nor do we do them any injustice when we refuse to do so.

But on the other hand, have we the right to say that free negroes shall not come into the State? Sir, my course in regard to that question would be by adopting the section which we have adopted. As one opposed to the institution of slavery, and one who is desirous of seeing it terminate, I would take the course the committee has taken. It is an admitted fact that there is no greater nuisance in the slave States than these free negroes. Are we then to throw open our doors to the importation within our borders of one of the greatest evils connected with the institution? It stands to reason that we should not. Our own self preservation demands of us to exclude them.

Then, when we look upon these two questions, we at once perceive that they are different—that they are entirely distinct. And we can say in all justice that free negroes shall not come in here, and do no wrong when we say we shall not make any appropriation for removing them out of the country.

But this, of course, depends on what we say in regard to negroes holding property. If we say they shall not acquire property, we ought to make an appropriation to enable them to leave the country, and so *vice versa*. My proposition is, that all fines collected for the violation of the provisions of this article shall be appropriated to the purposes designated. I have no scruples in voting against an appropriation to carry negroes out of the country, provided we do not impose upon them additional disabilities. If we take from them the right to acquire property, we should make not a niggardly but a liberal appropriation, in order to convey them to a place

where they can enjoy all those things which are denied them here.

I hope the amendment of the gentleman from Wayne will not be adopted. I say, let all fines arising from the violation of the laws passed to carry out the provisions of this article, be appropriated to the colonization of the negroes in our State.

Mr. BASCOM. Mr. President, I move the previous question.

Mr. DUNN of Jefferson. I move that the Convention do now adjourn.

The motion was agreed to, and
The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY,

The pending question being upon the amendment of the gentleman from Tippecanoe (Mr. Pettit).

The amendment was rejected.

The question then was on the motion to fill the blank with the words "two thousand."

The yeas and nays being demanded and ordered, were taken, and resulted—yeas 28, nays 98—as follows:

YEAS.—Messrs. Ballingall, Beach, Beard, Beeson, Bicknell, Brookbank, Bryant, Clark of Tippecanoe, Cole, Colfax, Dunn of Jefferson, Hawkins, Hitt, Howe, Kinley, Mather, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mowrer, Murray, Newman, Pettit, Ristine, Thomas, Todd, and Wheeler—28.

NAYS.—Messrs. Alexander, Badger, Barbour, Bascom, Biddle, Blythe, Borden, Bourne, Bright, Butler, Carter, Chapman, Chenoweth, Clark of Hamilton, Clements, Coats, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hugin, Holman, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kelso, Kent, Lockhart, Logan, Maguire, March, Mathis, McClelland, McLean, Milligan, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Trimble, Walpole, Watts, Wiley, Wolfe, Work, Yocum, Zenor, and Mr. President—98.

So the motion was rejected.

The PRESIDENT. The question now is upon the amendment proposed by the gentleman from Putnam.

The amendment was read as follows:

"All fines which may be collected for a violation of any of the sections of this article, or of any law hereafter passed by the Legislature, for the purpose of carrying out the provisions of this article, shall be appropriated and set apart for the colonization of such negroes and mulattoes as are now in this State, and are willing to emigrate."

The question being taken, the amendment was adopted.

Mr. EDMONSTON. I would like to inquire whether that amendment strikes out the original section?

The PRESIDENT. Yes, sir.

Mr. PETTIT. Is that section further amendable?

The PRESIDENT. No, sir, not under the operation of the previous question.

The question was then taken, and the amendment was ordered to be engrossed for a third reading.

ACQUISITION OF REAL ESTATE BY NEGROES.

The PRESIDENT. The next business in order is section 4.

The section was read as follows:

"After the year 1860, no negro or mulatto shall acquire real estate, or any interest therein, otherwise than by descent."

Mr. PEPPER of Ohio. I move that the section be indefinitely postponed. [Cries of "no," "no."] I do not wish to occupy one single moment upon this subject. I have prepared myself to dispose of the contents of this section so that it need not annoy the Convention any further this session. I am opposed to taking any steps which may have a tendency to degrade the colored race in the country, and for that reason I wish to see this section postponed indefinitely.

Mr. PETTIT. I ask for the yeas and nays on that motion.

The yeas and nays were ordered.

Mr. WALPOLE. I shall go against the indefinite postponement. I desire that this section may remain as an inducement to the African to sell out and leave our State. If you strike that section out, he and his posterity will ever remain in Indiana, and I desire that he may have every inducement to leave the State. That, in my opinion, is the best mode of colonization you can adopt.

Mr. KELSO. It ought to be remembered that these negroes are human beings, and that they came here when the State permitted them to come. They have acquired property perhaps as laboriously and as honestly as we have, and I think they ought to be permitted to enjoy it in the same way. Sir, it is no reason, that because his skin is of a different color, we should pass laws to rob them of what property they have honestly acquired. We have already passed a provision in that article prohibiting them from coming into the State, and I think

that is going far enough. Now what is the money to be applied to the purposes of colonization? Why, simply fines for a violation of the law as provided by the last section we have passed, and every one knows that this is a source of revenue that will not be very prolific. I care, therefore, very little about that; but to say that the men who are here, and who came amongst us in good faith and in compliance with the law as it then existed, shall not only not be allowed to acquire property by honest labor, but that even that which has been thus acquired, shall not descend to their offspring, is carrying the matter, in my opinion, with a high and tyrannical hand.

Sir, there is no good reason for the adoption of such a provision. Suppose that these people should choose to remain here as long as they live, have they not a right to be here? Did they not come here with our consent? Did they not come in obedience to our laws? Did they not come when it was right and proper that they should come? And what good reason is there that those who have thus come should not be allowed to remain here till it shall please God Almighty to make a proper disposition of them? Sir, there is no reason to say that they shall not increase their property, or that they shall not make a good living for their families, so that they may not become chargeable to the public; nor is there any good reason why they should be forcibly driven out of the State. I say that the section ought to be indefinitely postponed, and indeed that it never ought to have been there.

Mr. MURRAY. It seems to me that a strange want of charity has taken possession of the minds of the members of this Convention. If we could settle the matter whether these people should have been, or be, permitted to land on the North American continent, that, indeed, would be a very different question. But that is not so. They have been brought here in chains. We have wrung the sweat from their brows and the labor from their sinews, and some of the neighboring States which have been enriched by their toil, have made it felony for them to remain within their borders unless they are in a state of slavery; and we are also to pass laws determining that they shall not tread our soil, or breathe the air of heaven.

Mr. President, I am as far from being what is termed an "abolitionist" as any man upon this floor. I have no sympathy with them. But, sir, it is too late in the day now to say that these men, although they do differ from us in the color of their skin, are not human beings. They are moved by the same feelings, actuated by the same motives, and have hearts and sensibilities as other men who are not born in slavery. I feel, sir, that we stand in a position that is peculiarly interesting—that we are in a position in which the world will look upon

us as having assumed a stand that was contrary to every feeling of humanity—that we are actually outraging humanity and violating its every principle; and that our course here has been one that we shall hereafter be ashamed to look upon. [Applause.]

It seems to me that we ought not to meddle with this matter in the way proposed—that we ought not to adopt a provision in our organic law prohibiting these men from breathing the very air of heaven which the great God of the Universe has made free alike to all. The edict of Haman against the Jews was not more severe, not more designed to extinguish these people from the face of the earth, than the edict we are here seeking to pass against the negro race. If they are to have no place to live or breathe in—if we are to drive them from every position they may take—whether in Indiana, Illinois, Ohio, Missouri, Kentucky, or elsewhere—we shall drive them to final extermination. They cannot live without air any more than we. They cannot live without food any more than we. They cannot live without a place on which to rest their wearied limbs any more than we. There is, to be sure, a place belonging to the crown of Great Britain to which they may go; and where they may possibly exist; but how are they to get there? Sir, were they ever so willing to emigrate from other States, and were it necessary for them to pass through ours, we do not even permit them to travel over our soil. We give them no privileges whatever. We do not even give them the possibility of existence. Sir, it seems to me that it is wrong—that it is perfectly outrageous to every principle and feeling of humanity, to take this course.

Mr. SPANN. If I understand the question now before the Convention, it is the fourth section of this article, and reads as follows:

"After the year 1860, no negro or mulatto shall acquire real estate or any interest therein, otherwise than by descent."

Mr. President, I do not understand that the adoption of this section will have the effect to drive any negro or mulatto now here, from any property which he now possesses. The section does not propose to rob any one of them of anything he now has.

Sir, I regard this matter in a political point of view, and in none other. Men may enlist their sympathies in favor of the colored race, merely on the score of religion or humanity. That is one thing; but the question has assumed a political feature, and in that point of view I look at it.

Sir, the whole question may be summed up in a few words—whether we shall, by a provision in this Constitution, encourage the owners of worn-out negroes in other States, to force them into the State of Indiana, where they are to become paupers, and where we shall have

to support them. [A voice, "That's the question."]

Now, sir, if any man in this Convention might have sympathies for the black race, I might have them. I was born among them, and raised among them; and I never would deprive them of any privilege which they ought to have. But, sir, that is not the question. When we undertake to leave out of this Constitution this particular section, we yield every iota, as far as we have gone, and we might as well strike out every section we have passed, and leave out every thing we have done, as to leave out this section. Sir, as I have already said, it does not propose to rob them of anything which they now possess. It merely proposes to guard the State of Indiana from the influence of the black pauper population of Kentucky and other States.

And now, sir, I merely wish to add, that I hope this section will not be stricken out; but, sir, I do trust that the succeeding section, which proposes to submit this matter as a separate question to the people, may be stricken out. There is no need of its being submitted to the people as a separate question. If we do anything in regard to this matter, it should be done effectually, and not be left subject to a contingency. I trust, sir, that the section will be retained.

Mr. STEVENSON moved to lay the section on the table.

Mr. PETTIT demanded the yeas and nays.

The yeas and nays were ordered, and, being taken, resulted as follows:

YEAS.—Messrs. Badger, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Borden, Brookbank, Bryant, Carter, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dunn of Jefferson, Duzan, Farrow, Foley, Frisbie, Garvin, Graham of Miami, Hall, Hamilton, Harbott, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Howe, Johnson of Dearborn, Kelso, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Morgan, Mower, Murray, Nave, Newman, Owen, Pepper of Ohio, Pettit, Rariden, Read of Monroe, Ritchey, Robinson, Shannon, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Tannehill, Thomas, Thornton, Todd, Trimble, Watts, Wheeler, Work, Wunderlich, and Mr. President—77.

NAYS.—Messrs. Alexander, Barbour, Blythe, Bourne, Bowers, Bright, Butler, Chapman, Chenoweth, Clements, Coats, Cookerly, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Fisher, Foster, Gibson, Gootee, Gordon, Haddon, Hardin, Hovey, Huff, Johnson of Orange, Jones, Kent, Lockhart, Logan, Mathis, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Ristine,

Sherrod, Smith of Scott, Spann, Tague, Walpole, Wiley, Wolfe, Yocum, and Zenor—54.

So the section was laid upon the table.

Mr. OWEN. I believe it is now in order to offer an additional section. I offer the following:

"SEC. — There shall be an annual appropriation set apart by law, for the gradual colonization of so many of the Negroes and Mulattoes and their descendants, who may be in this State at the time of the signing of this Constitution, as may desire to leave it; and such appropriation shall be of sufficient amount to colonize, previously to the year 1860, all such Negroes and Mulattoes so desiring to leave the State. After the year 1860, no Negro or Mulatto shall acquire real estate, or any interest therein, within this State, otherwise than by descent."

The PRESIDENT. That will not be in order; the Convention has just voted down a section of similar import.

Mr. OWEN. There is what appears to me to be an essential difference between the provisions of the two sections. The one proposes a certain thing to be done at the time of the signing of the Constitution, the other at the time of its adoption. Besides, there are two other propositions in the section which I have offered, which were not contained in the section which was voted down.

The PRESIDENT. The Chair decides that it is out of order, the Convention having voted down the same principle once to-day. The principle of the sections is the same. A mere alteration of the phraseology, or a question of time, as to whether the thing shall take effect this week or next week, or even this year or next year, does not, in the opinion of the Chair, make such a difference in the question as to allow it to be offered again; at least, not on the same day that it has been rejected. The Chair, however, may be wrong, and the gentleman from Posey can appeal from the decision, if he is not satisfied with it.

DUTY OF THE GENERAL ASSEMBLY IN REGARD TO FOREGOING PROVISIONS OF THIS ARTICLE.

The PRESIDENT. The next business in order is section fifth, of the same article.

The section was read, as follows:

"SECTION 5. The General Assembly shall pass laws to carry out the provisions of the foregoing sections of this article, if adopted by the people."

Mr. FOSTER. I move to amend by striking out the section, and inserting as follows:

"It shall be the duty of the General Assembly to impose such penalties as will fully carry out the provisions of this article."

Mr. F. said: As this question was fully discussed, in all its bearings, some two months ago, I will not detain the Convention with any remarks. I am much pleased that the first and

second sections of this article have passed, and I should have been still better pleased if the third section should have passed, in a modified form. It will be perceived that there is a difference between the section as reported by the committee, and the substitute I have offered.

[Much noise and uproar, and thumping on the desks, and a voice. "We have had speeches enough on this question."]

Mr. F. (continuing). I just wish to be heard in the mere explanation of my amendment; but if gentlemen are determined to clamor me down, I shall keep the floor for at least half an hour. [The noise partially subsided.] The section reported by the committee provides that the article shall be submitted to a separate vote of the people. In the substitute I have offered, it will be seen that I do not want anything of that kind to be done. I want the Convention to take the responsibility of this matter, and not to agitate the people with such questions. Sir, in a much more important measure—a measure for *taxing* the people—I proposed that it should be submitted to them, and the proposition was rejected by the Convention. I see no necessity for submitting this question to the people, under any circumstances whatever.

Then again, sir, the section I have offered is much stronger than that proposed by the committee. It declares that "It shall be the duty of the General Assembly to impose such penalties as will fully carry out the provisions of this article." Now I know—we all know—that in the Constitution of Illinois a provision was adopted, similar to that reported by the Committee, and that it has never been acted upon to this day. Unless we say that the General Assembly shall impose such penalties as may be necessary for carrying out the article, you may rely upon it, it never will be acted upon. This proposition which I have offered, is more emphatic—more imperative in its nature. These are the reasons which induce me to offer the section: In the first place, that we should take the responsibility of passing the article; and in the second, that we should make the section much more stringent and binding upon the people.

Mr. WATTS moved to amend the original section by striking out the words "if adopted by the people."

Mr. BASCOM moved to lay the amendment of the gentleman from Dearborn on the table.

Mr. WATTS demanded the yeas and nays.

The yeas and nays were ordered and taken, with the following result—yeas 52, nays 78;

YEAS.—Messrs. Bascom, Beach, Beard, Beeson, Biddle, Borden, Bourne, Bright, Brookbank, Bryant, Carter, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Dunn of Jefferson, Duzan, Foley, Frisbie, Garvin, Gordon, Graham of Miami, Hall, Hamilton, Hardin, Hawkins, Hendricks, Hitt, Ho-

gin, Howe, Kent, Kinley, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Mooney, Morgan, Mowrer, Murray, Newman, Pepper of Ohio, Smith of Ripley, Trimble, Work, and Wunderlich—52.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Bicknell, Blythe, Bowers, Butler, Chapman, Clements, Coats, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Gibson, Gootee, Haddon, Harbolt, Helmer, Holman, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Lockhart, Logan, Maguire, Mathis, McLean, Miller of Clinton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Walpole, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—78.

So the amendment was not laid upon the table.

The question was then taken on the adoption of the amendment, and a division being called for, there were—yeas 72, noes not counted.

So the amendment was adopted.

The PRESIDENT. The question now is on the amendment of the gentleman from Monroe to strike out the section and insert the substitute which he has offered.

Mr. KELSO. I move to lay the amendment on the table.

The question being taken, the motion was agreed to.

The section as amended was then ordered to be engrossed for a third reading.

MOTION TO RE-CONSIDER.

Mr. CLEMENTS. I move to re-consider the vote taken on the amendment which was offered by the gentleman from Putnam to the third section.

The PRESIDENT. Did the gentleman vote with the majority.

Mr. CLEMENTS. I believe I did.

The PRESIDENT. The rule requires that any one moving to re-consider must have voted with the majority, and the gentleman from Daviess must be certain about it.

Mr. CLEMENTS. Well I am certain about it. The reason why I move to re-consider is that I think we ought to make it incumbent on the Legislature to make an annual appropriation for the colonization of negroes. [Loud cries of "no, no, no."]

The question being taken on the motion to re-consider, it was decided in the negative.

SUBMISSION OF ARTICLE TO A SEPARATE VOTE
OF THE PEOPLE.

The PRESIDENT. The next business in order is section six.

The section was read as follows:

"SECTION 6. This article shall be submitted to a separate vote of the people in this form: 'Exclusion and colonization of negroes and mulattoes—Aye, or No.'"

Mr. PRATHER. I move to lay the section on the table.

The yeas and nays being demanded and ordered they were taken with the following result—yeas 58, nays 73.

YEAS.—Messrs. Badger, Barbour, Blythe, Bourne, Bright, Butler, Chapman, Clark of Hamilton, Clements, Cookerly, Davis of Vermillion, Dick, Dobson, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Haddon, Helmer, Hogin, Hovey, Johnson of Orange, Jones, Kelso, Lockhart, Logan, Mathis, May, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Prather, Rariden, Read of Clark, Robinson, Sherrod, Spann, Steele, Stevenson, Thomas, Thornton, Walpole, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—58.

NAYS.—Messrs. Alexander, Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Borden, Bowers, Brookbank, Bryant, Carter, Chenowith, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Foley, Garvin, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hitt, Holman, Howe, Huff, Johnson of Dearborn, Kent, Kinley, Maguire, March, Mather, McClelland, McFarland, Miller of Fulton, Milligan, Morgan, Mowrer, Murray, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Monroe, Ritchey, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Tague, Tannehill, Todd, Trimble, Work, and Wunderlich—73.

So the section was not laid upon the table.

Mr. KENT. The Convention having refused to adopt the third section of the article, and also to set apart any sum annually for colonization purposes, I move to strike out the words "and colonization" in the second line of the section. [Cries of "consent, consent."]

Mr. PETTIT. I rise to request that we may have the section re-read which was offered by the gentleman from Putnam. I believe it provides that all sums arising from fines inflicted for violation of any of the provisions of the previous sections, shall be set apart for colonization purposes?

The PRESIDENT. Yes, sir.

[The section was again read.]

Mr. PETTIT. I hope the gentleman from Floyd will withdraw his amendment, as the words are necessary to make the section correspond with the section offered by the gentleman from Putnam.

Mr. KENT. I look upon that section as a mere nullity.

The question being taken on the amendment, it was rejected.

Mr. HAWKINS moved to amend the section by striking out all after the word "submitted" in the first line, and inserting "at the time of submitting the Constitution to a separate vote of the people by ballot in this form: 'negro exclusion,' or 'no negro exclusion,' and unless a majority of all the votes given shall be in favor of said exclusion, this article shall not become a part of the Constitution."

Mr. NAVE. I think we have now had quite enough upon the subject of negroes, and I therefore move the previous question.

The call for the previous question was sustained, and the main question was ordered to be now put.

The question being first on the amendment offered by Mr. Hawkins,

Mr. HAWKINS demanded the yeas and nays.

The yeas and nays were ordered and, being taken, they resulted as follows:

YEAS.—Messrs. Ballingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Borden, Brookbank, Bryant, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Dunn of Jefferson, Duzan, Foley, Garvin, Graham of Miami, Hall, Hamilton, Hawkins, Hendricks, Hitt, Holman, Howe, Johnson of Dearborn, Kinley, March, Mather, McClelland, McFarland, Milligan, Morgan, Mowrer, Murray, Newman, Smith of Ripley, Thomas, Trimble, Watts, Work, and Wunderlich—44.

NAYS.—Messrs. Alexander, Badger, Barbour, Blythe, Bourne, Bowers, Bright, Butler, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Gordon, Haddon, Harbolt, Hardin, Helm, Helmer, Hogin, Hovey, Huff, Johnson of Orange, Jones, Kelso, Kent, Lockhart, Logan, Maguire, Mathis, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robison, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Todd, Wallace, Walpole, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—87.

So the amendment was not adopted.

THE PRESIDING OFFICER (Mr. Miller of Gibson). The question now is on ordering the section to be engrossed for a third reading.

The yeas and nays were demanded and ordered, and, being taken, resulted as follows :

YEAS.—Messrs. Ballingall, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Borden, Bowers, Brookbank, Bryant, Carter, Chenoweth, Clark of T., Coats, Cole, Coifax, Crawford, Crumbaker, Davis of Madison, Davis of Parke, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Foley, Garvin, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hitt, Holman, Howe, Huff, Johnson of Dearborn, Kent, Kendall of Wabash, Kinley, Maguire, March, Mather, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Morgan, Mowrer, Murray, Newman, Owen, Pepper of Ohio, Pettit, Read of Monroe, Ritchey, Shannon, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Steele, Tannehill, Thornton, Todd, Trimble, Wallace, Work, and Wunderlich—78.

NAYS.—Messrs. Alexander, Badger, Barbour, Blythe, Bourne, Bright, Butler, Chapman, Clark of Hamilton, Clements, Cookerly, Davis of Vermillion, Dobson, Edmonston, Fisher, Foster, Frisbie, Gibson, Gootee, Haddon, Helmer, Hogen, Hovey, Jones, Kelso, Lockhart, Logan, Mathis, May, Miller of Clinton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Ristine, Robinson, Sherrod, Snook, Spann, Stevenson, Tague, Thomas, Walpole, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—57.

So the section was ordered to be engrossed for a third reading.

SECTIONS ON THIRD READING.

THE PRESIDING OFFICER. The next business in the order of the day, are sections on their third reading.

MR. PETTIT. We have got through this thing of negro-ology. [Laughter.] I now move that the Convention adjourn.

The Convention refused to adjourn.

THE PRESIDING OFFICER. The thirty-third section of article 12, will now be put, upon its third reading.

The section was read providing that the General Assembly may confer upon the boards doing county business in the several counties, such powers of a local, legislative, and administrative character as they may from time to time prescribe.

MR. PETTIT. My object in moving an adjournment a few moments ago, was because the Convention is nothing like full. Now, sir, I move to re-commit the section with instructions to strike out the words "legislative and." The section will then read as follows :

"The Legislature may confer upon the boards doing county business in the several counties of the State, such powers of a local administrative character, as they shall from time to time, prescribe."

A few words now in reference to this matter. I do not believe, Mr. President, that when the Convention adopted that section, it was ever designed to authorize the boards doing county business, to enact local laws. Now, I must be permitted for a moment to turn to a provision which you have already passed. Some six weeks ago, you passed this section :

"The General Assembly shall provide by law, for a uniform mode of doing county and township business."

Now, that is an adopted section, and the section which you yesterday ordered to be engrossed, and which is on its third reading, directly thwarts the one you have passed, and says that a little Legislature of three men in each county may legislate for the counties and townships as they please—that the Legislature may confer upon them authority to make law in every county. Sir, to what will it lead, if this power is delegated? Sir, they may confer upon the county boards the power to regulate the practice of the law, and in chancery—they may confer upon them the power to regulate the marriage ceremony, the explanation of wills, the registry of deeds for transfer of property real and personal—in fact every kind of legislation that should not be conferred upon the county boards, if the section remains as it is.

Now, sir, the great clamor of the people has been for less local and partial legislation, and now you come and say that there may be ninety times as much legislation of a local character as there has been heretofore. And where are your laws? How will they be published? Why, sir, there will be no publication of them at all. They will be recorded in the order books of your county commissioners. They will remain, sir, a dead letter, and will be silent as the tomb, as indeed they ought to be. In less than five years, with that section in your Constitution, you will have a conflict between your sovereign Legislature and the legislatures of your counties. Sir, you need no such law making power in your counties. All that you need in a board of commissioners is power to administer the laws as the Legislature shall make them. I say that that is a point which their power ought never to exceed. No board of county commissioners ever did make laws. All that they have ever done is to carry out the provisions of the law, and there is no necessity for a such a provision.

¶ Now, one word in reference to what fell from the gentleman from Sullivan, yesterday, in reference to road taxes and so forth. Why, sir, what is more easy than to regulate this by a general provision? Nothing in the world. Then again in those counties, where the lands

are low and subjected to inundation, what is more easy than to say that the owner of the land shall do it, or that the county board may direct that it should be leveed for the purpose of keeping it from being overflowed? Sir, no law is necessary to be made here by these commissioners. No legislative authority would be conferred. Sir, I would not give one farthing for all the reforms in your Constitution, with that provision in it. I am constrained to say that no advantage which that Constitution could confer upon the State, would or could induce me to go for it if you were to scatter over the State, in addition to the main Legislature, ninety miniature legislatures with power to legislate for one section of land. Let them be, as they should be, executive boards to put in force the provisions of general law.

Mr. WALPOLE (in his seat). Oh, submit the question to the people. [A laugh.]

Mr. SPANN. I voted for this measure yesterday, and for the reason that, as it seems to me, we have abolished the legislative department of the government. There never will be any laws passed by any future Legislature. In the first place, we have provided that the Legislature shall meet only once in every two years. In the second place, that when they do meet they shall not sit for a longer period than sixty days; and in the third place, that it shall require a majority of the whole number of both branches of the General Assembly to pass any bill. There never will be a revenue law passed.

Now, I want the board of the county which I represent, to have the power to do some matters connected with the immediate interests of the people. If the gentleman from Tippecanoe will give the legislative department power to legislate for the State, I will go with him; if not, I will vote here as long as I am able until we obtain for the representatives of the people some powers. Sir, I am opposed to local legislation if we can have any legislation; but it occurs to me that we never can have any legislation with the provision we have in the new Constitution.

Mr. KELSO. For twenty-five years, Mr. President, the people of Switzerland and Dearborn have enjoyed the privilege of regulating their own township business, and the county boards have—

Mr. PETTIT (interrupting). I ask the gentleman from Switzerland whether the county boards have ever made any law? Or whether it has not been their business to put the laws in force made by the Legislature?

Mr. KELSO. I admit they did not make the law, but I can tell the gentleman from Tippecanoe more than that. A proposition was made for the State of Indiana at large, that there should be in each township three township trustees and one clerk, elected by the people, and that they should transact all mat-

ters in relation to the repairing, and laying out, and opening, of roads, &c., and it would have saved an immense amount of trouble and expense to the citizens in traveling to the county seats. They refused, however, to adopt this provision, and the people of Dearborn asked that they might be allowed to adopt it themselves. The majority of the Legislature granted the privilege to a single county when they would not make it general, or even unite two counties under the provision. In 1834 that law was improved, since which time the county of Switzerland has been admitted into the arrangement. Now, they are not willing to part with this mode of transacting their business under any consideration. Now, whether we could induce even ten other counties to go with us for such a law, I cannot answer; but it is certain that in the counties of Dearborn, Ohio, and Switzerland, not three persons out of every ten would vote for any Constitution which would prohibit them that privilege. Now, what harm is there in leaving the people of a township the privilege of managing their township business just as they please. How can it affect the State of Indiana that our county should have three trustees in each township?

Mr. PETTIT (in his seat). I don't object to that. I object to the county commissioners having power to make a law.

Mr. KELSO. Who, then, can do it so well?

Mr. PETTIT. The Legislature.

Mr. KELSO. But the Legislature won't do it.

Mr. CHAPMAN. And if they did they would violate the Constitution by passing local laws.

Mr. KELSO. Yes, sir, most certainly. Now, we are not to suppose that the county commissioners are all dishonest, or would interfere with the judiciary, or undertake to direct what should be the practice in our courts of law, or chancery. We expect no such thing. We ask no such thing. Sir, are the men who come after us to be trusted in nothing? Is it to be supposed that we are the only and the last honest men in the State of Indiana. Sir, I believe no such thing. I believe that we may trust the trustees of townships as we have trusted them heretofore. It has been well remarked by the gentleman from Jennings, that we have almost annihilated the Legislature. True it is, that we have complained that we have been over-legislated for, but if we go on at this rate we shall have cause of complaint the other way. Now, I maintain that the section, as we have engrossed it, is right, and I hope it will be retained.

Mr. STEVENSON. I introduced this section, and it appears to me that gentlemen are mistaken as to its import. Now, what does it provide? It is simply a question whether a certain power can be trusted with the Legisla-

ture. You confer, by this Constitution, upon the county or township boards, no powers, whatever; and whatever powers are conferred upon them hereafter, are to be conferred by the Legislature. Now, Mr. President, from the feeling which has been manifested, there appears to be in the minds of many gentlemen, a holy horror of the Legislature. We have already said, Mr. President, that the Legislature shall not pass any local laws; that all laws shall be general. Well, sir, it is a necessary consequence of this provision that you should leave discretionary power with the Legislature, that if they find it necessary they may confer certain powers upon the county boards; and there is very little fear of their doing so unless they should find it necessary. Now, is no confidence to be placed in the Legislature in such an emergency? But the gentleman from Tippecanoe says it is wrong even to leave discretionary power with the Legislature to give this power to county boards, and he says that there never has been any such power conferred. If gentlemen will look into the Constitution of other States they will see to the contrary; and from all we can learn, no evil has been experienced by it. There is no danger—nothing to fear; all the horrors that gentlemen conjure up are but phantoms of the imagination.

Mr. WALPOLE. The powers sought to be conferred on the county boards, by the section of the gentleman from Putnam, are just such powers as it has been the every day practice to confer upon private corporations; and what is a county but a corporation? He proposes simply to grant such powers as are necessary to carry out the object for which this corporation was created. You may call it by what name you please, but it is simply those powers which you have ever conferred upon corporations to carry out the ends for which they were designed. Sir, I trust that we will not be threatened or frightened into rejecting this section by the opposition of the gentlemen from Tippecanoe and Clark, who each say, "Pass this, and my voice shall be raised against the Constitution." No, sir; I hope we will not be frightened from our sense of propriety to undo that which has been sanctioned by the experience of thirty-four years, and which was a part of the old Constitution of the State.

Mr. WALLACE. One word on this subject. The gentleman from Hancock (Mr. Walpole) has likened the counties to corporations; and I undertake to say that this does not conflict in the least with the sentiments expressed by the gentleman from Tippecanoe (Mr. Pettit). A corporation is a creature of the law; and, as a matter of course, it derives its powers from the law, and it has no power to act without the limits of that law. Then what does the gentleman from Tippecanoe ask? Nothing, sir, but what is perfectly reasonable—that the laws that shall govern, and regulate, and control, and give

power, if you please, to these counties, *shall be uniform*. The same power that is given to this or that county, give it to every other county in the State! Let them act under it; and under and within the range and limits of that power, surely they may act, and they *can* act. But, sir, the proposition of the gentleman from Putnam goes a step further. The attempt is to do what the people of the State have been denouncing for years. The people desire to take the power to enact local laws from your Legislature; but we, by this very act, are taking that power from the Legislature, and giving it to our counties. And, sir, what will be the result? Why you will have ninety different laws, perhaps, in ninety different counties in the State.

Sir, the gentleman from Jennings (Mr. Spann) has spoken of revenue. Does he suppose—and, sir, there is a meaning about it—and has he offered this amendment, and claims its paternity—when he says that we have taken from the Legislature the power to pass a revenue bill, that that power is to be conferred upon the county boards? He says that inasmuch as we have required a majority of the Legislature to pass a revenue bill, that therefore we shall have no revenue bill; and I suppose that his panacea is, that the power to raise revenue where the Legislature may not do it, is to be given to your counties. Is that it? I protest against it. The law, the reason, the argument, is with the gentleman from Tippecanoe. These are corporations, and within the range of their corporate powers they may act; but as a matter of course there is no legislative power there. We give them power to act, but it is under a general law, and it is the same power that enables this county to act, that enables every other county to act, and they all act alike. Sir, if the gentleman from Jennings supposes that an occasion should ever occur when your Legislature shall refuse a revenue bill, let them go back to the people. If it is wrong that they should pass it, the people will sustain them. That power is vested nowhere else; but it would seem that if the Legislature should not happen to do it, they may confer the Legislative power upon the counties to raise revenue! No, sir, I protest against it. My views in regard to this matter are entirely in accordance with those of the gentleman from Tippecanoe. Give them the local, the administrative power—the power of a corporation under the law—but let that law be uniform and general in its character. [A voice, "That's the talk."]

Mr. BIDDLE. When the proposition of the gentleman from Allen, (Mr. Borden,) was offered yesterday, I was at first inclined to favor it, but bestowing reflection upon it last evening, I have come to the conclusion that the gentleman from Tippecanoe is correct, and I hope that his proposition to re-commit will prevail. It is well known that the want of uniformity in our laws was one of the main causes of the calling of

this Convention, and now we propose to introduce a section conferring the power to legislate, not on one small body, but on ninety small bodies; and where, then, will be your uniformity? If you give legislative power to a county, you ought to give, also, power to enforce the law, and this, sir, is just like reversing the case, and making it stand upon its apex. It will not do. I regard this as an extremely improper proposition, and I hope the section will be re-committed. I speak the more earnestly, because I favored the proposition yesterday.

Mr. DOBSON. But for the remarks that fell from the gentleman from Marion, I should not have said a single word more upon the subject—that is that the people have been denouncing local legislation all over the State for years gone by. I take a different position. Out of every seven hundred laws that have been passed, five hundred of them have been local. [A voice. "That is what the people have been denouncing them for."] I know that this local legislation has been denounced in different parts of the State, but I am far from thinking that it has been denounced by a majority of the people. Mr. President, I take the ground that government is instituted for the benefit of the people, and that every individual should be benefited by it as far as possible, without injuring his neighbor. But gentlemen say that this power is to be destroyed. I ask them if there is a single power in the government which the people desire to see destroyed? I think not. They do not wish it destroyed, but to change its location. I know that this doctrine of "uniformity" is very pretty in theory, but not so easy in practice; and it appears to me that gentlemen might, with just the same propriety, say "Here is the Congress of the United States, which ought to pass laws for all the States at once, and in every respect," and then your courts could alike get along with decisions much better. It would be easier just to look at the laws of Congress, and be governed by them, and not by your State laws, in any way. But the gentleman is frightened at the idea of having any power of this kind conferred upon the county boards. As the gentleman from Hancock has said a county is nothing but a corporation, and to your Railroad Companies, and your Bank and Insurance Companies, and your city corporations—you give the power to all of them to pass by-laws, limiting them only in this respect, that they shall not be inconsistent with the Constitution of the United States, or of the State of Indiana; and we do not ask, in this section, for the power to pass any law which is inconsistent with the Constitution, either of the United States, or this State, or even any general law of the State. All we ask is, that the county, as a corporation, shall have as much power as any other corporation. If I ride my horse on your side walk, your city law says I shall be fined. [A voice. "That's right."]

And if I appeal the case to the circuit court, and beat you there on general law, and you carry it up to the Supreme Court, then they look to the corporate law and not to the general law.

Now, if your little towns or cities, comprising five or six hundred people, are to have these corporate privileges, is it wrong that your counties, consisting of as many thousands, should have them? [Applause, and "Hear him."] Sir, when you strike out the power to legislate on local matters, what do you save by it? You want to save the time of the Legislature do you? Sir, it cannot be saving of time at all. I come here, and want a local law passed, and by way of evading the provision of the Constitution, and make its application general, and I tell you that you will have just as many local laws passed, as ever you have had before. But, then, that will not be the idea. Then what will it be? Sir, the moment we make it an organic law that no local law shall be passed, then oppression commences, and I want to meet it on the very threshold. Sir, heretofore, when a man came in and wanted a local law that affected nobody but himself, then he could have it passed; but let the gentleman from Vanderburg come in and present a law which the people do not want, and one which they do want, then we stretch every nerve, either to pass it or reject it, as the case may be. As the gentleman from Jennings has truly said, if you go to restricting the people in this way it is exceedingly doubtful if the time will not soon come when you cannot get a law passed at all. You are going to have everything general, are you? Nothing is to be left to your county boards? They are to have no discretion? [Confusion and uproar.] Oh, I can talk down all your noise, and I shall continue to talk till you quit it. Now, suppose you have a general law for raising county taxes, and the amount is fixed at so much on every hundred dollars of property. Well, suppose your county buildings are burned down, and in order to replace them you may require a tax of 75 cents on every hundred dollars, while the tax in all the other counties, by general law, is but five cents. How are you going to manage it? Sir, nothing can be clearer than that discretion must be left with the county boards in many matters appertaining to local interests.

Mr. GORDON moved the previous question, which was sustained.

The question then, being on the motion to re-commit the section, the yeas and nays were demanded, and they were ordered and taken, with the following result—yeas 86, nays 43:

YEAS.—Messrs. Alexander, Allen, Anthony, Beard, Beeson, Berry, Biddle, Bourne, Bowers, Brookbank, Bryant, Carter, Chenoweth, Clark of Tippecanoe, Clements, Coats, Crawford, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Dunn of Perry, Edmonston, Fisher,

Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Helm, Helmer, Hendricks, Huff, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Logan, Mathis, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Nofsinger, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Wallace, Wheeler, Wiley, Yocum, Zenor, and Mr. President—86.

NAYS.—Messrs. Badger, Ballingall, Barbour, Bascom, Beach, Blythe, Borden, Chapman, Clark of Hamilton, Cole, Colfax, Cookerly, Davis of Madison, Dobson, Farrow, Frisbie, Hardin, Hawkins, Hitt, Hovey, Johnson of Dearborn, Kelso, Lockhart, Maguire, March, Mather, May, McClelland, McLean, Milligan, Moore, Murray, Niles, Pepper of Ohio, Pepper of Crawford, Prather, Spann, Stevenson, Walpole, Watts, Wolfe, Work, and Wunderlich—43.

So the motion to re-commit was decided in the affirmative.

On motion of Mr. CARTER.

The Convention adjourned.

SPEECH OF JUDGE BORDEN.

Delivered in the Convention on Friday, January 17, and on Monday, January 20, on the Judiciary System.

Mr. BORDEN, having obtained the floor, said—

MR. PRESIDENT: I rise with the view of taking some part in this discussion. Fully impressed, sir, with the great importance of the subject, and still more sensible of my inability to do it justice; yet, as my pursuits in life have necessarily compelled me, in some measure, to reflect upon it, I will ask the indulgence of the Convention for a short time, while I attempt to give, as briefly as possible, the views which I entertain in regard to this question; and I shall be happy if they should prove to be as satisfactory to others as they appear reasonable to myself.

All, sir, will admit that there is no subject which can more properly command the attention of the intelligent mind than the formation and due administration of the laws of the country, in order that the people may have a pure and equal administration of civil and criminal justice. "In nothing," says a learned and eloquent advocate, "though at an immeasurable distance—in nothing do men on earth so nearly approach the attributes of God, as in the administration of justice." Can there, then, come before this body a subject of greater in-

terest than the proper organization of the judiciary system of the State.

Allow me, sir, in the first place, to observe that I have ever entertained the opinion that that organization of the judiciary system in our State which separates the judges who pronounce the law in the last resort, from those who try the facts in the first instance on the circuit, is a most unfortunate one.

It is true, sir, that, in offering a resolution which I had the honor to submit to the Convention in the early part of the session, in which I proposed a judiciary system for the State, I did not then propose that the judges of the Supreme Court should ride the circuits, and perform what is termed by the lawyers *visi prius* duty. My reason for not then proposing it was, that it was a system with which the people of the State were not familiar, and I feared it would not receive much encouragement from the committee on courts of justice. But, sir, I believe that if we should now provide for dividing the State into judicial districts—say from five to seven—and leave it with the Legislature to direct the election of from three to five judges in each district, as the business of the people might require, and so arrange it that one of the judges in each district, after having performed circuit duty for several years, should then go on to the Supreme Bench, to form an appellate tribunal, it would be the best system that we could adopt. This, sir, is the plan; and it is something like the plan of the Supreme and Circuit Courts lately adopted in the State of New York, under their new Constitution; and I have been told by a member of the bar, lately from the State of Ohio, that their Constitutional Convention, now in session, will, beyond all doubt, adopt the same system, or one very similar in character to it.

I am aware, Mr. President, that there are objections which I have heard mentioned against that system. One of them is, that the Supreme Judges would necessarily be elected by the districts, and would thus be, in fact, local officers; and it is contended that they should be State officers, as their acts affect the whole people of the State. Sir, I admit that, if the Judges of our Supreme Court are to be elected specially for that purpose, there is much correctness in the position, and I should, in such case, be induced to vote with those who propose to elect them by the voters of the State at large. Yet, sir, so great do I consider would be the advantage of having the judges of our court of last resort to ride the circuits, that I would consent to endure one disadvantage to procure the greater good.

Sir, one of the greatest errors into which the public mind has fallen in requiring two sets of judges—one set for the Supreme Bench, and the other for the circuits—is, that the Judges of the Circuit Courts should be paid smaller salaries; and thereby have the people of our State,

in many instances, been deprived of the services of men as Circuit Judges who stand at the head of their profession in the various parts of the State. Sir, the judge who tries a cause in the first instance, in your counties, should, in my opinion, be as able a jurist as any Judge of your Supreme Court, who finally pronounces the law here in your capital. We all know that the Judge on the circuit decides more causes than the Judge on the appellate tribunal. But, sir, this is not all. The Circuit Judge has to decide, in the first place, all the points that your Supreme Judge is ever called to act upon; and besides these, many more that are never raised in your court of last resort. Sir, he is frequently called upon, while out upon the circuit, to decide the most important and intricate questions of law off-hand, without knowing beforehand what points will be presented for his decision, generally upon very imperfect arguments of counsel, at a distance from his books; and even if he had them, neither the time nor the opportunity for full consultation and examination upon the subjects. How is it, on the other hand, with the Judges of the Supreme Court? They always have well stored libraries at hand to consult; they are not harrassed with questions of fact, and other incidental and perplexing matters connected with the trial at the circuit; but on all occasions have the points of law first argued before them by able men, and then an abundance of leisure to deliberate upon, and maturely to consider every point before they are compelled to decide a question. Now, sir, I contend that, if either should be required to be more able, in point of intellect and legal learning, than the other, it certainly should be the Circuit Judge; and if the people of our State would take this view of the subject, it would justify us in adopting a system that would secure the services, as far as possible, of the same men both to ride the circuits and to sit upon the Supreme Bench.

Again, sir, I have another reason why I would be pleased to see a system adopted which would compel the judges of our appellate court occasionally to take their turn at circuit duty, and that is, that it would compel them to mix with and become acquainted with the bar and the people in the different parts of the State. I do not mean by this that our judges should mingle with their fellow-citizens to obtain their opinions as to what should be their decision. I consider that nothing can be a greater curse to a country than to have popularity-hunting judges, unless, indeed, sir, as was once remarked by one of the ablest judges that ever lived, it should be "that popularity which follows, and not that which is sought after." What I desire to express is, that, by doing circuit duty, the court would not become, as it were, insulated from the profession and the people; but that, by holding the Circuit Courts and mixing with the people, they would have an

opportunity of seeing practically applied the rules of law and evidence laid down by themselves in the Supreme Court. Sir, I cannot but think that this would have a good tendency; for we all know that it is natural to the human mind to theorize too much; and when you cloister your judges up here in a room in your Capitol, and, as it were, completely swathe them with paper records, can we be surprised that they should become altogether too philosophical and speculative in their inquiries? That is to say that there can be too much theory, and too little practical talent in these decisions; or, as some would express it, too little common sense. Sir, I know of no more effectual way to cure this admitted evil, than to require them to mingle with the bar and the people, in order that they may learn some "common sense," and incorporate it in their decisions.

I have often heard the question asked, how it was possible that twelve judges formerly, in England, and fifteen now—for it is only within a few years past that they added three additional judges to the Inferior Courts in Westminster Hall—could perform such a vast amount of labor on circuit, and then pronounce such able decisions, which are now, as they have been for centuries past, the wonder and admiration of the civilized world. Sir, it is the opinion of the greatest lawyers of that country, that it is entirely owing to their *nisi prius* system; and hence their most eminent statesmen have constantly resisted every effort for the separation of the judges of their highest courts from the performance of circuit duty, for the reason, as they contend, that the frequency of the labors of these judges in trying causes at the circuit with juries, is better calculated to produce that degree of ability and promptness, which are essentially necessary to insure the dispatch of business at the circuit, and at the same time to produce able decisions in their appellate courts. For my own part, Mr. President, I am perfectly satisfied that the performance of duty on the circuit, as I have already said, will do much to make the decisions of your Supreme Court more practical in their character; and I as fully believe that the knowledge which they would acquire upon the Supreme bench, would enable them to decide more promptly and correctly at the circuit. Sir, when the judges are required to come together as an appellate tribunal, they would necessarily be compelled to hear important questions argued before them by the most distinguished members of the bar in our State. After hearing the arguments, they would, of course, take time for full consideration and careful examination, previous to giving their decision; and, sir, not only would the knowledge which they would thus necessarily acquire, but the position which they would occupy give weight in the estimation as well of the profession as of the public, to their determinations at the circuit; and, in my opinion, this would tend materially to lessen the

number of appeals and writs of error—one of the greatest evils which the present system is calculated to foster and encourage.

I have just alluded, Mr. President, to the immense amount of business transacted by these fifteen judges in our mother country. I have heard it said that they really do more business than some fifty judges of the United States Courts, including the judges of all the courts of last resort in the different States of the Union; and I cannot but think that the example of that country where this system has prevailed for many centuries, and the experience of the State of Massachusetts, where the judges of their highest courts have always held the circuits—and allow me to say whose decisions are respected as most excellent authority wherever the common law is the basis of their system—should be satisfactory to the mind of any one that this method of organizing the judiciary system is the best possible plan that has ever been adopted in any government. It will also be recollected that this system prevailed in the State of New York for many years previous to 1821; and, sir, it was during this time that her juridical reputation became known far and wide. Their practice under that system, was, when important points of law were on the circuits, to reserve them for argument before a full bench, and the case proceeded, the facts were ascertained by a jury, and when the question of law was argued, and mature deliberation given to it, the whole case was then finally disposed of. But, sir, in an evil hour that State consented to separate the judges of the appellate court from the circuit. They were relieved from circuit duty, and separate judges were provided to hold the circuit courts. And what was the result? Sir, after a quarter of a century's experience—after their decisions had fallen in the estimation of the profession throughout the Union, it was found necessary to retrace their steps; to call another Convention, and, in a great measure, to restore the same system, as it existed previous to the Convention of 1821.

However, sir, I do not presume that either the prejudices of the profession in this State, or the habits of the people, would authorize us in the establishment of such a system; nor would it probably be suffered to remain long enough, if thus organized, to test its practical utility. I take it for granted, therefore, that we shall continue the present system, which provides a separate appellate tribunal, having original jurisdiction, and create separate judges to hold the Circuit Courts. I will, therefore, at once proceed to give my views on the system reported by "the committee on Courts of Justice." And, sir, the first objection which I have to that system is, that it leaves the power in the General Assembly, to create and abolish Courts of Justice, at their pleasure. The first section of the report provides, that "the judicial power of this State shall be vested in one Supreme

Court, in Circuit Courts, and in such other inferior Courts as the General Assembly may establish." It is to this latter clause that I object. Sir, I came here instructed, to propose and advocate that all Courts that are to exist in our State shall be named in the Constitution, thereby giving them a more permanent character. The object of this was to make the judiciary an independent department of this government. I am well aware, sir, that the theory is, that it is now such, under our present Constitution; but allow me to inquire, whether that which is held out so well in theory, is in fact actually carried out in practice?

Sir, not only has the Legislature the power, but they have in fact exercised it, of creating and abolishing, at their will, the Courts of this State. And not only so, but it is to them that the Judges must look to raise the necessary ways and means to pay them; and they can if they please, and *actually have*, reduced the salaries of these officers. Now, sir, I must say, if the theory of our government is correct—if we believe that it is a sound principle in the organization of our political institutions, that there should be three great departments of the government, I hope that this Convention will endeavor, as far as it possibly can, to make each department independent of the other two. I can see no reason why we should not make the judicial department as completely independent of the executive and legislative, as these two are of it. Now, sir, in order to secure this, several things are necessary. In the first place, the Constitution which we are about to frame should, as I have intimated, prescribe and clearly enumerate all the Courts, both of general and local jurisdiction; and no new Court should ever be created, or old one abolished, by the legislative department of the government; and in the next place, sir, the judiciary should not owe its existence to either of the other two departments of the government. That is to say, that I would not have the Judges appointed, either by the Governor or the Senate, much less would I have them elected by the General Assembly. On the contrary, I hold that they should be elected, like the other two departments of the government, directly by the people themselves.

We say in our old Constitution, and have provided in our new one, that the executive power shall be vested in one officer, who shall be styled "the Governor of the State." We do not vest the legislative department with power to divest this officer of any of his appropriate duties, and vest them elsewhere. We confer the power of making laws on the General Assembly; and no part of these powers can, with any propriety, be transferred to either of the others. The powers of each are fixed, and we particularly enumerate, in the Constitution, the officers which are to constitute each. And now, sir, let me make the inquiry, what reason is

there that the same principle should not prevail in the Constitution, in regard to the judiciary? Sir, I presume that no one will contend here for a moment, that the judiciary department of the government is not quite as important to the people of this State, as either of the other two. If the report of the committee on the organization of Courts of Justice is adopted, the General Assembly will be empowered to create and abolish at their pleasure, such inferior Courts as they may deem proper. Under this power they may, and I have no doubt will, continue the present probate system. Sir, it occurs to me that experience has rendered it necessary that we should be hereafter more explicit. Why, sir, what have we seen the General Assembly of this State do, under this power vested in them by the Constitution? They have, as I have already said, inflicted the present probate court system upon the people of this State, which is now generally admitted to be the worst possible system that could have been devised by the wit of man. If I recollect aright, I have heard it said, and I think upon this floor, that if a committee of men had been elected to devise means by which the estates of decedents could be most effectually swindled and defrauded; they would have adopted our present probate system, in preference to any other. But, sir, this is not all. In some of the counties of this State, they have created "Courts of Common Pleas," and have vested them with concurrent jurisdiction with the Circuit Courts. In one county they make the clerk of the Circuit Court act as the clerk of the new Court. In another county, a Court of the same name has been established, and the incongruous duties of clerk and judge are vested in the same officer. Now, with great deference to the opinions of others, I view this whole proceeding as entirely wrong.

It is, however, perfectly in keeping with, and may be considered part and parcel of, the same system that has rendered our laws so uncertain, and made them a by-word and a reproach to us as a State. We pass one set of laws for one county, and another and a different set for another county. Sir, I have never been able to discover a good reason why the same kind of courts that administer the laws of the State on the Ohio should not do it north of the Wabash. I cannot but think that it is our duty to deprive the Legislature of the power to create so many different courts with a variety of names, a diversity of jurisdiction, and diverse forms of procedure; and I would deem it a useless waste of time to detain this Convention for even a short time in pointing out the many objections that exist to such a system. There should be but one harmonious system, known by the same name, in every county in the State, from Posey to Steuben, with the same forms of proceeding and practice, whose jurisdiction could be understood by all.

But, sir, the greatest objection to investing

the legislative department with the power to create courts is, that if they can create them, they must necessarily have the power to abolish them; and thus the power is placed in two of the departments of the government to legislate the third out of office. Sir, we may talk as much as we please about three distinct departments of the government, each independent of the other. Practically, I think no such independence can be said to exist, while the Legislature can exercise the power of creating and destroying courts at their pleasure. Can we, sir, if the judges are in fact rendered practically dependent upon the Legislature, can we expect that our ablest men at the bar will relinquish their practice and take seats upon the bench, when, as it were, at a breath, the courts may be abolished, and they turned out of office? In my opinion in order to secure the requisite independence of the judges, it is necessary that their salaries should be permanently fixed in the Constitution; or at least that such a sum should be there named, below which the Legislature should not have power to reduce them. Now, sir, I respectfully suggest whether it is not wrong; perhaps I might go further and use a still stronger expression, and say, *dishonest*, to induce men to take the office of a judge of your supreme or circuit courts, to separate himself from his clients, and when he has thus relinquished his practice and deprived himself of his means of support, to compel him, by reducing his salary, to resign and leave the bench; and I ask whether any system which permits such things to be done is not calculated to make him entirely too dependent?

Again, sir: I submit whether it is right and proper to submit any man to the test of deciding that a law passed by the legislative and executive departments of the government is unconstitutional, when the effect perhaps will bring them into collision, and thus to deprive him and his family of their means of subsistence. Now, sir, I do not doubt that many judges could be found in our State of sufficient virtue and independence who would not hesitate for a moment to do their whole duty, and that, too, at all hazards. But should we thus place them within the power of the legislative and executive authority? Sir, it has been often said, and with great truth, that the judicial department of our government is the balance wheel that must regulate, as it were, the whole machinery of the Constitution, and hence it would seem to me that we should all desire to make it independent of the legislative and executive departments, at least in regard to the salaries of its officers.

Now, sir, you may erect as many parchment barriers here as you please, to protect the rights of the people, and to preserve a proper equilibrium between the different departments of the government, but unless you establish an independent and provide for an able judiciary, to

stand by and uphold your Constitution, I am convinced, however wisely it may be constructed in other respects, it will prove in the end only a rope of sand. Hence, sir, I am induced to believe that if the report of the committee is adopted, it will be incorrect to say that your judiciary is independent; for not only the terms of their office but the price of their labors will be at the mercy of the Legislature, and the judiciary department will never, in fact, become what it purports to be, an independent department of the government.

I come now, sir, to another proposition which I deem necessary to the independence of the judiciary, and that is, "that the judges of the State, from the highest to the lowest, should be elected by a direct vote of the people. Sir, I am fully convinced that every motive of sound policy as well as of expediency, requires us to provide for their election by the people themselves. This, sir, is the only safe course, if we desire to elevate and place that department above and beyond the control of the other branches of the government. But, sir, argument is unnecessary to sustain the propriety of this measure, as I have no doubt, from what I have heard generally expressed, this Convention will, by nearly a unanimous vote, decide in favor of the report of the committee upon this point.

There is, however, sir, one more provision which I deem necessary to secure the independence of the judiciary, and that is, that they should be elected for a reasonable term. While I am favorable to the judges being elected by the people, and although I have by my votes sustained the principle of short terms, both in respect to the legislative, executive, and administrative offices, yet I am inclined to think that there is not the same necessity for a frequent recurrence to the people in the election of judicial officers, as there is in the case of those which might be considered more strictly of a political character.

Judges, sir, were elected for a different purpose; and so far as it is consistent with the principles of our government, I am inclined to think that the temptation should not be held out to them to take too active a part in political matters. Sir, I find, from conversing with various members of this body, that there is considerable disagreement among us in respect to the term for which our judges should be elected. Some have proposed as short a term as four years, and others have gone farther and suggested that they should not be elected for more than two years. On the contrary, others have expressed the opinion that the judges of the Supreme Court, at least, should be elected for eight years. The first, I certainly think too short a term, and, perhaps, the last would be considered by many as being entirely too long. It is true, that the State of New York, which has lately adopted a system of judiciary, elected by the

people, has provided that both the judges of the court of appeals, and the circuit judges should be elected for eight years.

This term of service has been agreed upon there after a most thorough and able investigation of the whole matter by the gentlemen who composed the Convention; and for my part, I am inclined to think that six years is as short a term as this Convention should think of inserting in the new Constitution as the period of service of the Judge of the Supreme Court, especially as we seem all to agree that they shall be elected by the people. If the judges are elected for too short a period, they will be constantly tempted to keep an eye upon their re-election. It is natural that they should do so, and I think that sound policy should dictate that they should be kept as free as they can be reasonably kept from temptations of this kind by extending the term of their service. There is however a just and proper medium in this matter; and while I would not consent to adopt a term of office as long as that adopted in the State of New York—eight years—I am not inclined to reduce it to three or four years. If, sir, we desire to secure the ablest jurists in this State upon the supreme bench, is it not obvious that men who have a large practice which they have secured by their great ability and long experience in the profession, will not easily be induced to abandon it and accept of the office, when proposed to them, if their term of service is made too short. Let me ask whether a short term of office and low salaries will induce my friend from Jefferson, (Mr. Bright,) and the distinguished gentlemen from Wayne and Laporte, (Messrs. Newman and Niles,) to relinquish the lucrative practice which they are each known to enjoy and take the office when there are so many forbidding circumstances connected with the acceptance of the trust? Sir, do we not all know that the mere going through a severely contested election would of itself be sufficient to deter many of the worthiest men in the State from ever consenting even to become candidates for such a situation, even when they knew they could be elected? And when there was about an equal chance or even a possibility of defeat, how many more would be deterred from entering upon a canvass? Sir, there are but few men who are willing to have the reputation of being rejected by their fellow citizens for any situation; and for my part I can see no way to induce such men to take the office except by giving them a sufficient salary and extending their term of service to a reasonable length. Sir, if we add to the impediments which must exist in any system, a very short term of service, my word for it, the men who will most likely become candidates will be, of all others, the last that should be elected; and I have my serious fears that with all these obstacles staring them in the face, our best men—those on whom this

great, may I not add, this *sacred* trust should alone be conferred, will retire from the contest, and none but the most unworthy be selected to preside in the highest judicial tribunals of the State.

I desire now, sir, very briefly to allude to the proposition which has been so strenuously contended for here, that the judges of the Supreme Court should be elected by districts. I have already intimated my great desire to have a system adopted by which the judges of our court of appeals should be compelled to do circuit court duty for a time at least, before they enter upon the supreme bench, and that for one, I was willing to forego the principle of electing them by the State at large, provided this object could be effected. But as I have very little, perhaps I may say no hope of seeing this system adopted, owing to the causes which I have already intimated, I will ask the attention of the Convention to that part of the report of the committee on courts of justice. I much prefer that the Judges of the Supreme Court should be elected by the voters of the whole State, as has been reported by the minority of the committee, and as it was proposed to amend it by the Chairman of the judiciary committee (Mr. Pettit). The judges of the Supreme Court as at present organized, as has been well remarked by that gentleman, are now State officers, being nominated by the Governor who is elected by the whole State. I have therefore thought that sound policy as well as true principle required that they should continue State officers, and not become mere local or district officers as they would be if they were elected by districts. I think that as these officers were to serve the people of the whole State, so the electors of the whole State should have a voice in choosing them. I cannot, sir, but think that in the court of last resort, the majesty—if I may be permitted so to call it—of the whole people of Indiana should be represented; in other words that the entire State should be represented and not mere districts and localities, as proposed by the majority of the committee. I think if they were elected by districts there would be too much reason to fear that the judges of this court would be influenced by mere local feelings and prejudices and that they will not consider themselves as they should always do, as acting for the whole State.

Sir, if the Judges of our Supreme Court had the making of the laws of the State, then there would be some reason for electing them by districts. I perhaps would be bound to support it; for in providing for the organization of the Legislature, it is well known that I went for the single district system, and expressed a desire to bring the representative as directly home to the voters as possible. But, sir, the Judges of our Courts are not called upon to make, but to expound the laws; and while I can see great propriety in the principle of representation in mak-

ing a rule of action to govern society, I can see no possible necessity of the principle in declaring what the rule is. I am, and expect I shall ever continue to be, opposed to what is termed judicial legislation; and although it has been boastingly said, by one of England's greatest judges, that he as a judge in his day, had made more law than "King, Lords, and Commons," yet I hope, that if not immediately, the time will come, when we shall have a code that will entirely dispense with the necessity of judicial legislation. Sir, I believe further, that the election of the Judges by districts will not give them that respect in the public mind, which they would have if elected by the whole State.

Sir, I fear that the election as is proposed in the majority report will have a tendency to sink them in public estimation; but on the contrary, if they are elected by the whole State it is probable that none but those whose reputation is as wide as the limits of the State itself will ever be put in nomination, and the consequence will be that their decision will receive that profound respect which it is necessary they should receive.

Sir, there is another amendment which I desire to see introduced in case the Convention should determine that the judges of the Supreme Court should be elected by the whole State, and I have accordingly prepared an amendment which I intend to offer at the proper time, which will require the Legislature so to class the judges of the Supreme Court that not more than one of them shall go out of office in the same year. Sir, the Legislature could so regulate this matter that not more than one should be elected at the same general election, in case we adopt the system of annual elections; or, on the contrary, should we adopt biennial elections, then not more than two should be elected at the same election, and it could be so regulated that not more than one of those elected should take his seat in the same year. Now, sir, this regulation, in my opinion, will tend much to prevent those sudden revolutions in the bench of our highest judicial tribunal, and which it seems to me it will readily be admitted, ought not to occur. It will be recollected that some thirty or more years since, in the State of Ohio, the General Assembly of that State passed a law which their Supreme Court felt bound to decide was unconstitutional. That decision created a most tremendous excitement. The Legislature was elected the next year in the midst of that excitement, and an impeachment was gotten up against the bench, and had their terms of office all expired at the same time, it is well known that not one of those judges could have been elected by the General Assembly, in whom the authority was then vested to elect. Now, sir, what was the final result? In the course of another year the public mind became more calm; reason resumed its sway;

and one of them, the ancestor of my friend from Huntington, (Mr. Murray,) was elected governor of the State, showing most conclusively that "on sober second thought, the people are always right."

Sir, I do trust that never in Indiana shall we witness the whole supreme bench thrown out of office by a momentary excitement of this kind, and to avoid this I trust we shall so regulate this matter that they may go out by rotation.

Again, sir, I trust a clause will be inserted in the Constitution that the judges of the Supreme and Circuit Courts shall not during the time for which they were elected, be eligible to any other than a judicial office; and in my opinion, sir, it should go further, and declare, as in the new Constitution of New York, that all votes cast for either of them for any other than an office of that kind shall be void. Unless we go thus far, it will do no good whatever, as the judge may resign before the election comes on. Sir, it should also extend to officers of the United States as well as to State officers; and unless this is done, your Circuit Judges will be eligible to a seat in Congress.

I would be pleased, sir, also, to see a provision requiring the Judges of the Supreme Court to hold a term of that Court once in every year in each Circuit. There are now thirteen circuits, and this could be easily done. Some point might be designated by the Legislature where it would be convenient for the members of the bar to convene in the circuit, and the court should be compelled to hear all causes arising in that circuit.

But, sir, if this is thought to be too laborious, then, sir, let us require them to hold at least one term of the court in each judicial district. Then, sir, if we have five judges of the Supreme Court, as seems to be contemplated by the report of the committee, there will be five districts, and, of course, five terms of the court in each year; and if there should be only three judges, then three terms of the court. The judges of the Supreme Court now only hold two terms in each year; and I am satisfied that this is not a sufficient number of terms to insure the prompt dispatch of the business which may come before it. In the State of Ohio the Supreme Court holds one term each year, in every county in the State; and, I believe that in that State there are some seventy counties. And, sir, I would prefer this plan, if it could be done; but the number of counties is so great in this State that it would be utterly impossible for them to perform the labor; but, sir, they can hold at least one term in each judicial circuit, and they should be required to do so. Sir, in my opinion, there never was a wiser provision than that which requires that all the judicial business of a people, as far as it is possible to do so, should be transacted in their midst. Let, then, the cases be annually decided where they arise in

the districts; and I believe that such an arrangement would not only be profitable to the court, but advantageous to the bar, and would tend much to command respect from the people.

A few words now, sir, with regard to the probate business, then I am done with this subject. I think I see a disposition on the part of some of the members of this Convention, to avoid the responsibility of abolishing the present probate system, and of devolving the duty upon the Legislature of either continuing it or of establishing some other system in its place. Now, sir, I regret to see this. I think we should not, under a clause empowering the Legislature, to create inferior courts, shirk this question. No, sir, let us face it, and either throw the mere ministerial duties of the probate office into the clerk's hands, and vest the most important business, such as orders for the sale of infants' property, &c., &c., in the circuit judge, or else let us create, as has been proposed by the gentleman from Floyd, (Mr. Thornton,) a county judge, and devolve the probate duties upon him. Sir, we can do one of two things—either we can make the clerk do all the ministerial duties—such as are done by the register of the orphans' court in Pennsylvania, (in a manner which has been described to me, for I will readily admit that I am not particularly familiar with the probate business of that State,) or the surrogate in New York, and require the judge of the circuit to attend only to the most important matters; or we can create a county court, and vest the probate jurisdiction in that officer. In the State of New York, the county judge is elected for four years, who holds the county court and disposes of appeals, certioraries, from justices of the peace, tries all offenses, except where the punishment is either death or confinement in the State Prison, and disposes of much minor business that would otherwise occupy the attention of the circuit court. The clerk of the county is clerk of this court, but the judge also does the probate business, and in doing it he keeps his own record and receives the fees for it. Sir, if we were to adopt this system, we could require the probate judge to keep his office open every day for the transaction of probate business. He could hold a court on the first Monday in each month, to hear motions and grant injunctions, to prepare business for the terms of the court, and once in four months in the smaller, and as often as every second month in the larger, counties, he could hold a regular term of the county court for the dispatch of business. Sir, were we to adopt this system, it would relieve the circuit court of much small business, especially of petit criminal offenses, that now delay its action in more important matters, at the great cost of persons having business to transact in that court. If you create this court and throw all the unimportant business into it, then you can safely reduce the present number of circuits to ten. But, sir, I hope you

will not establish a county court unless at the same time you make some ample provision calculated to secure the services of a judge of sufficient competency and integrity to do the duties of the office well. In New York, in addition to the fees paid for doing the probate business, the county boards are authorized to pay the county judge, by the year, a certain sum out of the county treasury, for holding the county court, and, sir, the effect has been to bring upon the bench of the county courts, some of the ablest judges in that State. And, sir, in a great number of the counties where the county boards have voted a fair salary, they have obtained by this means, men of ability; and the bar and the people are constantly disposed to throw all their business into the county court. All admit that the system has worked well there, and I see no reason why it should not work well here also.

Sir, I see by the report of the Auditor of State, lying upon our tables, that the amount paid out of our State treasury to the judges of the Supreme, circuit, and probate courts, amounts to about twenty thousand dollars per annum. If we add to this the amount paid out of the county treasuries to the associate judges, and in some of the counties the additional sum also paid to the probate judges, including what is paid in several of the circuits out of the county treasuries to the president judges, for holding adjourned and special terms of their courts, together with the pay of the judges of the "common pleas" in Tippecanoe and Marion counties, the whole amount of the present cost of our judiciary system, will be a little over thirty thousand dollars. Now, sir, if we provide for five judges of the Supreme Court, and fix the salaries of each at \$1500, this will take \$7,500, and will leave \$22,500, which would employ twenty-two circuit judges at \$1000 each, and would thus be a saving to the State of \$500. Should we fix upon the number of twenty-two judges, the circuit of each judge would consist of from three to five counties, depending upon their size, and the amount of business in each. Then, sir, by devolving upon the clerks all the duties performed by the surrogate in N. Y., the circuit judge could easily perform his duties, and hold in each of the small counties in his circuit three, and in the larger counties four, terms in each year, if the business required it. But, sir, whatever system we may adopt, I sincerely trust that the court or officer which is to have charge of the probate business will be required by law to keep his court open daily for the transaction of this kind of business.

In conclusion, I must again, on behalf of those I represent here, enter my protest against the further continuance of the present probate system, and I hope the Convention has the courage to meet the question fairly, and decide what system shall in future take its place. And, sir, more than all do I trust that we shall organize

a judicial system that will secure to the people of the State the prompt and certain administration of justice—one that will not be subject to sudden changeability, but such an one as will give permanency and stability to our laws, by keeping up a uniformity in the decisions of our highest judiciary tribunal. Sir, I have already alluded to several things which I deem essentially necessary to secure these results, and I trust that they may receive the approval of this Convention.

FRIDAY, JAN. 24th, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. ———.

The journal of yesterday was read and approved.

Mr. PEPPER of Crawford, from the select committee on the subject of aliens holding and transmitting property, reported certain sections on that subject.

The sections were read a first time, and passed to a second reading to-morrow.

Mr. OWEN. In pursuance of notice heretofore given, I offer the following resolution to amend the rules:

Resolved, That the rules be so altered that it shall be in order, immediately after an article shall have been disposed of, to introduce an additional section.

Mr. CLARK of Tippecanoe. I have but a single objection to make to this proposed amendment of the rules, and that is, that, after we get through with an article, there will be no end to amendments that will be offered. I prefer the rule as it is.

Mr. OWEN. In reply to the gentleman from Tippecanoe, I have this to say: that, if that be the objection, it is no objection at all. For, whenever there is an article that contains more than one section under consideration, there is no difficulty, at present, about offering as many amendments, in the shape of additional sections, as you please. The object of this amendment is, that, when there is an article which has but one section, the same opportunity to offer amendments shall be afforded. If any gentleman can tell me why there should not be, I will yield the point.

Mr. CLARK of Tippecanoe. I understand that, under the present rule, it is in order to offer a new section when the article is up for consideration. I can see no necessity for the amendment.

The question was taken on the adoption of the proposed amendment, and it was, upon a division—ayes 55, noes 32—decided in the affirmative.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day,

The first thing in order being the section which provides for the appointment of three commissioners to revise and amend the rules of practice of the courts, and to prepare a code of laws, &c., on its third reading.

Mr. HOVEY moved to re-commit the section with instructions to substitute the following:

"The General Assembly, at its first session after the adoption of this Constitution, shall revise and simplify the rules of practice and pleadings in the courts of this State, or shall appoint commissioners for that purpose."

Mr. H. said, I shall not detain the Convention with any remarks. I considered myself something of a reformer before I came here, but I find myself entirely distanced in regard to reforms. If gentlemen will give me the yeas and nays upon this proposition, I shall be satisfied.

I will merely say, that, by the section as it now stands, the report of the commissioners will be the law of the land, without any further action on the part of the General Assembly. There is no revising power; and further than this, you are proposing to abolish, by Constitutional provision, the distinction between law and equity. I am willing that the experiment shall be tried as a law, but not as a Constitutional experiment. And I am not willing to fasten upon the State three commissioners for all time to come.

I hope the yeas and nays will be ordered.

Mr. READ of Clark moved to amend the instructions, by striking out "three commissioners," and inserting, "a commissioner."

I recollect, said Mr. C., when our revised code was formed, we had three commissioners, and about half a dozen clerks employed. That code cost the State about twenty thousand dollars, when the whole work might have been done by one commissioner, with a sufficient number of clerks. I am in favor of the proposition that is contained in the section as reported by the committee; I am in favor of abolishing the distinction between law and equity practice; but I am fearful of the great expense of these three commissioners. I think, sir, that one commissioner, with a sufficient number of clerks, will be all that is requisite in order to effect the object.

Mr. ROBINSON demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being on the amendment to the instructions, it was, upon a division—yeas 66, noes not counted—decided in the affirmative.

The question then being on the motion to re-commit with instructions,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 65, nays 63—as follows:

YEAS.—Messrs. Badger, Barbour, Beard, Bidle, Blythe, Bowers, Brookbank, Butler, Chen-

owith, Clark of Tippecanoe, Clements, Cole, Colfax, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Gordon, Graham of Miami, Harbolt, Helm, Helmer, Hendricks, Holman, Hovey, Howe, Huff, Kelo, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Mathis, Miller of Fulton, Milligan, Moore, Morgan, Murray, Nave, Newman, Niles, Nofsinger, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Robinson, Sims, Smiley, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Todd, Watts, Wolfe, Yocum, Zenor, and Mr. President—65.

NAYS.—Messrs. Alexander, Allen, Anthony, Bascom, Beeson, Borden, Bourne, Bright, Bryant, Carter, Chapman, Clark of Hamilton, Coats, Cookerly, Crawford, Crumbacker, Dick, Dunn of Perry, Duzan, Edmonston, Fisher, Foley, Garvin, Gibson, Gootee, Graham of Warrick, Haddon, Hall, Hamilton, Hardin, Hawkins, Hitt, Hogin, Johnson of Dearborn, Johnson of Orange, Jones, Logan, Maguire, March, May, McClelland, McFarland, McLean, Miller of Gibson, Milroy, Mooney, Morrison of Washington, Mowrer, Owen, Pettit, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Shoup, Snook, Smith of Scott, Thornton, Trimble, Wheeler, Wiley, and Work—63.

So the section was re-committed.

The section which provides that the Legislature shall not pass local laws, in several cases enumerated, such as regulating the duties of justices of the peace, regulating the practice of law, providing for granting divorces, in relation to juries, roads, &c., was read a third time.

Mr. BLYTHE moved to re-commit the section, with instructions to amend by inserting the following:

"The General Assembly shall, by special enactment, fix the route and termini of all railroads."

It seems to me, said Mr. B., that some provision of this kind ought to be made for a double purpose. In the first place, in the construction of railroads throughout the State, that injustice may be prevented; and next, that we may save ourselves from being placed under the absolute control of our neighbors. The General Assembly, it seems to me, although they may provide general laws conferring powers on corporations, should reserve to itself the right to fix the route and termini of railroads.

Mr. SHOUP. I move to amend the instructions by inserting the word "private."

Mr. NILES. It is with some reluctance, and after a good deal of reflection, that I have made up my mind to vote for an amendment similar to that just offered by the gentleman from Vanderburg. I think I may safely say that I am as decidedly as any gentleman on this floor, in favor of free competition, in every lawful pursuit, whenever it may be permitted without violence to public or private rights.

A railroad company possesses high privileges, in being authorized, at their own pleasure, even on making just pecuniary compensation, paid in advance or otherwise, to appropriate the private property of any individual. A man may be strongly attached to a particular spot of ground as his home. It may possess, to his mind, a peculiar value, which no jury would see or appreciate like himself. A railroad company must be authorized, for the public good, and whenever the public good imperatively requires it, to destroy the peculiar value of such a spot, by running a road through it in any direction—even if it be through the man's dwelling house. It is true that we have a general plank road law at present, under which a company may condemn and pass through any man's land at pleasure, and no great evils are experienced under it. But a plank road company, which is commonly a neighborhood affair, with a small amount of capital, could seldom have a sufficient motive to run through a valuable farm or dwelling-house, so as to destroy it; and a plank road is generally a benefit, rather than an injury to the land through which it passes. A railroad company, on the contrary, is often a powerful corporation, wielding a large capital, and to which the assessed cash value of the right of way in any direction, through any man's land, is a small matter. A railroad running through a farm, would destroy its value to many owners. Unlike a plank road, it can be used by no private individual. The company's steam horses alone can travel upon it. Now, sir, one strong reason, with me, for preferring to reserve to the General Assembly the power to fix the route and termini of railroads, is, that I am hardly willing to intrust, indiscriminately, to any and all associations, whether of our own citizens or of foreigners, such extraordinary powers. The power to take private property for public use, is one of the highest attributes of State sovereignty. Whenever the public good requires its exercise, whether by the State directly, or by an association such as a railroad company, organized under its laws, I would give the right on just and reasonable terms, and with no feelings of hostility to corporations. But, is it anything more than a reasonable safe-guard against the abuse of such a power by a railroad association, to require that they obtain the special assent of the Legislature before building their road? All roads would still be built under the same general law, and would have precisely equal rights and privileges. The Legislature would simply retain the power to say on what routes and between what points such roads were required for the public good. What can the most devoted friend of equal rights find to condemn in the reservation of such a power to the people's representatives? We shall do well to see to it, that in our heated zeal for the largest liberty, we do not needlessly permit the strong to trample upon the weak.

But again, sir: there is another strong reason for reserving this power to the Legislature, in the greater security which it will give to capital invested in public works. The value of a railroad as an investment may be destroyed by the building of another parallel road, and threats to build the second may effectually prevent the building of the first. Even after men have invested their capital in one road, another company may be induced, in a time of wild speculation, to destroy its value by building a second, which the necessities of the country do not require. The mere fact that such a power could be used at any time, would, I apprehend, make railroad investments less desirable, and, consequently, important works would be less likely to be built. There would be no power left with the government to control and regulate this great public interest. Why may not the State retain the power to exercise this one act of sovereignty? The General Assembly would hardly refuse the right to build a railroad whenever the public interest would be essentially promoted by it. I have finally concluded to vote for the restriction, with the belief that it will aid rather than prevent the building of important roads. The public faith would, in a manner, be pledged that investments made in railroads should not be sacrificed to mere caprice, and that the interests of railroad companies, no less than of the public, should receive reasonable protection. By throwing the door wide open, and leaving this whole matter to individuals, we go farther than any other State has gone, and make an experiment which I fear will prove injurious.

Mr. PETTIT. I am opposed to this amendment upon the broadest principles of propriety and of expediency, in regard to business of every kind. We have adopted a section that substantially secures the right of all parties through whose lands these roads may be constructed. It will be recollected that the Convention labored over that section long, and discussed it thoroughly. The section reads as follows:

"No man's property shall be taken by law without just compensation, nor, except in case of the State, without such compensation first assessed and tendered to the owner."

Sir, with this provision in our Constitution, there will be no danger of the occurrence of the difficulty which the gentleman from LaPorte anticipated of doing injury to the property of the citizen. Before any such thing can be done, those who undertake to do it must have the damages assessed and tendered to the injured party, and men will not be foolish enough to put their hands in their pockets and pay for supposed damages. There is no probability of their doing so. I have no fear that the competition permitted by this provision will operate injuriously. The reverse of the fear of competition is what I desire to promote. I ask the

gentleman, on what principle can you say that you will grant to one set of men and not to another the right to construct a railroad or plank road? Upon what principle practically does it differ from allowing one man to set up a store or hat manufactory within ten feet of another! Just as soon, sir, would I say that men would not invest their money in merchandise for fear of competition, unless they had exclusive privileges granted to them by legislative or Constitutional authority, as to say that men will not construct railroads for fear of competition. Sir, no business ought to be carried on in any State which needs to be exclusive—which needs to have extraordinary privileges—which needs the fostering care of the government ["consent."] I go for making every kind of business open and available, and free to all. Is there any more danger of competition in the constructing of roads than there is in merchandise or farming, or any other thing? Sir, you need grant no exclusive privileges. You need no legislative enactment to say where the terminus of a road shall be, or where its commencement shall be. Make general laws and say that all those who desire, complying with the Constitution and laws, may construct roads, and that the people all over the State shall enjoy equal privileges in this respect.

Mr. DUNN of Jefferson. The provision under consideration may cut as a two edged sword, and will, in all probability, have a very different effect from that contemplated by its advocates. It is supposed that if all railroad companies are required to be organized under a general law upon that subject, there will be the largest liberty allowed for such enterprises. But gentlemen should remember that railroads are now in progress of construction in almost every part of the State. Those interested in these roads will watch with feeling every movement calculated to affect the trade of their respective roads. They will not be willing that liberty should be given for the construction of rival roads, and if there is no other way of avoiding this danger, they will endeavor to load down a general railroad law with such restrictions as may effectually prevent any persons from engaging in the construction of railroads under the general law. Their common danger will cause them to unite for their mutual protection; and, permit me to say, that the present railroad influence in this State is strong enough to control the Legislature on this subject. If the amendment proposed by the gentleman from Vanderburgh (Mr. Blythe) should prevail, it would prevent the companies now organized from combining to prevent further improvements of this kind.

But, if I am mistaken in supposing that the effect of the provision in the section under consideration will be to embarrass future railroad enterprises, there are still weighty reasons why the amendment should be adopted. Railroads

are destined to be the great thoroughfares of transit and trade, almost superseding water transportation. They will make and unmake cities. Should we not retain control of the routes and termini of these roads so as to build up cities in our own State? By so doing we would greatly increase the wealth of the State, and to a corresponding degree reduce the burdens of taxation. A sovereign State, it appears to me, ought to retain control of these great lines of commerce. Shall we vote to foreign capitalists the freedom of the State, to construct railroads where they please, and thus divert from us our trade to the benefit of cities in other States? But, it is said, the great State of New York has a general railroad law. That is true, but she has a great commercial city that is not only the natural center of the trade of New York, but of nearly the whole Union. We have no such center of trade in this State, and from our geographical position never can have, but we have many cities that may grow into considerable commercial importance under judicious legislation. If we can control the routes of railroads so as to increase the growth and prosperity of our own cities, without doing injustice to any other interests, it seems to me it is our duty to do so, and that we ought not, recklessly or inconsiderately to deprive ourselves of the power of exercising such a control.

Mr. EDMONSTON demanded the previous question.

The demand for the previous question was seconded by the Convention, and the main question ordered to be now put.

The question being first on the instructions moved by the gentleman from Vanderburgh,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 115, nays 14—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beard, Beeson, Berry, Biddle, Bourne, Bright, Brookbank, Bryant, Butler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Hawkins, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson of O., Jones, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristie, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott,

Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimby, Wallace, Wheeler, Wiley, Work, Yocum, Zenor, and Mr. President.—115.

NAYS.—Messrs. Beach, Blythe, Borden, Bowers, Dunn of Jefferson, Hardin, Johnson of D., Kelso, Kilgore, Mather, Moore, Pepper of Ohio, Walpole, Watts, and Wolfe.—15.

So the section was re-committed.

NEGROES.

The section which provides that no negro or mulatto shall come into or settle in this State after the adoption of this Constitution, was read a third time.

The question being, Shall it pass?

Mr. GORDON. Having voted on yesterday for the engrossment of this section, I wish to state the reason why I shall vote against its passage to-day.

The idea of a separation of the races has ever been a favorite one with me; and we now have within our power the means of accomplishing this desirable object, so far as our own State is concerned. If we prohibit the further immigration and settlement of negroes in our State, and at the same time make provision for the gradual colonization of such negroes and their descendants as may be in our State at the time of the adoption of this Constitution, the time will come when there will not be a negro within the limits of our State. It was to aid in producing this result, and to remove from our midst a perpetual libel on that clause of our Constitution which says, "all men are created equal," that I voted for the engrossment of the section. I believe that, to avoid subjecting ourselves to the charge of inconsistency, we must either place the negroes on a political equality with our citizens, or remove them from our midst. As it is impossible, in the present state of public feeling, to adopt the first of these propositions, it only remains for us to adopt the latter. But there appears to be no disposition in the Convention to adopt the third section of this article, providing for an appropriation for the colonization of the blacks now in the State. If, then, the twenty thousand negroes now in the State, and their yearly increase, are to remain here, it will be utterly impossible to prevent the emigration of their brethren from the neighboring States into ours, and the passage of this section will be unavailable.

The delegates from the southern counties who have been most anxious for the adoption of a clause prohibiting the further immigration of negroes into the State, appear to be the least favorable to the colonization section. They say their constituents will vote against the adoption of this article if that section is passed, on account of the expense of colonizing. If the people who are most annoyed by this class of persons are too parsimonious to

contribute their mite towards ridding the State entirely of them, I do not care how soon the negroes may flock among them as thick as the frogs in the habitations of the Egyptians. Exclusion and colonization are inseparable; and I will not vote for the one without a fair prospect that the other will also be adopted.

Mr. WALPOLE. I am in favor of the proposition as originally introduced; but, in the shape in which it has been engrossed, I cannot vote for its passage. When the question of public indebtedness was proposed to be separately submitted to the people for their approval or rejection, a large majority of the Convention voted against it. When the question of banking and currency was proposed to be submitted to the people of the State, a large majority of the Convention voted against it. But when we come to the question of the admission of negroes into this State from abroad, it is made a separate and distinct question to be submitted to the people of the State. I am unwilling that this question should be made a question for discussion at our elections. I want no question separately submitted to the people. I want the Constitution that we make to be either adopted as a whole, or rejected as a whole.

I want no two Constitutions. I do not want to say this shall be part of the Constitution, if accepted by the people, and this shall not be a part of the Constitution, if not accepted. I shall, for this reason, vote against the adoption of the section as reported.

Mr. OWEN. The gentleman from Howard has said that, although he was in favor of the section yesterday, he could not vote for it to-day, because many of the southern members, who were deeply interested in prohibiting negroes from coming into the State, are nevertheless unwilling to vote an appropriation for purposes of colonization. For one, I feel that that does not touch me. There is no man on this floor who is willing to go further to promote colonization than I am. Nor do I consider that we have had a fair and direct vote on the subject of colonization at all.

It will be remembered that my friend from Putnam yesterday moved the substitution of one section for another. His section was good enough, as far as it went. It provided that fines and forfeitures for the violation of any of the sections of this article should go into the colonization fund. So they should. But when he made it a substitute for the original section, he deprived us of the opportunity of having a direct vote. I hope we shall have that vote to-day. When the section which was introduced by the gentleman from Putnam comes up on its final passage, I shall propose to commit with instructions, which I read now in advance, because this may possibly have influence in deciding the votes of gentlemen—perhaps the vote of the gentleman from Howard—in regard

to this section. My proposition is to amend by adding the following:

"And that the net proceeds, after provision for draining of the swamp lands belonging to the State of Indiana, or so much of the same as may be necessary, shall constitute a fund to be applied to the colonization of such negroes, now in this State, as are desirous of leaving it."

I shall detain the Convention but a very few moments in relation to these swamp lands. The Governor informed me to-day that he had received, from thirty counties of the State, returns of the number of acres of swamp lands in those counties. They are counties containing more than an average quantity of that description of lands. The number of acres of swamp lands, in these thirty counties alone, is upwards of six hundred and forty thousand. It is not possible accurately to state the total throughout the State; but, from information received by the Governor, he believes that the whole number of acres returned as swamp lands will not fall short of a million and a quarter. The Governor estimates the probable value of these lands, after providing for draining, at from forty to fifty cents an acre, making a fund of something like half a million of dollars. Now, half a million of dollars will colonize all the negroes in the State, estimating the cost at thirty dollars a head. They may thus be colonized, therefore, (if the Governor do not over estimate,) without imposing a cent of tax upon the people of the State for that purpose. It seems to me peculiarly appropriate that they should be devoted to that purpose. They may be called a God-send; they came to us unexpectedly. No man a year ago expected any such thing. I hope, then, that this fund, or as much thereof as may be necessary, will be set apart as a fund for the purpose of colonization. I hope that, when the section comes up, it will be committed with instructions such as I have read, and I trust the gentleman from Howard and others will give their votes accordingly.

Mr. MILLER of Fulton. I had intended to vote for the section as it now stands, but if this be the game you are going to play, I shall be compelled to vote against the entire section.

Mr. WALPOLE moved to re-commit the section with instructions to strike out that part which proposes to submit the question as a separate proposition to the people.

The PRESIDENT. The Chair would remark that the section is not now before the Convention.

Mr. MOORE demanded the previous question.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being, Shall the section pass?

The yeas and nays were taken in accordance with the rule, and resulted thus—yeas 93, nays 40—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Berry, Blythe, Bourne, Bowers, Bracken, Bright, Butler, Chapman, Chenowith, Clements, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Duzan, Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warlick, Haddon, Hall, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kelso, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, Mathis, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—93.

NAYS.—Messrs. Anthony, Bascom, Beach, Beard, Beeson, Biddle, Borden, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Foley, Garvin, Gordon, Hamilton, Hawkins, Hugin, Howe, Kilgore, Kinley, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Murray, Newman, Niles, Smith of Ripley, Todd, Trimble, and Work—40.

So the section passed, and was referred to the committee on revision.

The second section of the same article which provides that all contracts made with negroes coming into the State shall be void, and that all those who encourage negroes to come into the State shall be fined not less than ten dollars nor more than a hundred, &c., was read a third time.

The question being, Shall it pass?

Mr. MILLIGAN moved to re-commit the section, with instructions to add the following:

"This provision shall not apply to citizens of other States coming into this State, &c."

Mr. MILROY demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on re-committing the section, with instructions,

The yeas and nays were demanded and ordered, and, being taken, the Secretary reported the following result—yeas 43, nays 91:

YEAS.—Messrs. Anthony, Bascom, Beach, Beard, Beeson, Biddle, Borden, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of

Madison, Dunn of Jefferson, Duzan, Foley, Garvin, Hamilton, Hawkins, Howe, Kendall of White, Kilgore, Kinley, March, Mather, May, McClelland, McFarland, Milligan, Morgan, Mowrer, Murray, Newman, Niles, Robinson, Smith of Ripley, Todd, Trimble, Walpole, and Work—43.

YAYS.—Messrs. Alexander, Allen, Badger, Barbour, Berry, Blythe, Bourne, Bowers, Bright, Butler, Chapman, Chenowith, Clements, Coats, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson, of O., Jones, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, Mathis, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Wallace, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—91.

So the section was not re-committed.

The question then being, Shall the section pass?

The yeas and nays were taken in accordance with the rule, and resulted thus—yeas 78, nays 39—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Berry, Blythe, Bourne, Bowers, Bright, Butler, Chapman, Chenowith, Clements, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foster, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Hardin, Helmer, Hovey, Huff, Johnson of O., Jones, Kelso, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, Mathis, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Wallace, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—78.

NAYS.—Messrs. Anthony, Bascom, Beach, Beard, Beeson, Biddle, Borden, Brookbank, Bryant, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Duzan, Foley, Frisbie, Garvin, Gordon, Hamilton, Hawkins, Helm, Hendricks, Hitt, Hogin, Holman, Howe, Johnson of D., Kendall of White, Kilgore, Kinley, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Milli-

gan, Morgan, Mowrer, Murray, Newman, Niles, Rariden, Ritchey, Robinson, Shoup, Sims, Smith of Ripley, Thomas, Todd, Trimble, Walpole, Watts, and Work—59.

So the section passed, and was referred to the committee on revision.

The third section of the same article, which provides that all fines collected for the violation of any section of this article, or of any law hereafter passed by the Legislature for the purpose of carrying into effect the provisions of this article, shall be set apart for the colonization of the negroes now in the State, &c., was read a third time.

Mr. OWEN moved to re-commit the section, with instructions to add the following:

“And that the net proceeds, after provision be made for the drainage of the swamp lands belonging to the State of Indiana, or so much of them as may be necessary, shall constitute a fund to be applied to the colonization of such negroes as desire to leave the State, and the remainder, if any, of such proceeds, shall be added to the common school fund of the State.”

Mr. GARVIN moved to amend the instructions so as to provide that there shall be an annual appropriation made by law for the colonization of such negroes and their descendants as may be in the State at the time of the adoption of this Constitution.

Mr. WOLFE. I shall be under the necessity of opposing the proposition of the gentleman from Posey. It seems to me that it would be very improper to take these swamp lands and appropriate them to the purpose of colonization by a permanent constitutional provision, because we do not know whether these negroes will be willing to leave the State or not. To tie up the fund derivable from these lands for a purpose which may not require its application, is, in my judgment, entirely wrong. It may be that there may be no necessity for making any appropriation for such purpose. I think that we ought to apply the proceeds of these lands to a very different purpose, and one equally important. I think the best thing we can do with them, is to apply them to the purpose of education. I would have them applied to the support of common schools. If there has to be an appropriation made for the purposes of colonization, let us make it directly out of the treasury. There may be a larger sum required in some years than in others. We should make the appropriation to suit the emergency of the case. I am for leaving it to the Legislature to make the necessary appropriations, as they may be needed.

Mr. ROBINSON demanded the previous question.

The demand for the previous question was, upon a division, yeas 66, noes 27, seconded, and the main question ordered to be now put.

The question being first on the amendment to the instructions proposed by the gentleman from Kosciusko,

Mr OWEN demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 61, nays 70—as follows:

YEAS.—Messrs. Allen, Beach, Beard, Bidle, Bourne, Bowers, Brookbank, Bryant, Butler, Chenowith, Coats, Cole, Davis of Parke, Davis of Vermillion, Dick, Farrow, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Hamilton, Hardin, Hitt, Holman, Johnson of D., Jones, Kent, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Logan, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Morgan, Morrison of Washington, Mowrer, Murray, Newman, Nofsinger, Owen, Pettit, Rariden, Read of Clerk, Read of Monroe, Ristine, Ritchey, Shannon, Snook, Smith of Scott, Spann, Thomas, Wheeler, and Wolfe—61.

NAYS.—Messrs. Alexander, Anthony, Badger, Barbour, Bascom, Beeson, Berry, Blythe, Borden, Bright, Chapman, Clark of Hamilton, Clements, Colfax, Crawford, Davis of Madison, Dobson, Dunn of Perry, Duzan, Edmonston, Fisher, Graham of Miami, Graham of Warrick, Haddon, Hall, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hogin, Hovey, Howe, Huff, Johnson of O., Kelso, Lockhart, March, Mather, Mathis, McClelland, Miller of Gibson, Milligan, Mooney, Moore, Morrison of Marion, Nave, Niles, Pepper of Crawford, Prather, Robinson, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Steele, Stevenson, Tague, Tannehill, Thornton, Todd, Wallace, Walpole, Watts, Wiley, Work, Yocum, Zenor, and Mr. President—70.

So the amendment was not adopted.

The question recurred upon the motion to re-commit with instructions.

Mr. OWEN. I ask for the yeas and nays upon this question:

Mr. KELSO. I should like to have the instructions read again.

The PRESIDENT. It is not in order for the gentleman to ask that the instructions be read again. They have been read once, already.

Mr. KELSO. Then I move that they be read again.

The question being upon the motion of the gentleman from Switzerland,

It was decided in the affirmative.

The instructions were then read at the Secretary's desk.

The yeas and nays being ordered upon the question of re-committing with instructions, they were taken, and resulted—yeas 41, nays 93 :

YEAS.—Messrs. Alexander, Barbour, Berry, Bourne, Bowers, Clements, Davis of Parke, Davis of Vermillion, Dick, Duzan, Farrow, Frisbie, Garvin, Gibson, Gootee, Hardin, Hen-

dricks, Hitt, Holman, Johnson of D., Jones, Kent, Logan, Maguire, McLean, Milroy, Morrison of Washington, Mowrer, Nave, Newman, Owen, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Smiley, Spann, and Thomas—41.

NAYS.—Messrs. Allen, Anthony, Badger, Bascom, Beach, Beard, Beeson, Biddle, Blythe, Borden, Bright, Brookbank, Bryant, Butler, Chapman, Chenowith, Clark of Hamilton, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Dobson, Dunn of Perry, Edmonston, Fisher, Foley, Foster, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hogin, Hovey, Howe, Huff, Johnson of O., Kelso, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Lockhart, March, Mather, Mathis, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Marion, Niles, Nofsinger, Pepper of Crawford, Prather, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thornton, Todd, Trimby, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Yocum, Zenor, and Mr. President—93.

So the section was not re-committed with instructions.

The PRESIDENT. The question now is, Shall the section pass?

The yeas and nays being taken upon the passage of the section, resulted—yeas 106, nays 33 :

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Bascom, Berry, Biddle, Blythe, Bourne, Bowers, Bright, Butler, Chenowith, Clements, Coats, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, May, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Walpole, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—106.

NAYS.—Messrs. Anthony, Beach, Beard, Beeson, Borden, Brookbank, Bryant, Chapman, Clark of Hamilton, Cole, Crumbacker, Davis of Madison, Dick, Duzan, Garvin, Gordon, Hawkins, Hogin, Howe, Kendall of White, Kilgore,

March, McClelland, McLean, Milroy, Newman, Niles, Robinson, Smith of Ripley, Todd, Wallace, and Work—33.

So the section was passed, and, under the rule, referred to the committee on revision, &c., &c.

On motion of Mr. PETTIT,
The Convention adjourned.

AFTERNOON SESSION.

The PRESIDENT. The Convention will now resume the consideration of the

ORDERS OF THE DAY.

Mr. BORDEN. I desire to make a report from the committee on the practice of law and law reform, if the Convention will suspend for a moment the order of business to permit me to do so.

The question being taken the order of business was suspended.

Mr. BORDEN. The committee to whom was referred the subject which was under discussion this morning have directed me to report the following section:

"At their first session after the adoption of this Constitution, the General Assembly shall revise and simplify the practice and proceedings, both civil and criminal, and appoint one commissioner to effect that object."

In reporting back the section as required by the committee, I desire to say that the amendment proposed by the gentleman from Posey, (Mr. Hovey,) which was adopted by the Convention in lieu of the original section, completely defeats the object which the friends of legal reform had in view in reporting it, and I cannot but think that some of those who voted in favor of the instructions to the committee did so under a misapprehension of the real effect of the proposition. The proposition offered by the gentleman from Posey was, I think, drawn by my friend from Lagrange, who, as I understand the matter, has always been a steady opponent of legal reform, and I give him full credit for the ingenuity with which he has effected his object.

Mr. WALPOLE. I rise to a point of order.

The PRESIDENT. What is the gentleman's point of order?

Mr. WALPOLE. The gentleman from Allen (Mr. Borden) promised the Convention the other day that if we would only listen to his speech on law reform, he would not again trouble the Convention with another speech. I ask now whether after such a pledge it is in order for the gentleman to inflict upon us another speech on the same subject. I think not; and if the Chair should unfortunately decide against me, I shall be under the necessity of appealing to the decision of the House. [Laughter.] I think when gentlemen give such solemn pledges they ought to keep them. [Renewed laughter.]

The PRESIDENT. The Chair will be under the necessity of overruling the point of order raised by the gentleman from Hancock. This is not exactly a violation of the rules of order, although it may be a violation of the gentleman's pledge. [Laughter.]

Mr. BORDEN. In reply to the gentleman from Hancock, (Mr. Walpole,) I have only to say that he is under a mistake as to what I said on the occasion to which he alludes. I said that I should not probably again throw myself on the indulgence of the Convention for the purpose of making a speech, and if he understood me otherwise he is mistaken. Of course I did not say that I should not submit such propositions as I pleased to the Convention and take an opportunity of explaining their import to the body. That is a right which I shall exercise until the close of the deliberations of the Convention. But, sir, I desire to allude to some objections that have been made to the original section itself.

An objection has been taken to that portion of the section which makes it mandatory on the Legislature to abolish the distinct forms of action, and which requires that hereafter justice shall be administered in a uniform mode of pleadings without reference to any distinction between law and equity. So far as I am concerned, I am willing that this part of it should be so amended that it should be optional with the Legislature to require the commissioners to abolish the distinction between law and equity, and I would insert the words that they should do it as far as the same could be found practicable and expedient.

And now, sir, in regard to that part of it which requires a revision of the statutes, by turning to it, it will be seen that the General Assembly may make it the duty of the commissioners to reduce to a systematic code the statute law. Here it is entirely optional with the Legislature, and if they do not see proper to require the commissioners to do it, it will not be done.

Now, sir, there is another objection raised, that these officers may be life officers. It will be recollected, however, that we have lately adopted a provision of the Constitution that no office can be created beyond four years. But, sir, by looking at the section, it will be seen that it says directly, that provision shall be made by law for filling the vacancies, regulating the tenure of office, and the compensation of said commissioners. Now, sir, it seems to me that this power of fixing the term of service of these commissioners had better be left with the Legislature. It may take one year or it may take two years to complete the work; but whatever term it may take should unquestionably be left with the Legislature to fix. The friends of reform, however, cannot yield so much of it as requires the commissioners absolutely to revise, reform, simplify, and abridge, the rules, practice, pleadings, forms, and pro-

ceedings in both civil and criminal cases, and of so much of it as provides for the abolition of the distinct forms of action at law. That, we insist, should be positive. The balance we are willing to leave entirely discretionary with the Legislature. If therefore gentlemen will meet us in a spirit of compromise, we will so amend the section and adopt it.

Mr. DOBSON said he must confess that he admired the manner in which gentlemen had caught him with a pin-hook in the morning. Now what was the state of the case? A reform was asked for in the practice of the law and in the forms of action and pleadings, and the proposition of the gentleman from Posey came in, and by way of getting rid of the commissioners, the proposition just dropped all that the friends of reform wanted to obtain. The proposition was to have a commissioner to draw up forms and to regulate practice. As he understood it, each judge could do this for himself. The great object the Convention had in view was to abolish the difference in forms of action and the distinction between law and equity, together with a modification of the rules of practice. That was what the original section provided for; but the amendment of the gentleman from Posey did no such thing. It dropped the whole of it. Now if the friends of reform desired a reform, they ought to reconsider that vote on commitment with instructions, and take the section as it is.

But the gentleman from Sullivan appeared to think that the commissioners were to be here forever. This would be the case as to those which the amendment provided for, but the Legislature could regulate everything in relation to the tenure of office. The amendment he regarded as being worth nothing, and he must say that he had been most completely misled as to its meaning.

Mr. TAGUE. Will it be in order again to move to refer the section with instructions?

The PRESIDENT. Yes, sir.

Mr. TAGUE. Then I move to re-commit it with the following instructions:

[The substance of the amendment was that the General Assembly, at its first session, after the adoption of the Constitution, should appoint three commissioners, whose duty it should be to revise, reform, and simplify the rules of practice, to abolish the distinction in forms of action, and between law and equity—that they should report their proceedings to the Legislature, and that their commission should expire at the time of the adjournment of the Legislature.]

Mr. HOVEY. I wish to say a few words in reference to this section now reported from the Convention: There is a charge made against the friends of the section, that we have attempted to impose upon this Convention in regard to this reform. I throw back that charge in the teeth of the gentleman who made it, and I tell him that he is decidedly mistaken.

Mr. DOBSON (interposing). I will just say that I heard some gentlemen laughing about it, and bragging that they had cheated us. It was very smartly done, no doubt. I give the gentleman full credit for it. He fairly pin-hooked me.

Mr. HOVEY (continuing). I understand the manœuvring of the gentleman from Owen, very well. He is an old parliamentarian, and very likely voted for the section with the majority, in order that he might move a re-consideration of the vote. Sir, he cannot fool me in this manner.

Now, what is the meaning of the section, as reported back from the Convention? It means all that every man desires who wishes to abolish the distinction between the different forms of action, and to simplify the principles of practice and pleading. The words used in the section, are as emphatic and broad as can be desired by any safe reformer.

Mr. GIBSON. In whose hand writing did the amendment come?

Mr. HOVEY. The hand writing makes no difference—I know where it came from and I know also the movements of its enemies well enough. There are not a few men in this Convention, who are very anxious for a provision for three commissioners.

Now, what does the section reported amount to? Simply that at the first session of the Legislature, after the adoption of this Constitution, the General Assembly shall revise and simplify the rules of practice and pleading, both civil and criminal, or appoint one commissioner to effect that object. Sir, if you simplify the rules and forms of pleading in our courts of justice, what more do the people want? I wish to see pleadings and practice so simplified that a man of ordinary common sense, may sit down and write a declaration, in ordinary cases, without the technical forms of law. I ask gentlemen to say whether the section will not accomplish that object?

Mr. ROBINSON (in his seat). Yes, if you could give the people at the same time the sense to do it.

Mr. HOVEY. Better say give the Convention sense enough to do it. I consider there is wisdom enough outside of these walls to appreciate such charges. I am in favor of wholesome and necessary reforms; but I will not go the mad length which is proposed by the enemies of this section, and when they insinuate that I am an enemy to reform, I will tell them in reply, that I can put my finger on three men in this Convention, who wish to be appointed the commissioners under the section originally reported. [Loud cries of "name them, name them;" and various names were mentioned by members, among which were "Borden," "Pettit," "Gibson," "Wolfe," and "Kent."]

Mr. KENT (interposing). Did the gentleman name me?

[Here there was considerable confusion in the Hall. After it had somewhat subsided.]

Mr. HOVEY (continuing). Now, look at the section as reported back by the committee, and then look at the original section which some gentlemen have wished to palm upon the country, and which amounts to the creating of two distinct law making powers.

Mr. BORDEN (interposing). Will the gentleman from Posey give way for a word of explanation? I do not suppose the gentlemen designs to say anything calculated to do me an injury. It is time, sir, that in some remarks I submitted a few days since, in favor of legal reform, and in replying to some remarks that had been made, that there were not men competent to this task, I did say that without going out of this body, men could be found with whom I would be willing to entrust the revision of our laws, contemplated by the proposition under consideration. But, sir, as I find that these remarks were misunderstood, I will here say that it was furtherest from my intention to allude to myself, as has been intimated. Sir, there are somethings that I think I know, and somethings which I will readily admit I do not know. [Laughter and "consent."] And among those that I do know, is that I am not possessed of the peculiar qualifications requisite for one of these commissioners. And, sir, I can truly say that I never dreamed of such a thing, nor did I suppose that any one else had.

Sir, if it would not be deemed indelicate for me to do so, let me say here that when I then made the observation, that there were men in this Hall qualified for the situation, I intended to say that if I had the selection, and they were to be taken from this Convention, I would, for my own part, put the intellectual powers of a Pettit, the philosophical Niles, and the industrious and astute Newman to the work. But, sir, they are not the only men either in this Hall or in the State, that are competent to the task. For my own part I can say that I neither desire nor expect it, and when any gentleman rises in his seat, and imputes to me such unworthy motives, I must say that it is altogether gratuitous. In the efforts which I have put forth in favor of law reform, I have been governed only by what I believed to be for the best interests of my constituents, and the people of the State generally, and I can assure gentlemen that they are mistaken in the person, if they suppose any abuse will deter me from the performance of what I deem my duty.

Mr. HOVEY (resuming). I ask from whence the insinuations first came? I moved to recommit the original section this morning with instructions, and the Convention sustained the motion. And now, sir, since that time a counter current has been put in motion, and I am accused of circumventing and deceiving the Convention. The aim of such charges can be easily seen through. They are made for the

purpose of arousing prejudice against the members of the legal profession in this Convention, who, it has been insinuated, work alone for their own interest.

And, now, let me say one word to those gentlemen who are not lawyers. A feeling seems to exist here that everything ought to be crushed which may happen to come from a member of the bar. They say "down with the lawyers," and "down with their schemes," and let the farming, and mercantile, and other portions of the Convention form the Constitution. I say, sir, that it is wrong to impugn the motives of any profession or calling. Do you suppose, sir, that the members of the bar are willing to sacrifice the best interests of the State for their own benefit? Have they not property—have they not families—have they not children, whose interests are to be guarded by this Constitution, as well as the interests of those who do not belong to the profession? [Applause and uproar.] Are not their lives and their liberties to be protected as well as the lives and the liberties of others? [Applause.]

Sir, I say that the lawyer who would thus recklessly sacrifice principle for his own temporary benefit, is a man who is base beyond description.

Now, sir, I hope the vote will not be reconsidered, for it seems to me that the section, as it is, provides for all that is necessary.

Mr. BADGER. Mr. President, It is a matter of no little interest, sir, to us clodhoppers, to see gentlemen of the legal profession thus engage in pulling each other's wool. [Laughter.] Now, sir, the gentleman from Posey, (Mr. Hovey), who has just taken his seat, remarked that the instructions with which this section was referred, proposed to simplify certain distinctions in the practice of law, and that was all the legal reformers asked for. The original section proposes to *abolish* those distinctions. And is there no difference in simplifying and abolishing a thing? I look upon simplifying a matter as one thing, and the abolition of it quite another. And like my friend from Owen, (Mr. Dobson,) who sits near me, I voted for these instructions, under the impression that they contained all we wanted, but upon a more careful examination I see my error.

In relation to the charges just made by the gentleman from Posey, "That certain gentlemen on this floor were desirous of filling an office in this commission," I have only to remark that, in my opinion, they need not give themselves any uneasiness on this score; for, as has been remarked on another occasion, by the honorable delegate from Jefferson, (Mr. Gregg.) I think from all I can learn from an honest and an unsuspecting community, touching their views of the conduct of this body as a whole, we may well regard this as no less than a "political slaughterhouse;" an ordeal through which but few of us will be able to pass unharmed.

Mr. President, as I have on a former occasion said, I am no lawyer, but I have been taught to regard law as being a rule of action, founded in common sense, upon common honesty, for the purpose of dispensing common justice. If this be a correct view, then why not give us a simplified system of the principles of justice by which to secure the greatest good to the greatest amount, or to the greatest number.

Surely no one will deny that the necessity of the case requires it—no one will say the spirit of the age does not demand it.

Then, sir, avault with your absurdities and technicalities; give us English ideas, in English words; simplify the practice and abolish the distinctions so that, in place of a declaration as long as the Constitution, containing more repetitions than ideas, a simple statement of the matters of fact in the case, will be all sufficient; for, sir, after all your special pleadings, and lengthy declarations, it is to the facts in the case your jury looks, and by them they are governed in making up their decision. But, a question to the lawyers: A. sells B. a lot of hogs, of certain number, and specified weights, to be delivered on a certain day, at a given place; B., in consideration of which, agrees to pay A., on delivery, a given amount of money, all of which is stated in a written contract, together with the amount paid in advance, as a bonds, but B. refuses to take the hogs according to the written article. I wish to know if A., in bringing suit for damages, could not sustain his action on a declaration, in which was set forth the above named facts? I ask if it is not a good declaration?

Mr. KELSO. No, sir.

Mr. HOVEY. It ought to be.

Mr. BADGER. Thank you, sir. The gentleman from Posey says it ought to be, and, sir, so think I, and I arrive at this conclusion simply because I am forced to it, as the result of a common sense view of the subject. But I have, perhaps, said enough; and having no desire to detain this honorable body unnecessarily, I will close with one other remark. Gentlemen of the bar seem to think that hard things are said here of those of them that oppose this salutary reform. But let me say to those honorable gentlemen that this is a reform for which the people call—a reform that the people's INTEREST demands, and those gentlemen will hear a voice from that people, ere long, which will tell them in tones of muttering thunder, that "the day of their powers that be, are numbered."

Mr. ROBINSON. I do not intend to trouble the Convention with any lengthened remarks, but lest it should be thought from the remarks made by the gentleman from Putnam (Mr. Badger) that the lawyers of this Convention are opposed to legal reform—and they are certainly not to blame for this want of capacity to understand the meaning of a declaration—I wish to say one word on the subject; and I desire to

address myself to the thinking portion of this body.

I will say now, sir—and when I say it I believe that I speak the sentiments, generally, of the legal profession in this Hall—that were I disposed to advocate any measure calculated favorably to affect my own interest, it would be this very reform which is now asked for in the practice of the law. It is a mistaken idea that has got abroad in the land that we can so modify, and simplify, and fix the rules of practice, and special pleading, as to do away with the necessity of lawyers. Sir, if it is never tested until it is tested by experience, I tell you that the day you appoint commissioners to undertake to simplify, and remodel the rules of practice, and law, from that day you will increase litigation, and, consequently, the number of men who will engage in the profession. Sir, it will throw dollars into their pockets, where cents only go now. No man, except him who could not understand a plain declaration, will ever be found to advocate a doctrine to the contrary. I believe that if there is any safeguard to the rights of the individual in coming into court, it is with the points of the case narrowed down to the narrowest point you can get—it is by bringing the matters in dispute to as few points as possible; this, sir, can only be done by special pleading, by which the parties present to the court and jury the matters proper for trial. Sir, we are told that the rules of practice are to be so simplified that any individual can go into court and obtain justice without delay. Sir, the individual who advocates that doctrine, is so far behind the times as not to be conscious of the real manner in which such a change would operate upon the country.

I intend, sir, to vote against the whole section; and that, not because I am a lawyer, but because I believe it to be one of the most stupendous pieces of nonsense that was ever presented to the country, and which will be productive of a thousand mischiefs which have not yet entered the conception of any member of this body.

Now, what can be simplified? There are the various actions of debt and assumpsit, and replevin, and trover, and others; and if you abolish them, and say that these names shall not exist in practice, how far have you succeeded in attaining any reform? Is an individual to come into a Court of Justice, and stalk up to the judge upon the bench, and say that he has a right to a writ of replevin, and he wants justice without delay? I care nothing myself about the name of an action. You may call it debt, assumpsit, covenant, replevin, trover, trespass, or any other name. Names in themselves amount to but little, and cannot change the nature of things. Sir, there is but one safe and sensible way for parties litigant to come before a court and jury that is to pass upon and settle their rights. The plaintiff or complain-

ant must spread their case on paper. They must make out a state of things—a set of facts containing his cause of action or complaint. This gives the opposite party notice of the facts with which he stands charged, and he comes prepared to contest them, and defend against them. The defendant thus charged, examines the charge or cause of complaint, and if the defendant thinks that the facts charged do not amount to a cause of action, he files his demur to the pleading of the opposite party, and at once refers the legal question to the court, which may be the means of saving much cost and trouble. If the facts charged by the party are deemed sufficient, then he files his plea, replication, or other necessary answer to the charges of his adversary, thereby presenting to the court and jury the points and facts on which they rely; thus enabling the parties to direct the testimony to the proper points, and the court and jury to make a proper application of the law and the facts; and thereby rendering litigation certain, and avoiding that confusion which must render the rights of the parties litigant unsafe and insecure.

Sir, gentlemen may talk about the rules of special pleading in courts of justice—they may ridicule the science, and humbug the people with the vain and foolish notion that every man can be his own lawyer. This, sir, may to some sound well; but when you attempt to reduce it to practice, it will be a clear failure. It will teach the fact, that when parties litigant call on a court or jury to settle their disputes by a trial at law or in equity, they must present something tangible, something certain, on which they can act. This, sir, can only be done by the correct rules of special pleading.

Mr. ROBINSON moved that the Convention adjourn.

The Convention refused to adjourn.

Mr. ROBINSON (continuing). Then, by the kind permission of the Convention, I will say a few words more in regard to this subject. I am quite aware of one thing; that when the question goes to the country, in such a manner, about simplifying the laws so that every man can be his own lawyer, and those in the profession go to some other business—which perhaps they ought to do—I know that it takes like wild-fire, and that the demagogue upon the stump could have no better theme for excitement. This, sir, sounds very well in theory; but when we come to reduce it to practice—when we come to examine it, and strip it naked, and talk about it as it really is, and as sensible men ought to talk about it, and think about it, it brings itself to my mind as one of the most contemptible notions that ever was presented to the consideration of any deliberative body, or sensible man.

Now, what is the avowed object? It is, so to simplify the law and special pleading, as to make it understood by all men. Let us exam-

ine it for a moment. Take, for instance, an action of trespass, which consists of a certain set of facts. For instance, I go upon the lands of my friend from Putnam, and trespass upon his rights, and he wants the practice of the law so simplified that he can obtain his rights. How will he get them? How else can he get them, but by going into court and spreading upon paper the facts, so that the man who is charged may know what he has to meet, and what to answer? Now, will those gentlemen who wish to simplify the practice of the law tell me that we can get rid of the necessity of doing this—of putting on paper the charges that we complain of? True, sir, this is very easily done. I do not suppose that, at this day, there is any member of the profession who would draw a declaration in an action of trespass that would fill more than half a sheet of paper. It is due, however, to the party who is to meet the action, that he should know what he has to meet and defend; and, sir, as I have before stated, the defendant comes into court, sees the causes of action, examines them, and thinks them not sufficient, and, to shorten litigation, he files a demurrer. He then raises before that court, the whole question of the sufficiency of the matters alleged in that paper, for a cause of action. The court, then, without the intervention of a jury, decides at once on an issue of law raised, which often settles the whole case, without a lengthy trial. And yet this course is denounced as oppressive.

Then, again, if an individual wishes to sue another, in an action of slander, or an action of "assumpsit," how is he going to get before the court? Will any man suppose that he is to come into court, and state before the judge on the bench, that he has a cause of action against a given individual? Tell the judge or jury that you have been wronged—state in court, in an oral manner, your complaint—your adversary does the same. The cause is, perhaps, for some good reason, continued from court to court, and when it is at last brought to trial, where is the case forgot by the court and all concerned.

Sir, this is all nonsense, in the extreme. It will never do. The ends of justice, the rights of the parties, and the convenience of courts, all require that causes should be put on paper. The questions and points which are to be tried should be put directly in issue by the allegations of the parties, that courts and juries may know what they have to try—that the parties may know what they have to prove or disprove—that the court or jury may be informed, in and through the channel of legal evidence, of the truth or falsity of the matters on which they have to pass. This, sir, is what is meant by special pleading. It is nothing more nor less than a plain and simple statement of the plaintiff's cause of action, and of the defendant's defense. Farther than this, special pleading need not go; short of it, it should not stop.

Sir, you may appoint commissioners to simplify the practice of the law, and to abolish special pleading, as you please; but there will be, at last, but one way of getting before a court in a safe and proper way, and that is, by spreading your case upon paper, and giving your adversary an opportunity of coming up to meet it. Let them introduce special pleading until they have narrowed down their case; and then the jury and the parties will know what they have to try. And, sir, without it you would have to introduce a practice which could not fail to be highly prejudicial to the parties litigant—a practice which would render everything on both sides very uncertain. Sir, if there be any one thing which renders a man's rights secure, it is by having the facts put down upon paper, and there narrowing the points down to a single issue. But suppose a party comes into court, when there is no certain issue pending—there is no certain issue of law or fact made up. He then comes, not knowing what he is to meet; he is taken by surprise, and justice is not meted out to him. And thus, sir, we would soon have our courts of justice shorn of their dignity, and those tribunals scenes of confusion and nonsense, of which the whole community would have just cause of complaint.

I should not have said one word upon this subject, but I have heard it here—and I regret to hear it, and hope it will never be reiterated in this Hall—I say I have heard it insinuated, that the legal profession are not morally honest. Sir, that may be the case with some; but certainly this is not the place for any such remark.

Mr. President, I have only to say, that I shall vote against the reference, and the section, and the whole subject. And I say to gentlemen now, that if they want to raise the cry of "Lawyer," if they want to impute to me any motives of profit or interest, in the remarks I have made, they will not only do me a positive injustice, but will render themselves ridiculous. For, sir, my object is to preserve those principles of law which are well settled, so that parties can have their rights, and courts of justice do business without such confusion as we have witnessed here to-day, and which must and will ensue if we adopt the section.

In regard to who is to be commissioner, I care nothing about that. If it is to be my friend from Tippecanoe, (Mr. Pettit,) I think he would be a very able one; if it is to be my friend from Allen, (Mr. Borden,)—although he says he has not sense enough—I think he might get along very well, if he had two others of good sense with him. But, sir, I cannot but repeat, that I regard this movement as an innovation of the rights of the people—a measure which would prove deleterious in the extreme.

Sir, I stand here, not as a lawyer, but as a delegate; and what I say I wish to be regarded

as being spoken as a delegate, having in view the welfare of my constituents, and the State at large. All imputations of any contrary motives, fall harmless at my feet, as unworthy notice or refutation.

Sir, I think I may safely say, that I have had some experience in regard to this matter; and I will say again, that the very day you appoint these commissioners, with a salary of at least six thousand dollars, you will expend a sum of money which would be much better expended in the colonization of the free blacks of the country, or added to your common school fund. They may labor at it for three, five, or seven years; and when they have done, they will produce nothing but an abortion, and we shall have to go back to the old beaten path of common sense, tried by time, beautified by the judgment and approval of the ablest sages of the law, sanctified by the experience of ages; the only true and solid foundation on which the dignity of your courts can rest, and the rights of the people find a safe guarantee.

Mr. KELSO. I do not desire to make a speech on this matter, but simply to make a suggestion which I think may result in some good. I think, sir, much bad feeling has been engendered by the calling of the previous question on this subject, cutting off even the bare opportunity of offering a few amendments. Now so far as calling the previous question has an effect to prevent lengthy discussions, there is some use in calling it. But there are amendments, and important ones, which, by the operation of the previous question, we have been cut off from the privilege of offering.

For my own part, I am willing to see this section of reform take any course the majority see fit to make it take; but I do desire to have an opportunity of offering, for one, an amendment to it. I believe there is an amendment to an amendment pending, and I desire, after we have had a vote upon the pending amendment, that whether it is adopted or rejected, the section may be left open to amendment. I desire to offer an amendment, and if it is rejected, well and good; but the privilege of offering amendments, at any rate, I think, should be left to such members as desire to offer them. My proposition is, that whether the commissioners be many or few, they shall be elected by the people. That is the amendment which I desire to offer, if this section is only left open for amendment.

Mr. KENT. I move a re-consideration of the vote re-committing this section to the committee on law and law reform.

Mr. BORDEN. Is that motion in order, Mr. President?

The PRESIDENT. It is.

Mr. THORNTON. I desire to say a word in regard to this subject.

THE PRESIDENT. The motion is not debatable, as the subject is now under the operation of the previous question.

MR. BORDEN. I call for the yeas and nays.

The yeas and nays were ordered, and taken with the following result—yeas 98, nays 33 :

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beach, Beeson, Berry, Borden, Bourne, Bryant, Butler, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Shannan, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Tague, Tannehill, Thornton, Trimble, Wallace, Wheeler, Wiley, Work, Yocum, and Mr. President—98.

NAYS.—Messrs. Barbour, Beard, Bowers, Brookbank, Clark of Tippecanoe, Colfax, Dunn of Jefferson, Farrow, Gregg, Harbolt, Hendricks, Hovey, Howe, Huff, Kelso, Kendall of Wabash, Kilgore, Mather, May, Morgan, Nave, Newman, Niles, Rariden, Smith of Ripley, Spann, Steele, Stevenson, Thomas, Todd, Walpole, Watts, and Wolfe—33.

So the vote was re-considered.

MR. MURRAY'S name being called, he refused to have it recorded.

THE PRESIDENT. The question now is upon re-committing the section with instructions.

MR. KELSO. I believe we are now under the operation of the previous question, Mr. President, but may not a motion be made to reconsider the vote ordering the main question?

THE PRESIDENT. It is not in order to reconsider the previous question while under the operation of the previous question.

MR. KELSO. I'll knock under; there is one question ahead of me.

THE PRESIDENT. The vote to re-consider having carried, it leaves the pending question—to re-commit with instructions.

This question was put and negatived.

THE PRESIDENT. The question is, Shall the section pass?

The yeas and nays were demanded and ordered, and being taken resulted as follows—yeas 97, nays 34:

YEAS.—Messrs. Alexander, Anthony, Badger, Bascom, Beeson, Borden, Bourne, Bryant, Butler, Carter, Chapman, Chenowith, Clark of

Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Hogin, Holman, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Shannan, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Tague, Thornton, Todd, Trimble, Wallace, Wheeler, Wiley, Work, Yocum, and Mr. President—97.

NAYS.—Messrs. Barbour, Beach, Beard, Bowers, Bright, Brookbank, Clements, Davis of Madison, Dunn of Jefferson, Farrow, Harbolt, Helmer, Hendricks, Hitt, Hovey, Howe, Huff, Kelso, Kilgore, Morgan, Murray, Nave, Newman, Niles, Rariden, Robinson, Spann, Steele, Stevenson, Tannehill, Thomas, Walpole, Watts, and Wolfe—34.

So the section passed.

MR. KELSO. Will it not be in order, Mr. President, under the new rule, to offer an additional section?

THE PRESIDENT. This cannot be done while an article is on its third reading. It may be done on its second reading.

MR. KELSO. I believe the previous question is exhausted, and, having voted in the affirmative on ordering the main question, I move to reconsider that vote, so that I may have a chance to offer my section.

THE PRESIDENT. The gentleman can offer his section as an amendment to some other article on its second reading, and the committee on revision can insert it, if passed, in its proper place.

MR. KELSO. I do not wish to consume the time of the Convention; I will, therefore, withdraw my motion.

THE PRESIDENT. That is much the better course to pursue. It is not the proper plan to offer an additional section as an amendment to an article on its third reading.

The fifth section of article 51, providing that the General Assembly should pass laws to carry out the sections of this article, if adopted by the people, was then passed; the rule requiring the yeas and nays on its passages, by consent, being suspended.

The sixth section of article 51, providing that the article should be submitted to a separate vote of the people in this form, "Exclusion and colonization of negroes and mulattoes—aye or no," then came up on its third reading.

Mr. WALPOLE. I move to indefinitely postpone this section.

Mr. COLFAX. I demand the previous question.

The PRESIDENT. Will the Convention second the demand for the previous question?

The demand was seconded.

The PRESIDENT. The question is, Shall the main question be now put?

It was so ordered by consent.

The PRESIDENT. The main question is, Shall the section pass?

Mr. WATTS. Does that cut off the motion to indefinitely postpone?

The PRESIDENT. It does; the question is now upon the passage of the section.

On this question the yeas and nays were demanded and ordered, and the Secretary reported the following result—yeas 82, nays 54:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Beard, Beeson, Bicknell, Borden, Bowers, Brookbank, Bryant, Carter, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Parke, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Frisbie, Garvin, Gordon, Gregg, Hall, Hamilton, Harbott, Hardin, Hawkins, Helm, Hendricks, Hitt, Holman, Howe, Johnson of D., Kent, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Maguire, March, Mathis, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Morgan, Mowrer, Newman, Niles, Owen, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Ritchey, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tannehill, Thomas, Thornton, Todd, Trimble, Wallace, Wiley, Work, and Mr. President—82.

NAYS.—Messrs. Alexander, Badger, Barbour, Bourne, Bright, Butler, Clark of Hamilton, Clements, Cookerly, Davis of Madison, Davis of Vermillion, Dick, Dobson, Edmonston, Farrow, Fisher, Foster, Gibson, Gootee, Had-don, Helmer, Hogin, Hovey, Huff, Johnson of O., Jones, Kelso, Lockhart, Logan, May, Miller of Gibson, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Sherrod, Spann, Stevenson, Tague, Walpole, Watts, Wheeler, Wolfe, and Yocum—54.

So the section passed.

Mr. WATTS gave notice that on to-morrow or some subsequent day, he should offer for adoption, an amendment to the standing rules, providing that no delegate should be allowed to change his vote or record it after the roll was called.

Mr. MOORE gave notice that on to-morrow or some subsequent day, he would move for adoption a standing rule providing that in all cases where members left their seats and roamed or swaggered about the Hall, or held

conversations that annoyed others, the President should call upon them by name to keep silent until the Secretary should record their names on the journal.

Mr. PETTIT (in his seat). I move to amend by adding after the word "silent," the words, "until he has thrown his hammer at their heads." [Laughter.]

PUBLIC DEBT.

The first section of article 37 provides that the revenues derived from the sale of the public works of the State, and from their net annual income, and any surplus remaining in the treasury derived from taxation for State purposes, after the payment of the expenses of government and interest on the bonds of the State—other than bank bonds—should be annually applied under the direction of the General Assembly to the payment of the principal of the public debt—came up on its second reading.

The PRESIDENT. The pending question is the motion of the gentleman from Scott to lay upon the table.

Upon a division—ayes 43, noes 48—the motion was not agreed to.

So the section was not laid upon the table.

The PRESIDENT. The question is now upon the demand of the gentleman from Wayne for the previous question. Will the Convention second the demand?

The demand was seconded, and the main question having been ordered to be put,

The section was engrossed for a third reading.

Mr. KELSO. I now offer the following additional section to that article:

The section was read by the Secretary, and provides that the commissioners who were to simplify the law and law proceedings should be elected by the qualified voters of the people.

Mr. KELSO. I would state to the Convention that this contains the doctrine which I have contended for in reference to the commissioners who are to simplify and change the mode of law practice—and that is, they shall be elected, whether many or few, by the people.

Mr. GIBSON. I move to lay the section on the table.

Mr. HENDRICKS offered an amendment providing that the term of office of these commissioners should continue no longer than two years, and that no act of theirs should take effect until submitted to and approved by the Legislature.

Mr. KELSO accepted the amendment.

Mr. GIBSON moved to amend by striking out and inserting that the terms of the commissioners should expire as soon as their labors were completed; and that their whole compen-

sation should not exceed one thousand dollars apiece.

Mr. G. said that he wanted some restriction upon the amount to be paid these commissioners. A thousand dollars apiece was sufficient, and they would then take their own time about the execution of the duties assigned them without the danger of running the State into debt, which gentlemen had predicted.

Mr. KELSO remarked that the effect of this proposition would be, that the work assigned these commissioners would be botched up by them, for they would be in a hurry to make all the money they could, and get through with their labors. He would, therefore, move to lay it on the table.

Mr. GIBSON. I call for the yeas and nays.

On this, the yeas and nays were demanded, and being ordered and taken, the Secretary reported the following result—yeas 90, nays 40:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beach, Beeson, Borden, Bourne, Bowers, Brookbank, Bryant, Butler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Duzan, Elliot, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Warwick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morrison of Washington, Mowrer, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Snook, Todd, Trimble, Wallace, Wheeler, Wiley, Work, and Mr. President—90.

NAYS.—Messrs. Beard, Bright, Colfax, Cookerly, Davis of Madison, Dunn of Perry, Edmonston, Gibson, Hardin, Hendricks, Holman, Huff, Johnson of D., Johnson of O., Kilgore, Kinley, Moore, Morgan, Morrison of Marion, Nave, Newman, Pepper of Crawford, Rariden, Read of Clark, Sims, Smiley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Walpole, Watts, Wolfe, and Yocum—40.

So the amendment was laid upon the table.

Mr. FARROW. I demand the previous question.

The demand was seconded.

The main question was then ordered to be put.

The PRESIDENT. The question now is, Shall the section be engrossed?

The yeas and nays were demanded and ordered, and being taken, resulted as follows—yeas 76, nays 54:

YEAS.—Messrs. Alexander, Bascom, Beach, Beard, Bourne, Bowers, Brookbank, Butler,

Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Elliott, Fisher, Foley, Foster, Frisbie, Garvin, Graham of Warwick, Harbolt, Helmer, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson, of D., Kelso, Kent, Kendall of Wabash, Kilgore, Lockhart, Logan, Mather, Mathis, McClelland, McFarland, McLean, Milligan, Milroy, Morgan, Morrison of Washington, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Ristine, Ritchey, Robinson, Sims, Spann, Steele, Stevenson, Tague, Tannehill, Todd, Wallace, Walpole, Watts, Wolfe, and Yocum,—76.

NAYS.—Messrs. Badger, Bascom, Beeson, Berry, Biddle, Bright, Carter, Chapman, Chenoweth, Clark of Hamilton, Coats, Cole, Crawford, Dick, Edmonston, Farrow, Gibson, Goo-tee, Gordon, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Hogin, Johnson of O., Jones, Kendall of White, Kinley, March, May, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Newman, Pettit, Read of Clark, Read of Monroe, Shar-ron, Smiley, Snook, Smith of Scott, Thomas, Thornton, Trimble, Wheeler, Wiley, Work, and Mr. President—54.

So the section was engrossed for a third reading.

On motion,

The Convention adjourned.

SATURDAY, JAN. 25, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

The journal of yesterday was read and approved.

ADDRESS TO THE PEOPLE.

The PRESIDENT announced the appointment of a select committee of one from each Congressional District, to prepare an address to the people, under the resolution of Mr. Owen: Messrs. Owen, Carr of J., Berry, Smiley, Maguire, Helmer, Davis of V., Bryant, Colfax, and Bascom.

BANKING.

Mr. STEVENSON offered the following resolution:

"Resolved, That the Committee on Revision, Arrangement, and Phraseology, be instructed to strike out all after the word 'Constitution,' in the four hundred and seventy-fourth line of the article on banking."

Mr. S. said: It has been provided, in good faith, I trust, by both parties, the free bank and the State Bank party, to establish free banks, and, also, a State Bank, with branches. We have provided a section declaring that free

banking shall be adopted, with ample security, and that the State Bank shall be established with branches, on the principle of mutual liability. But, by this section it is declared that the "General Assembly shall not have power to establish or incorporate, in this State, any bank or banking company, or monied institution, for the purpose of issuing bills of credit, or bills payable to order, or bearer, except under the conditions prescribed in this Constitution, and that all banking in this State shall be on a specie basis, actually paid in." I think that this provision prohibits the establishment of free banking, and should, therefore, be stricken out. I think it is a matter of justice to the free bank party, that this provision should be stricken out, so as to enable the free banking system to go into speculation. I move to strike it out.

Mr. WALPOLE. As a friend to the system of State Banking, I protest against the imputation applying to me, of belonging to the party that compromised this measure of currency. I understand there was a compromise consummated in this Convention through the action of about a dozen men who favored State Banking, and who went over to the free bank party, and when the party said they would agree to a compromise. But that the men who were utterly opposed to free banking, went over to the party sustaining that system, I deny, and the recorded votes of members on the subject will carry me out in my assertion.

I rise, Mr. President, at this time, simply to a question of order. The Convention has refused to re-consider the vote adopting the section the gentleman now proposes to strike out, and therefore we have not the power under our present organization to do that which he proposes. He can only effect his object by moving a change in the rule which applies to the question.

Mr. SMITH of Ripley. The committee of revision has not yet taken this article under consideration, and I think it would be better to wait until that committee acts upon it, and then if they detect any incongruity in it they can present a proposition to that effect, for our action. If gentlemen are suffered to bring in propositions to strike out, before a week has elapsed we will have propositions to strike out nearly one-half of the articles we have passed. While up I would say in looking at a report of our proceedings in this morning's paper, I am stated to have compromised this bank question. Now, sir, upon that subject, I simply declare I have no compromise to make. If the committee on revision, when they come to overlook this matter, find any inconsistency — when they report that fact back to the Convention for action in regard to it, we will be able to act understandingly.

Mr. KELSO. I do not pretend to deny, on my part, that I did accept cheerfully, the proposition of the gentleman from St. Joseph, (Mr. Colfax) offering what I thought a fair compro-

mise upon the question. I have represented, as I have said before, the State Bank interest from necessity, because the people I represent are partial to that system of banking. I was satisfied from the vote that was taken, that the State Bank system could not be carried as a separate measure, and when the compromise was offered I freely accepted it, as I would do again.

I was willing to accept the proposition of the gentleman from St. Joseph, and have also been inclined freely to accept the sections which, since the adoption of that proposition, have been presented to us on the basis of the principle contained in the main section already adopted. I do not believe that by the power we have granted, we have agreed to guarantee a dollar of specie for every dollar issued of paper, but we have agreed that there shall be an additional security over and above the specie. With regard to the State Bank, we have hitherto had the system of mutual liability, which, of course, has been the best security.

On the part of the free banks, the gentleman from Posey (Mr. Owen) voluntarily tendered to us additional security. I would like to inquire of him why he came forward voluntarily with this additional security? Was it with the intention of destroying the section we have already passed—I mean the section requiring the specie basis. I cannot think he had any such intention, and above all, to have a proposition of this kind to destroy that section, coming from a State Bank man is what puzzles me. For a State Bank man to come forward and ask to destroy the very foundation of the State Bank system and of all other good and safe banks, appears to me somewhat singular.

In regard to the point raised by the gentleman from Hancock, with reference to the motion to re-consider the vote on the passage of the section, the Convention, I think, has already refused to reconcile that vote, thus placing it out of the power of the Convention during the session, to alter its former course of procedure. I think it is somewhat inconsistent to ask to confer upon a committee power to do what we have not the power to do ourselves.

The PRESIDENT. The Chair would state in regard to the point of order raised by the gentleman from Hancock, that it is correct. Upon referring to the journal, the Chair found that a motion to re-consider the vote on the passage of the section failed, so that it is out of the power of this Convention, during the remainder of its session, to act further upon it.

Mr. STEVENSON. I would inquire of the Chair, if there is no way in which we can alter this manifest contradiction in the Constitution.

The PRESIDENT. The Chair cannot help any contradiction in the Constitution. A motion to re-consider the vote by which this section was passed has failed, and that vote remains as the fixed judgment of this body. The gentleman's resolution is not in order.

TOWNSHIP BUSINESS.

Mr. JOHNSON offered a resolution that the system of transacting township business in the counties of Dearborn, Ohio, Switzerland, Adams, and Wells, be not interfered with, except by legislative enactment, after the adoption of this Constitution.

Mr. EDMONSTON. I trust this resolution will be adopted. This is a matter in which these counties feel a great deal of interest, and as the adoption of the resolution cannot affect the interests of any other county in the State, I trust it will pass.

Mr. WOLFE. I trust this resolution will not pass. If it does, and these counties are excepted from the operation of certain provisions of the Constitution, I see no reason why other counties may not also be excepted from the operation of certain provisions which affect them in a particular manner. If this is to be the rule, I desire to have my county excepted from the provision in the new Constitution, which provides for the office of Auditor in our county, which will put the county to the expense of six or seven hundred dollars more than they are under at present. Here we have professed to do away with all local legislation, and yet we are going right on to exempt certain counties from the operation of certain laws. If we are going to have general laws, let us show our hands; but if exemptions are to be made in favor of certain counties, I shall certainly ask to have the rule applied to the county I represent.

Mr. WATTS. A permanent exemption is not asked for in this resolution. We only ask that our township system of business may not be interfered with until the Legislature is prepared to repeal the law under the present Constitution.

Mr. HENDRICKS. I trust this resolution, sir, will pass, as it is merely in regard to a local matter in which these counties feel a great deal of interest, and having no influence, injuriously or otherwise, upon other counties. One of the delegates from Dearborn county, I know, designed saying something in regard to it, and if he had not been compelled to be absent on account of his family, I should not have said a word. I think the members of the Convention can, with great propriety, extend this favor to these counties and permit them to retain their present township organization, as they have become accustomed to it, and it can in nowise affect other counties. The rest of the counties do not wish to establish this system. Shelby county, for instance, does not desire to have the system there that has been so long in operation in Dearborn county. I hope the resolution will pass.

Mr. PEPPER of Ohio. I rise merely to call the attention of the gentleman from Sullivan to the truth of this matter. He seems to regard this resolution as one that, if adopted, will con-

fer upon these counties a privilege which the county he represents may not enjoy. Now, sir, we desire no such thing. If any gentleman here has a similar proposition in regard to township organization in the county he represents—that he desires adopted—I will cheerfully go for it, if in the position he takes, he truly represents the will of his constituents.

Mr. BORDEN. I move to amend the amendment by inserting the county of Allen. I am perfectly willing, for one, to put a clause in the Constitution requiring a uniform mode of doing township business; nevertheless, if there is to be any exception, we want our county excepted. Let us not make flesh of one and fish of the other, but let our action be consistent.

Mr. KELSO. What harm, sir, can possibly result to the people of Indiana, if each county has a particular mode of transacting its township business. In the county of Ripley, adjacent to the counties of Switzerland, Ohio, and Dearborn, on the western boundary, the people have to go from the extreme portion of the county to the county seat to have every little change made in a county road, a matter of the most trivial character. It is there, also, their supervisors make their returns to the county commissioners. If the people desire change in the location or construction of a certain road, they have to go from either end of the county to the county seat to have it done, and they can only have a regular meeting four times a year. That is their mode, and they seem satisfied with it. In the other counties adjacent, which I in part represent, if the people desire to construct a road other than one created by legislative enactment, or a road that leads from one county seat to the other, they have three trustees to each township, who decide upon the creation, vacation, altering, or changing of all roads, and the transaction of the necessary business in those townships. It thus saves a great deal of time and expense to the farmer and the people generally; and everything is done just as well as if the commissioners had done it. This has been the mode of transacting township business in some of those counties for twenty-five years, and in others, twenty-one years. They are satisfied with it, and will not be easily satisfied with anything else; and many other counties of the State have adopted the same provision, as I now learn from the gentleman from Allen, (Mr. Borden,) a fact I did not before know. I regard it myself as a great saving of time and expense to the people, and they so regard it. I consider, sir, this mode of transacting the business of townships will be in many counties entirely new, and that its adoption by the Convention will, when ingrafted in the new Constitution and presented to the people, create great dissension among the people, and cause much opposition to the Constitution, which would not exist, if each county were to

be allowed to continue its old system of transacting its township business in its own way. It is a mere local arrangement—an arrangement, sir, which only affects individual counties in which it exists, and cannot by possibility affect the interest of any other counties. Every county should have the power reserved to it of transacting its township business upon its old system; and if it desires to change that system, that is a change that may be left to the county board who will readily accomplish it. Sir, let us have such a section as will satisfy the people, providing that each county that wishes may transact its township business upon its old and long established system.

I certainly hope that, in this matter, the expressed wishes of the people will be consulted. Leave the matter to them. We have literally destroyed the Legislature. Can we trust nothing to the people? I ask, in all sincerity, what reason have we to doubt the ability and competency of the people to arrange their own internal matters, so far as the transaction of township business is concerned. If they had known in time the gentlemen on this floor who are now refusing to trust them with such little matters of home concern, they never would have trusted them to come here.

Mr. WALPOLE. I do not think it necessary to adopt this resolution. The committee on miscellaneous provisions are about reporting an article, by which it will be provided that all laws and parts of laws now in force, and not inconsistent with the Constitution, shall remain as the law of the land. That provision will still keep in force the law gentlemen ask for in this resolution. There is certainly nothing in the provision to be reported by the committee that will affect the object of the gentleman's resolution.

Mr. KELSO. But a portion of a section that has been passed provides that there shall be a uniform law as to county and township business; and I would ask if it does not cover the arrangement proposed by this resolution.

Mr. WALPOLE. I would state that, in regard to the section the gentleman refers to, its character was not generally understood at the time of its passage, otherwise it would have been objected to. I did not know that such a provision had been adopted, until I learned the fact from the gentleman from Clark; and I intended to have said, when up before, that that difficulty could be obviated by moving a re-consideration of the vote on the passage of the section, for the purpose of striking out the objectionable part referred to, and leaving the question of township organization to the Legislature. It is impossible for the poorer counties to sustain three township trustees; and I feel well assured that, with reference to many other counties, the people as yet are not ready for the proposed change.

Mr. WATTS. At the time the section was up, providing for the passage of uniform laws upon township organization, an effort was made to strike out the word "township," so as not to interfere with the township business. But it failed, and we were therefore deprived of one remedy at that point. I cannot see any harm that will result from the adoption of this resolution. We only ask by it to be allowed to go on with our present organization, until the general system is adopted, and then, if our present system is not adopted, we must yield to the general system.

The PRESIDENT. The question is on the amendment of the gentleman from Allen (Mr. Borden).

The amendment was not concurred in.

The PRESIDENT. The question is now upon the amendment of the gentleman from De Kalb.

Mr. LOGAN. I move to amend the amendment by adding the following:

"The counties of Washington and Sullivan shall be excepted from the provision of the new Constitution requiring an election of auditor in each county."

The amendment to the amendment was rejected.

Mr. MURRAY moved to amend the amendment by inserting the counties of Kosciusko, Whitley, and Huntington.

Mr. RITCHEY. I see in this action, sir, just precisely the same kind of movement here that has characterized the proceedings of the Legislature of Indiana for the last thirty years, in regard to special legislation. If it is the intention of the Convention to sanction local legislation of this character, then let us adopt the proposition of the gentleman from Hancock, and strike out the section already passed providing for uniformity of township organization. Let us leave the question open.

I would not unnecessarily disoblige any gentleman, but I must insist that if it is designed to make exceptions in any respect, the matter should be left open for the accommodation of all the counties; otherwise, a uniformity of law should be insisted upon. I think, to settle this matter, we should re-consider the section that has been already passed requiring a uniformity of law, and adopt the proposition of the gentleman from Hancock.

I move to lay the resolution and pending amendments on the table.

The motion was agreed to.

RE-CONSIDERATION.

Mr. OWEN offered the following resolution.

"Resolved, That the failure of a motion to re-consider any vote, of a section heretofore passed, shall not prevent a motion to instruct the committee on revision in regard to the same section."

Mr. OWEN. The gentleman from Ripley, in his remarks a short time since, expressed his opinion that if the committee on revision found matters in the Constitution which were of a contradictory nature, they might strike out a part so as to make the whole consistent. It strikes me, that is conferring upon the committee on revision great power, which, if I judge the sentiments of the Convention aright, they do not intend to confer on them.

There are not more than two or three sections upon which motions have been made to re-consider, where those motions have been defeated. This resolution of mine will not in anywise open a gate to a flood of resolutions proposing to make changes in articles already passed; hence it can operate but in these three cases.

One of the sections in question is that requiring that banks should be organized on a specie basis.

Since I have alluded to that subject, I will state in reply to the gentleman from Switzerland, that in objecting to the term "specie basis," as applied to any system of banking, I had not the slightest idea of going against the principle that all notes should, at all times, be redeemable in specie, and in nothing else. At the same time I am not at all sure what the future judicial decision may be, as to the meaning of the section which the gentleman from Putnam (Mr. Stevenson) attempted to amend; declaring that all banking shall be upon a specie basis, actually paid in.

I am not sure that the supreme court might not decide, under that section, that no bills shall be issued unless there be a specie basis of dollar for dollar. That, of course, would destroy all banking whatever. If it does not mean that—if it means only that *some* proportion of specie, be it only a tenth, perhaps, of the amount of bills issued, is to be paid in as a fund to redeem such bills, it affords no security, and has little force or effect of any kind.

The difficulty which will occur if this subject be left for the action of the committee of revision is evident. To avoid it, I am desirous that the whole matter should be so left open for instruction by the Convention as that the committee of revision may have an expression of their wishes and intentions in the premises.

Mr. PETTIT. Mr. President, I look upon this resolution as a dangerous one. I look upon it as a resolution that will create more turmoil and excitement in this Convention than any other proposition that has yet been introduced. If, after having your various articles acted upon under three different readings, at three different times, with the privilege of offering amendments and motions to re-consider on these different times, we are, during the last few days of our sitting, to direct a committee on revision to strike these articles out and insert them in another and different kind of phraseology, I

can only say that the members of this Convention have been laboring, in regard to them, during the last three and a half months, by giving them a full and fair consideration in committee and in debate, in vain. In a few days we will undo that which it has taken us months to accomplish; and that, too, when perhaps not even one-half of our members will be present; for I have heard several gentlemen state that they are going to leave next week, and doubtless there are many others whom I have not heard so express themselves, who will pursue the same course. As for myself, I shall stay here until the last hour of our session; until your hammer comes down and announces an adjournment *sine die*; and I wish I had the power to detain every other member of this Convention until that time.

But to come back to this resolution: I say, if you adopt it, that at the very latest moment of our session, in the midst of excitement and turmoil, you will undo everything you have already done.

Mr. OWEN. I would remind the gentleman from Tippecanoe, that this resolution only refers to those particular cases where a motion has been made to re-consider and has failed; and not more than three such cases have occurred.

Mr. PETTIT. I do not care if there was but one. If there was but one, that one might be referred to the committee, with instructions to frame it anew, after we had expended two or three week's time in its consideration.

One word with reference to this mooted point of a specie basis. I say that, whether the bar or legal gentlemen agree with me or not, the Supreme Court never has and never will hold that a specie *basis* means a dollar in specie for a dollar of issue. I apprehend that there is more danger that a specie basis will be construed to mean one *fi*p in specie for every million of issue, and that there would be no trouble about such a system of currency. It does not follow, however, that there could be no banking upon a basis of one dollar of specie for a dollar of issue. Missouri has based her banking system on that plan, and her banks have been expressly prohibited from issuing more than dollar for dollar; and it has proved to be the most reliable system of banking that was ever instituted in the United States. This fact proves, then, that banking can be carried on in that way. I would not care, for my part, if the Supreme Court did decide that the issue of banks should be dollar for dollar. But there is no danger on that point. This matter of a specie basis will be settled according to the common and general sense understanding of the term. What is generally understood to be a specie basis, is three dollars of issue to one of specie; this I believe to be about the average. The Supreme Court will be guided in their decision by the general understanding and views of those who follow banking business. Commercial terms are construed

commercially. I trust the resolution will not be adopted, and that we will not consent to revolutionize that which we have already done.

The PRESIDENT. Inasmuch as this resolution proposes to establish a new rule, whereby the action of the Convention must be hereafter guided under our standing regulations, it must lie over for one day. So the resolution lies over.

Mr. BADGER offered a resolution providing that the Convention commence its afternoon sessions on and after Monday next, at half-past one o'clock, P. M.; which, on motion, was rejected.

FINAL ADJOURNMENT.

Mr. WATTS. I ask for adoption the following resolution:

Resolved, That this Convention adjourn *sine die*, on the 1st of February.

The PRESIDENT. The gentleman's resolution is out of order.

Mr. WATTS said, he would take an appeal from the decision of the Chair; but subsequently he withdrew it.

Mr. BASCOM. I move a re-consideration of the vote indefinitely postponing the question of the adjournment of this Convention, *sine die*, on the 15th of January.

Upon this motion the yeas and nays were demanded and ordered, and, being taken, the Secretary reported the following result—yeas 113, nays 11:

YEAS.—Messrs. Allen, Anthony, Badger, Barbour, Bascom, Beach, Beard, Beeson, Blythe, Borden, Bourne, Bowers, Bright, Brookbank, Butler, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbott, Hawkins, Helm, Helmer, Hendricks, Hitt, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kendall of Washash, Kendall of White, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Thomas, Trimble, Wallace, Walpole, Watts, Wheeler, Wolfe, Work, Yocum, Zenor, and Mr. President—113.

NAYS.—Messrs. Alexander, Biddle, Bryant, Chapman, Miller of Gibson, Milroy, Pettit, Prather, Robinson, Thornton, and Wiley—11.

So the vote was re-considered.

The PRESIDENT. The question is, Shall the resolution be indefinitely postponed?

Mr. MOWRER. I move to amend the resolution by striking out the words "fifteenth of January," and inserting the words "tenth of February."

Mr. FOSTER. I move to strike out the word "tenth," and inserting the word "seventeenth."

Mr. KELSO. I am willing to vote for the amendment fixing the time of our adjournment at the tenth of February, though I do not believe we shall get through our labors by that period. However, we can fix upon that day, and endeavor to work up to it; and if we cannot get through by that time, we can re-consider the vote fixing it, and extend the time.

Mr. FISHER. I move to lay the amendment of the gentleman from Monroe (Mr. Foster) on the table.

The motion was agreed to.

Mr. HENDRICKS. I move to amend the amendment by striking out the word "ten" and inserting the word "first."

Mr. BORDEN. When this question was up before, I thought that by fixing upon early day for adjournment, we would thereby be induced to work up to it and get through with our business by the time fixed upon. Since that time, and at the present hour, I think it extremely doubtful whether this body can get through with its necessary business by Monday, two weeks. There is a large file of bills yet on our table, for consideration, and I hardly think we can get through in two weeks time.

In preparing this Constitution, we should endeavor to embrace everything in it necessary—everything that is contained in the old Constitution; but I find upon looking over the old Constitution, that there are many provisions contained in it which hitherto we have not acted upon, and the consideration of which by a committee or by the Convention, has been omitted. After sitting here as long as we have, we should not mar the work which we have performed by hasty and hurried action.

We should endeavor to perfect our work, and not for the sake of gaining a few days' time, mar that which we have already done. I am willing, however, to vote for the amendment proposing the tenth day of February as the day of adjournment, and then if we do not conclude our labors by that period, the vote fixing that day can be re-considered, and we can extend the time as long as is necessary.

Mr. KELSO. I move to lay the amendment of the gentleman from Shelby on the table.

The motion was agreed to.

Mr. SHERROD. I move to amend the pending amendment by adding the words:

"Provided, we get through with the business our constituents sent us here to do."

Mr. GIBSON. I rise for the purpose of giving the reasons why I shall vote against this or any other proposition which provides for a final adjournment until we get through with our labors. Sir, we are unlike a Legislative body that may fix upon a day to adjourn without any great injury resulting to the community therefrom. If bills fall to be passed or to be acted upon in the Legislature by the day fixed upon for adjournment, they can receive the attention they demand, at subsequent sessions. But the case of this Convention is different. If we are governed by any operation of this kind—if we fix upon a day, and important provisions in the Constitution are not ready by the time fixed for adjournment, our entire labor for the last three or four months will be lost—for we present a defective Constitution to the people.

And again, if we fix upon a day for adjournment we place it within the power of ten members of this body a few days previous to final adjournment, to stave off important subjects, and render nugatory our whole action by calling the yeas and nays, and making motions to adjourn, until the time appointed for our final separation. I do not say that this will be done; but simply that it can be done. I am unwilling to place it in the power of a small minority to defeat the action of this House.

Mr. PETTIT. I move to lay the resolution and pending amendments on the table.

Upon a division—ayes 62, noes 51,

The motion was agreed to.

MISCELLANEOUS.

Mr. KILGORE. I offer the following resolution:

Resolved, That the committee on revision and phraseology be instructed to add to the last section of article 51 the following words: "and if a majority of the legal voters shall vote aye, then this article shall be taken as a part of the Constitution." "

Mr. PETTIT. This is part and parcel of the same thing I was contending against this morning; we shall be flooded with resolutions of this character. I move to lay it on the table.

Mr. KILGORE. I trust the gentleman will allow me the privilege of—

Mr. PETTIT. Oh, if the gentleman desires to debate the resolution, I will withdraw my motion.

Mr. KILGORE. I simply desire to remark that the last section of this article provides for a vote to be taken on the subject of the exclusion of negroes, without declaring what the effect of the vote shall be. The object of my resolution is to express at the close of the section clearly and satisfactorily what will be the effect of the vote.

Mr. PETTIT. I renew my motion to lay upon the table.

The motion was agreed to.

Mr. BROOKBANK asked leave to withdraw from the files of the Convention a petition which he had offered a few days since referring to the rights of negroes.

Leave was granted.

ORDERS OF THE DAY,

Mr. READ of Clark. I offer the following resolution:

Resolved, That we now proceed to the consideration of the orders of the day.

The resolution was adopted.

Mr. WALPOLE. Before proceeding with the orders of the day, I would simply state that on the third of December an article was passed by a vote—yeas 116, nays none—authorizing the Legislature to provide for a uniform mode of doing county and township business; I move a re-consideration of the vote by which that section was passed. It is the eleventh section of article seventh.

Upon this motion the yeas and nays were demanded and ordered, and, being taken, the Secretary reported the following result—yeas 27, nays 98:

YEAS.—Messrs. Bascom, Beach, Blythe, Butler, Clark of Tippecanoe, Colfax, Cookerly, Davis of Madison, Davis of Parke, Dobson, Gibson, Harbolt, Hendricks, Hitt, Huff, Johnson of D., Kelso, Logan, McLean, Milligan, Mooney, Moore, Morrison of Washington, Smith of Ripley, Walpole, Watts, and Wolfe—27.

NAYS.—Messrs. Alexander, Allen, Badger, Barbour, Beard, Beeson, Biddle, Borden, Bourne, Bowers, Bright, Brookbank, Bryant, Carter, Chapman, Chenoweth, Clark of Hamilton, Clements, Coats, Cole, Crawford, Crumbacker, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Edmonston Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Goozee, Gordon, Graham of Miami, Gregg, Had-don, Hall, Hamilton, Hawkins, Helm, Helmer, Hovey, Howe, Johnson of O., Jones, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Lockhart, Maguire, March, Mathis, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Morgan, Mowrer, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Trimble, Wheeler, Wiley, Yocum, Zenor, and Mr. President—98

So the vote on the passage of the section was not re-considered.

STATE DEBT.

The Convention then proceeded to the consideration of article thirty-seven, which is as follows:

"SEC. —. All the revenue derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may at any time remain in the Treasury derived from taxation for general State purposes, after the payment of the ordinary expenses of the Government, and the interest on bonds of the State, (other than Bank bonds,) shall be annally applied, under the direction of the General Assembly, to the payment of the principal of the State debt."

The section being upon its third reading,

Mr. HOWE moved to re-commit, with instructions to add—

"That a specific tax of fifty thousand dollars, with an annual increase of five per cent., be levied for twenty-five years, and expended each year in the purchase of our State bonds, unless the State debt is sooner paid off."

Mr. H. said, by the calculation I have made, assuming the State debt to amount to six million of dollars, with an interest of five per cent., amounting to three hundred thousand dollars per year, we can pay, by raising three hundred thousand dollars every year, together with a specific tax of fifty thousand dollars per annum, with a progressive increase of five per cent. every year, on the amount raised the previous year, two and a half millions of dollars in twenty-five years, being nearly one-half of the entire debt. I do not think, sir, that we can perform any act that will be more grateful to the people, than to set them an example in this matter, and show them some method of paying this debt. It is perfectly useless to leave a matter of this kind to the Legislature, subject, as it will be, to be delayed from time to time. The benefit to result from a sinking fund system depends very much on its early adoption.

Take the whole of our capital invested in the different departments of industry, and it will be found to yield nothing like five per cent.; therefore, we can save money by getting out of debt; and the only way to do this is to establish a permanent sinking fund. Another method of doing it has been pointed out by the honorable chairman of the committee having charge of this subject; but the proposition he presented was subsequently withdrawn. If that proposition had carried, I would not have offered the present one. I now take the course which I pledged myself to do, if his proposition failed. Every gentleman can see for himself, if he chooses, to make the calculation, that what I have stated is correct; and I do not believe we can do anything that will be more acceptable to the people than to make provision for the payment of this debt. The amount

will be scarcely felt by the people generally; and an increase of five per cent. per year for twenty-five years will not be a greater ratio of increase than that of the increase of the wealth of the State during that period. It is very probable that the present rate and method of taxation guarantied in what is commonly the Butler Bill will be observed; but even if that taxation affords a fund for the payment of the debt, this will enable us to pay it off sooner. Besides, our public debt was contracted chiefly for the benefit of property, and property should pay it. My amendment contemplates this method. By the Butler Bill, a poll tax of seventy-five cents is established. Again: a sinking fund is the simplest and most effectual method of paying off any public debt. Our public debt is a severe and lasting grievance, and I believe it to be of the utmost importance to establish in this Constitution some method by which it may be, with *absolute certainty*, at some time paid off.

Such a plan, instead of depressing the value of property in the State, will raise it, I believe, by an amount more than an equivalent to the burden of the tax.

Mr. BORDEN. I desire to make an inquiry of my friend from Gibson, (Mr. Hall,) whether the section now under consideration provides that any overplus of the taxes arising from the imposition of twenty-five cents tax on the hundred dollars valuation, shall be applied to the definite object of liquidating the principle of our outstanding State debt, after the payment of the interest on the debt?

Mr. HALL. The arrangement, and only arrangement with our bond-holders was under the acts of '46 and '47, by which twenty-five cents on every hundred dollars worth of taxable property, and seventy-five cents poll tax were pledged for the payment of principal and interest of the public debt, until it shall be entirely paid. According to a calculation made, if this system of taxation shall be continued, in eighteen years, the entire public debt will be paid off. The committee of which I am chairman, having charge of the subject, believing that there was a propriety in placing it beyond the power of the Legislature to violate the pledged faith of the State, instructed me to introduce a section providing that the twenty-five cents on each one hundred dollars of taxable property, and seventy-five cents poll tax, should be annually assessed until the debt was paid. This section was laid upon the table, and, I think, inconsiderately. I think the matter should be placed beyond the power of change by the Legislature.

Mr. BORDEN. Sir, on a previous occasion, I desired that this should be done; because I know that this is the wish of the people I have been sent here to represent. They do not want the subject to be left with the Legislature. They are willing to carry out in good faith the

arrangement made with the bond-holders of the State, and to pay twenty-five cents tax upon every one hundred dollars valuation, until the State debt is extinguished; and they desire that a clause should be inserted in the Constitution, which shall secure the application of this overplus to the extinguishment of the principal of the State debt.

For my own part, I cannot conceive why, if there be an overplus any one year, the officers of State may not be authorized to go into market and buy up our State bonds at whatever price they can, and destroy them, and thus relieve us from that much of the debt. I have conversed with gentlemen who are familiar with this subject, who have stated that there would be nothing improper in the State's pursuing such a course.

Mr. STEVENSON. I am entirely opposed, sir, to levying taxes upon the people; but am in favor of leaving the whole subject open to the action of the Legislature. I look upon a law imposing taxes, as a departure from the spirit of our institutions. See how tenacious the people have been hitherto, in regard to this subject; they would not even permit the Senate of your State to levy taxes, when that is a body elected only once in three years. The people have required, heretofore, that all bills providing for taxation, should originate in the House of Representatives. And, sir, shall we so far depart from the original spirit of our government, as to take upon ourselves, in Convention, to levy taxes upon the people, without regard to the monetary condition of the country from time to time. Taxes must be levied equally in all cases.

Sir, this attempt to levy an additional tax upon the people by us, is all wrong. I believe there is virtue enough in the people, to settle this matter through their representatives in the Legislature; and I much prefer to leave it with that body.

Mr. WALPOLE. I do not think that this section should be adopted. If there is a section to be incorporated in the Constitution on this subject, it should provide for the fulfillment of the contracts on the part of the State, on the condition that the bondholders carry out their part of them in good faith; but the State should not be compelled to fulfil these contracts without regard to a want of faith on the part of her bondholders. The bondholders, distrustful of Indiana, would not take the legislative enactment on the subject as a sufficient guarantee, but insisted upon having the intervention of trustees, that they might enforce the bonds against the State. I object to the section, because there is not a corresponding pledge required on the part of the bond-holders to carry out their obligations.

Another ground of objection which I have to the section, is, that the Legislature, in order to carry out its provisions, may sell the interest of

the State in the Madison and Indianapolis Railroad—which, after the year '52, will bring eighty thousand dollars, and apply the money to the discharge of the interest on the public indebtedness. This is a matter which should be left with the Legislature. Gentlemen who represented the Wabash canal interests the year before last, obtained from the General Assembly, an act authorizing them to sue these trustees, I have referred to, and they have been involved in legislation ever since. They allege that the trustees refused to perform the contract imposed upon them. Now it becomes these gentlemen interested in the Wabash canal to see that the interests of their portion of the State are not compromised in the section under consideration. But what provision could be adopted that would more certainly guarantee that their debts would be safe, let their acts be what they may—when they know, too, that the representatives they send to the Legislature would most certainly stand for their interests.

I prefer to leave the matter entirely with the Legislature. I hold, in addition, that nothing should go into the Constitution, that shall not be as lasting as the Constitution itself. This Constitution may last a hundred years, and long before that period has arrived, the public indebtedness of the State will probably be discharged, so that the Constitutional provision would then be of no effect.

Mr. MAGUIRE. The section reported by the committee on the State debt and public works, has no relation to taxation, and therefore I suppose the remarks of my friend from Putnam (Mr. Stevenson) have no application to that section. The provisions of the section are simply that the proceeds of any of the public works belonging to the State, if sold, and the net income of any that may continue the property of the State, together with any surplus that may at any time remain in the treasury, derived from taxation for general State purposes, after the payment of ordinary expenditures and the interests on the State debt, shall be applied to the payment of the principal of said public debt, under the direction of the General Assembly. I am wholly at a loss to see any reasonable objection to the section. Unquestionably the proceeds of the State's interest in any of the public works, should be held sacred to the extinguishment of the indebtedness created for their construction, and I think there can be no objection to the provision that any surplus remaining in the treasury, shall be applied to the same great object. The chairman of the committee, at an early period of the session of this Convention, made an elaborate calculation in regard to the public debt, and an effort was made to have it spread before the Convention, but, for some reason, which I never could understand, a majority of the Convention refused him the opportunity, until the subject came up for consideration a day or two ago. I have examined that

calculation with care, and I think it opens up a pleasing prospect of the extinguishment of the debt at a period not very remote. It appears to be more accurate than any other calculation recently presented to the public. By it, if the present rate of taxation is continued, the entire debt will be paid in fifteen or sixteen years after 1853—the period between this time and 1853, being allowed for the extinction of our domestic indebtedness. The calculation goes upon the principle of an immediate application of the surplus means to the purchase of the State stocks at their market value. The par value of the five per cent. stocks, is about eighty-three to the hundred dollars, and at that rate, \$100,000 would purchase stocks to the amount of \$120,000. The par value of the two and a half per cent stocks, is about half as much as the par value of the five per cent stocks, and of course will cost only about half as much in the market. Other calculations are based upon the principle that dollar for dollar is to be paid both for the five per cent. and the two and a half per cent. stocks, and that is one of the reasons the calculation of the gentleman from Gibson pays the debt at an earlier period than the others.

The gentleman from Hancock (Mr. Walpole) seems to think that it would be wrong to insert such a provision in the Constitution, for the reason that the bond-holders may violate their part of the contract. Now, Mr. President, by the arrangement with the bond-holders, we gave them the Wabash and Erie Canal, and the lands donated for the completion of it, as an absolute payment of one-half of our indebtedness. The other half must be paid out of the State treasury, and this section has reference, of course, only to that part of the debt which rests upon the treasury. If the bond-holders fail to comply with their part of the contract, there is a remedy in the law.

Mr. President, I would like to say something more upon this subject, but I perceive there is some impatience manifested by a portion of the members, and I will, therefore, abstain from further remark, and let the question be taken.

Mr. RITCHEY. I move to re-commit the section with instructions to strike out and insert that "the present rate of taxation, twenty-five cents on taxable property and seventy-five cents on each poll, shall be continued until the indebtedness of the State is fully liquidated." I would remark that this is a transcript of the report of the committee on the subject; and I have no doubt if this course is adopted, that in some fifteen or eighteen years the public indebtedness of the State will cease to exist. Under the action of the General Assembly we made this agreement with our bondholders, in reference to the payment of the bonds they held, which constituted the public debt. The adoption of a proposition of this kind will not only increase the credit of this State, but do

away with any suspicion that we have any disposition to repudiate the contracts we have made. We owe it to our constituents that we should endeavor to erase the unjust aspersions cast upon them in relation to this matter. And it is due also to our bondholders that we should repeat here, in this Convention, the action of the Legislature in the arrangement made by which, in some fifteen years, we will rid our States of its public debt.

Let me say that the State of Illinois, and many other States, have adopted a provision of the same kind, with reference to their funded debts, in their several Constitutions.

[Here there was much stamping of feet and confusion in the Hall.]

If gentlemen insist upon it, I will not continue my remarks further. I was just about closing them without the stimulus of rude interruption. I have never, since I have been a member of this Convention, assisted in "knocking down" any gentleman on this floor. As other gentlemen have met with the same treatment, perhaps I should not complain. I give way to "noise and confusion."

Mr. SHOUP. I call for the previous question.

Upon a division—ayes 42, noes 40—the call was seconded.

The previous question having been ordered to be put—

The PRESIDENT. The question will be first taken upon the adoption of the amendment offered by the gentleman from Johnson (Mr. Ritchey) to the pending instructions.

The question was put and decided in the negative.

The PRESIDENT. The question now is upon the motion of the gentleman from Lagrange (Mr. Howe) to re-commit with instructions.

On this motion the yeas and nays were demanded and ordered, and taken with the following result—yeas 8, nays 112:

YEAS.—Messrs. Beach, Colfax, Hitt, Howe, Miller of Gibson, Milroy, Mooney, and Newman—8.

NAYS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Beeson, Bidle, Blythe, Bourne, Bowers, Bright, Bryant, Butler, Carter, Chapman, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of

Fulton, Milligan, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Trimby, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Yocum, Zenor, and Mr. President—112.

So the motion to re-commit did not prevail.

The section then passed—the rule being suspended requiring the yeas and nays.

Mr. WALPOLE here entered his protest upon the journal against the action of the Convention in suspending the rules requiring the yeas and nays in the passage of article No. 37, just under consideration, and also against the adoption of said article.

LAW REFORM.

The section providing for the election by the people of three commissioners to simplify the law and law proceedings, was then taken up and read a third time.

The PRESIDENT. The question is, Shall the section pass?

Mr. EDMONSTON. I trust gentlemen will reflect upon this matter before they pass this section, especially the friends of law reform. My honest opinion is, that this section will have the effect of defeating the object desired by this Convention, and thereby the country, by procrastinating the work for years. Let us see how the matter stands: These commissioners will not be elected until the necessary concurrent authority is given by the Legislature which will meet in 1852; and that election will not take place until the month of October succeeding that session, which will be in the year 1853. Then these reports cannot be acted upon until the succeeding meeting of the Legislature in 1854. Thus four years will elapse before the object so much desired by the majority of this Convention, and the people of the State, will be effected.

With this view of the subject I leave it to the good sense of this Convention whether they had not better leave the election of these commissioners to the Legislature, rather than procrastinate it by leaving it with the people. I believe that an election thus made would meet with the hearty concurrence of the people.

Mr. McFARLAND. I do not see that it makes any particular difference whether these commissioners are appointed by the Legislature or elected by the people, so far as the expediting of the business they are to be appointed to perform is concerned. Suppose, however, that they be appointed by the Legislature. That cannot take place until the session preceding the time at which their election would necessarily take place. If elected by the people they would have eighteen months in which to

perform their labors, before the meeting of the Legislature.

Mr. MAGUIRE. It seems to me that there is no necessity for this clause providing for the election of these commissioners by the people, for the reason that, if I am not mistaken, the Convention has already adopted a general provision requiring that all officers whose election is not provided for in this Constitution, shall be elected by the people.

Mr. GIBSON. As a sincere and honest friend of the reform contemplated by the section as it now stands, I hope this amendment will not be adopted. It is one of a series of amendments upon which I made a few remarks the other day. The attempt to reform the rules of pleading and practice met, from the start, fair and open opposition; and it had also been met in a more covert way, by proposing amendments calculated to defeat the object of the measure. This is one of the class of covert and trickstering amendments; it does not totally defeat the object designed, but it procrastinates it.

Sir, let the Legislature, when it next meets, appoint these commissioners, and let them go to work side by side with the Legislature, and let them, from time to time, report their labors to the Legislature; and if these commissioners are the right kind of men, they will have concluded their labors before the Legislature adjourns, as its session will necessarily be protracted to mature provisions rendered necessary under the new Constitution.

The change contemplated to be effected by these commissioners, consists mainly in the abolition of the distinction between law and equity, and general reform in the proceedings of courts; so that it need not take them long to finish their labors. Besides, they have the light of other commissions to guide them; they are not marking out a new and untrodden path. They have the action of the New York and other commissioners, which they may consult. If they cannot accomplish the duty imposed upon them in three months, all I have to say is, they will not be fit for their place.

If you put a man in this office for eighteen months or two years, you must give him some kind of salary proportioned to that time; and yet, when I proposed on yesterday an amendment, fixing the pay of these commissioners at not exceeding, for the whole labor, one thousand dollars, it was voted down, not by the friends of reform, but by its enemies.

I ask the true friends of reform, to come up and assist in voting this proposition down, and then let us pass a provision restricting the amount of salary of these officers. I am willing to vote for, and I believe it would be ample compensation to any commissioner, for the labor of simplifying our law proceedings, to fix it at five hundred dollars, believing it is sufficient,

and that we can obtain the best talent in the State for it.

I say now, as I said the other day, this amendment comes from the wrong quarter. Vote it down, if you wish to carry out the reform for which we have been struggling. There is safety in no other course.

Mr. KELSO. Sir, I offered this section in good faith, and if there is any trick in it, I am as badly shaved as any of the rest. If there is anything about it wrong, I don't know it. I would say to the gentleman from Clark, (Mr. Gibson,) that my objection to his proposition offered yesterday, to limit the salary of these commissioners, is this: that it is tantamount to saying that the commissioners shall make one thousand dollars in as short a time as possible, and without specifying what labors they shall perform. He says that his measure of retrenchment was voted down by a majority of the Convention, who were the enemies of reform. Sir, there are no enemies of reform here; we are differing only about the best mode of doing the same thing. Now I undertake to say, that two to one of the members of this Convention are in favor of reform on the subject of law practice; but when you attempt to talk about reforming the law, you might as well talk about reforming the science of mathematics, or of orthodox Christianity. You may simplify the law and its practice; but law is itself a regular science, without which society would become disorganized and anarchical. We cannot reform the law; but we may simplify it, so that it shall retain all the essential elements of the science, and yet be more easily comprehended.

But, sir, what difficulty, I ask, will arise from the election of this commission by the people, and the limitation of the term which these individuals shall continue in office under that commission to two years?

Suppose the Legislature, at its next meeting, should elect these commissioners, and they remain in session for three months; can any man in his right mind suppose that these commissioners would be ready to report a new and revised code of practice, before the Legislature should terminate its session, and yet that body have time to decide and act upon their labors? Certainly not. Sir, these men will have to pass measures affecting my life, my liberty, my property, and my reputation, and the life, liberty, property, and reputation of every other citizen. They are to prescribe the rules of practice in our courts of justice, by which every great principle affecting human rights shall be put in practice. And the people earnestly desire that they should have the privilege of electing these important arbiters, as well as all other officers of equal importance.

The term of these officers should be fixed; otherwise we do not know how long their labors may be protracted. In New York, where a similar commission was appointed, it has con-

tinued its sessions for three years—the only result of their protracted labors so far being, that they have made the laws of the State more uncertain and more complicated than they were before, and have materially increased litigation; and how long they will continue their work, no one can tell, nor what is to be the result of their labors.

Sir, the amount of compensation for the services of these commissioners, should be left with the people and their representatives. They should be paid in proportion to the labor they perform, and if they are industrious in the prosecution of their labors, they will soon bring them to a close.

All that is desired, sir, is, that the people shall have the privilege of electing these important officers, and that their salaries shall be fixed by the Legislature, and in addition, the term of office shall be determined. We do not seek by this section, to limit those commissioners in their labors; we do not seek to cripple their powers, or in any way to trammel them; we leave them free to act, to the fullest extent, without throwing so much as one straw in the way of their progress.

But, sir, this is a stupendous power to be exercised upon one of the most important departments of your State government—the judiciary of your State. I ask if that department of your State Government—the *legislative*—which creates your laws, is any more important to the safety and well being of the people than is the judicial department, which decides what really is the law, and its full bearing, force, and effect, upon the community? Certainly not. And who among us would insist, for one moment, that the members of the next General Assembly should have power to elect members of the Legislature next after themselves? Would the people, think you, quietly submit to such a high-handed usurpation of power? Certainly they would not. I ask, then, have they any less interest in the present question? No less. Their interest, involved in this great scheme of legal reform, is as deep and as all-absorbing as is the continuance of any one of the great departments of State Government; and all that the friends of this section ask, is, that the officers who are to make those great legal reforms may be chosen by the people, for whom they are to act. Shall this be denied? Sir, when this vote is taken, we shall see who is for the largest liberty—who it is that can trust the same people that have trusted him—who it is that comes here, sir, to create a host of new officers, unheard of and unthought of by the people, and at the same time deny them the privilege of choosing those officers. Sir, let him who distrusts the honesty, purity, and competency of the people, so cast his vote—*against this section*. For my own part, I choose to submit this whole affair to the people, to act upon it for themselves as may best accord with their

own judgments; for that reason I have offered this section, for that reason I will vote for it to the last.

Messrs. WALPOLE and WOLFE expressed themselves in favor of the section as it stood, and trusted it would be adopted.

Mr. HAMILTON moved the previous question; pending which,

On motion,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the

ORDERS OF THE DAY.

The PRESIDENT. The pending question is on the motion of the gentleman from Allen, (Mr. Hamilton,) for the call of the previous question.

Mr. HAMILTON. Mr. President, I am asked to withdraw my motion for the previous question. It is the first time I ever made that motion. My object was to save time, believing, as I did that debates now, on almost any question, are useless, and tend to prolong our session. Last month, my colleague (Judge Borden) made a motion that the Convention should adjourn early in this month. I then thought it was premature, as we seemed to have made little progress in our labors. A highly respectable paper, in its editorial, complimented him for his exertion to cause an early adjournment. Voting as I did against that motion, it is due to myself now to say that we again differ; I think we can adjourn before the tenth of next month, if we cut off useless debate; my colleague thinks not. To carry out my wishes, I have moved the previous question, cutting off further discussion, if sustained. At the request of the gentleman from Vanderburgh, (Mr. Lockhart,) I will withdraw it, he having agreed to renew it.

The question being upon the passage of the section, providing for the election of the commissioners, &c., &c., by the people,

Mr. LOCKHART. I am opposed to the passage of this section, for the reason that we have already passed one that provides for the election of the commissioners by the Legislature. Prompt and speedy action will be desired in reforming, revising, simplifying, and abridging, the rules and practice, pleadings, forms, and proceedings, both civil and criminal.

The more expeditious mode, therefore, of choosing the commissioners, ought to be preferred. I think that the gentleman from Dubois, (Mr. Edmonston,) has clearly shown that one year at least will be saved by electing the commissioners by the General Assembly. There can, therefore, I repeat it, be no necessity for passing the section now under consideration.

I now desire to say a few words about the section passed on yesterday. There is a provision in that section, which, in my judgment, ought

not to be there; I refer to the provision in relation to a revision of our statute laws. That provision, it is true, is not restrictive, but permissive. It permits the Legislature to do precisely what it has a right to do without permission, and therefore ought not to be in the Constitution.

I was anxious to have offered an amendment by which this provision could have been stricken out, but the call of the previous question prevented it. This morning, I would have offered a resolution instructing the committee on revision to strike out all that part of the section, but from the action of the Convention I discovered a disinclination to instruct that committee on any subject. Upon the subject of legal reform, I desire to say that I will go as far as he who will go farthest. I am for breaking down all distinctions between the several forms of action, and for having the law administered in an uniform mode, without reference to the distinctions between law and equity. It is high time, sir, that the artificial distinctions which have so long clogged the wheels of justice should be dispensed with. We have already passed a section which provides "that all courts shall be open, and every person, for injury done to him, in his person, property, or reputation, shall have remedy by due course of law, and in the beautiful language of Lord Coke, that section declares that "justice shall be administered freely and without purchase, completely and without denial, speedily and without delay." The provisions of this section can never be realized until the reforms alluded to are carried out in practise.

I must here, sir, be permitted to say that the denunciatory language used on last evening by the gentleman from Clark, (Mr. Gibson,) and by the Rev. gentleman from Putnam, (Mr. Badger,) was ill-timed. There are TRUE FRIENDS of legal reform upon this floor, who understand the subject upon which they speak—who are prepared to act understandingly; men, sir, who will not swallow the dogmas of either of those gentlemen. I am now done with this subject, but hope that before our labors close, some friend of legal reform will move to re-consider the vote taken upon the passage of the section, so that its objectionable features may be stricken out.

Mr. KELSO. I understand the gentleman as not finding fault with the section. I agree with him that this clause was passed under the operation of the previous question. Now the simple question is "shall the people or the Legislature appoint these commissioners?" I maintain that if the people are competent to elect the men to decide what the law is, they are equally competent to elect men to simplify the practice under the law. If they have the privilege in the one case, why not in the other. I contend that they should elect them, and select them from such portions of the State as

they may think proper. But I shall not further detain the Convention.

Mr. THORNTON. I do not wish to trouble the Convention at this late stage of this matter, by making a speech. I desire however to have this question understood before we take a vote upon it; and I hope this will be the last action we will have upon the subject.

I have oftentimes listened with pleasure to the remarks of the gentleman from Switzerland, (Mr. Kelso,) whose strong good sense has made him a very useful member of the Convention. But he had either dismissed that monitor, on the present occasion, or he underrated the judgment of this Convention very much, when he undertook to declaim so loudly about his rights as one of the freeman of this State, jeopardized by delegating to the Commissioners as proposed in the section, the mere simple duty of preparing a code of practice for the final action of the General Assembly. He affected to believe, and seemed to press the matter as if he was really in earnest, that by the section, the power of the Legislature, would be conferred on said commissioners. He certainly could not have read it with sufficient care, for I venture to assert that no man possessed of the most ordinary degree of discrimination, upon reading it, would come to such a preposterous conclusion. These commissioners would be vested with similar powers with that of an ordinary committee appointed by a Legislature during its session, to take into consideration any matter referred to it and to draft and report a bill accordingly for the final action of such Legislature. He insists that if the power of making laws is to be conferred on these commissioners the people ought to have the right to elect them as being in accordance with the principles of true democracy. This suggestion of the gentleman is so glaringly fallacious as to be liable to detection at the first blush—why he might as well contend for electing the committees attached to the Legislature. The language of the section clearly imports, that the commissioners to be appointed are to prepare a code of practice and report the same to the General Assembly, for its final approval or disapproval. No one of the friends of the measure, ever dreamed of any such a ridiculous notion, as that any act of such commissioners would become binding or acquire the force of law without the final action of the Legislature. It is also a matter of special wonder too, to see one like the gentleman from Switzerland, who has had so much legislative experience, and who arrogates to himself such a profound acquaintance with the law and its history, pretending to treat the matter, as if he had never read or heard of a similar course having been pursued. If he has not he is much more ignorant than I have taken him to be, but if he has, and disguises his knowledge, he is guilty of a most reprehensible degree of in-

cincerity, for which he deserves a pointed rebuke at the hands of this Convention.

I should very much regret to see this section which is advocated by the gentleman attached to the one we have heretofore passed, as it would virtually destroy it, and render it absolutely unmeaning and wholly inoperative. This is no doubt, what the gentleman and those who are co-operating with him, wish. He and they, though assuming the guise of friends, are covert deadly enemies, for when thus pretending a wish to amend one section, it is only an insidious plan to destroy it. For my part I cannot but view with suspicion any thing tendered under the color of favor, coming from an enemy—"Timco Danaoset dona ferentes," as was well said by the wary Trojan when seeing the hostile Greeks presenting the wooden horse to the tutelar deity of the city of Troy. I think we had best profit by his wise suggestion, and decline the acceptance of the proffered aid from an avowed enemy, and especially from one who has so recently denounced our measure as wholly at war with common sense and its advocates as little better than fools and pettifoggers. If the gentleman has in fact become favorable to it, he has certainly undergone a very rapid conversion.

But even if it were proper to elect these commissioners by the people, the wording of our original section is broad enough to meet that object. The language is, "the General Assembly shall provide for the appointment of three commissioners." &c. Under this the Legislature might provide that they should be elected by the people if it should deem it advisable. The whole power is vested in it to prescribe the course of appointment, and that is sufficient to meet all which could be reasonably desired by the most ultra advocate for popular elections. I repeat it however, that no *same* Legislature will ever come to such a preposterous conclusion.

I agree with the gentleman from Vanderburgh (Mr. Lockhart) in wishing to see our plan, for the present, restricted to a mere code of practice or law procedure. I would have preferred leaving out the part which contemplates a general codification of of the whole body of the law; but as it is only permissive on the part of the Legislature to adopt such a course, it may as well remain as it is.

The argument used in favor of the adoption of the pending amendment is that among other things it goes to limit the tenure of the commissioners term of appointment. Well it does seem plain to me, that the language of the original section is sufficiently broad, to cover even that. It provides that the General Assembly shall regulate the tenure of office of the said commissioners, and under it the term of their appointment may be made as long or as short as the Legislature may deem proper. It will possess a complete control over, not only the

term of appointment, but the course of proceeding, compensation, &c. It thus appears that the proposed section is wholly unnecessary, as every thing it is intended to embrace, is fully provided for in the original section, which we have passed heretofore. To adopt it then would only uselessly incumber the article.

Let me here before closing my remarks say a word to the friends of the original section. It has been tauntingly said, that our militia troops, are in a bad state of drill, though sufficiently strong to carry our point, if we could act in concert. I must confess, I regretted to see unfortunate divisions made in our ranks, caused by the artful, insidious maneuvering of a wiley enemy. Some of our friends were decoyed off by the plausible show of economy by substituting *one* commissioner instead of *three*, as proposed in the original section, and now again, they are amused with the false pretense that the proposed section is necessary to limit the tenure of the office of said commissioners. I sincerely hope that the real friends of the measure, will not suffer themselves to be any longer gulled with the false pretenses of the opposition, but come up manfully, and firmly, at once, and promptly vote down this, and every thing else conflicting with our favorite measure. Our opponents certainly hold out in their opposition with unexampled pertinacity. Although they have encountered defeat after defeat, they do not seem to be humbled or discouraged. after seeing the result of ninety-three votes against their thirty, I had supposed they would be inclined to abandon the field, but not so. They certainly die very hard. This is, in my humble opinion, evincing very little respect for the will of the majority, and that so strongly and repeatedly indicated, as has been on this question. Let it be remembered that they threw every obstacle in the way of the passage of our measure during its progress through the Convention until its final passage, and now after it has been passed and received the sanction of an overwhelming majority, they come in at a late hour and seek to destroy and nullify it by clogging it with a senseless and unmeaning amendment.

I cannot dismiss this subject, however, without taking a passing notice of some assertions made by the gentleman from Switzerland, (Mr. Kelso,) whilst he was engaged in the discussion of this question. He undertook to assert in a manner which indicated the greatest confidence, that this system had been a complete failure in New York, where it has been introduced some two or three years ago, and then again, he involved himself in a contradiction and palpable inconsistency, by roundly alleging that the committee then appointed to prepare a code of procedure, had been engaged at it several years, but had not yet completed it. This was held up as a scare-crow to frighten our timid lay friends, but to those who are informed correctly

on the subject, it only conduced to show to them he was either wholly ignorant of the facts of the case or was disposed recklessly to hazard assertions without much regard to their truth. In reply to this, I undertake to state that the commissioners of New York appointed for that purpose, have completed their code, of both criminal and civil procedure, that it has gone into full operation and has been found to work well and to exceed even the expectations of its most sanguine advocates. When speaking of the completion of this code, I do not imitate the course of the gentleman from Switzerland, in venturing random assertions, without having any actual knowledge of the truth of what I say. But I speak knowingly. I have some months ago, received from the Hon. D. D. Field, one of the commissioners, a copy of the code, and it is now at my room at the Capital House, in this city, to be seen and inspected by any gentleman choosing to call and examine it. The gentlemen from Switzerland is at liberty to infer what was the estimate placed by me on his round and unqualified assertions in regard to this matter.

Whilst noticing this subject, I must be indulged in calling the attention of the Convention to a brief article I have extracted from the Madison Courier, copied by the editor, from the London Nwes, a leading English Journal of high reputation. The terms of commendation in which this article speaks of the New York code of procedure, will, I hope, serve as a complete set-off against the weight of the opinions expressed by the learned gentleman from Switzerland against it. Here it is:

LAW REFORM.

The London News, referring to what has been done in this regard by New York, says:

"We consider this subject so important, and we find in that code so admirable a model for our own guidance, that we intend to lay the principal portions of it before our readers; we mean those portions by which the distinction between Law and Equity is abolished, which give a single form of action, which abolish special pleading, and which provide for the the trials of issues, in fact and of issues of law. There are also very valuable provisions respecting costs, and the right of examining the hostile parties in the case, which we shall also extract *in extenso*.

We earnestly beg the attention of our readers to this code, because it shows us exactly what we want. There we have it, not in vague suggestions or crude fancies, but in definite black and white, and in full and careful detail. It comes also to us recommended by the test of actual experience. It has now worked for nearly two years in New York, and has worked to the thorough satisfaction of all parties there, except some of the bench and bar, who there, as everywhere else, dislike all change, are incapable of all philosophical comprehension, and

cling like rust to the old fashioned institutions in which they were born and bred."

In addition to this, as I have heretofore stated in the course of some remarks which I have made on this subject, the opinions and arguments of both the Attorney General and Solicitor General of Great Britain, in favor of Law Reform, and especially in reference to this much abused New York code, must put to silence all the objections of the gentleman, and those who are acting in opposition with him. It would be a waste of time and breath to use further argument in refutation of their positions. It is truly a matter of astonishment to me, to see gentlemen so well informed and intelligent as some of those are who have opposed this salutary measure indicating such a want of correct information as regards the progress of reform in the science of jurisprudence throughout the Union generally. They certainly are less read in the history of the times than I had supposed, or they are attempting, in no very creditable way, to impose upon the judgment of this Convention. I therefore hope that the section under consideration will be voted down.

Mr. SPANN. I will give my reasons why I shall vote against the final passage of the section. My vote has been cast in every instance against the measure, and I regard it as being consistent if I vote against it now. The venerable gentleman on my right, made an allusion to the Trojan horse. I would carry out the idea and say—"When Greek meets Greek, then comes the tug of war." The gentlemen of the bar try to plume themselves over us—the lay members of this Convention. I claim to be one of the lay members of this body. I am not familiar with the law, I never studied it, nor did I study common sense much; but, however, I trust I am endowed with sufficient of perception to distinguish between one thing and another—at all events between my right hand and my left hand. When the Convention is divided on this very question—when it is stated to us as it was by the gentleman from Clark, that the measure is intended especially for the bar—for the professional men and the students who cannot enter the sanctuary of the law on account of the rubbish that blocks up the portal, I am admonished that it is our duty to consult the interests of the litigants in our courts, rather than those of the members of the bar. I am willing to go for a simplification of the mode of practice.

This question of codification has not been discussed before the people—it never has been adopted by the people and bar of this State. I think the matter is out of place coming up at this late day. I know one thing in relation to it, and that is that I shall record my vote against any attempt to foist upon the people of this State, any dozen or half a dozen superannuated lawyers to be made commissioners of for life. I will vote against any proposition that

will go to foist judges, farmers, or any others, no matter what, upon the State as life officers.

The proposition yesterday, was to limit the tenure of this office to two years. That I was willing should be adopted, but now, however, we have the old original section up, which is to place these commissioners in office for life. As I said before, I am opposed to any such measure as that. Indeed, sir, I think a few plain, common sense farmers could do as much in this matter in a few hours, as these commissioners could do in two years.

[A VOICE. That is the idea.]

I will not vote for any proposition, I care not how much it may be termed law reform, that will go to fasten upon the people life incumbents. I will here—

Mr. KELSO. That matter has been passed over long ago.

Mr. SPANN. I understood when I made my remarks, that it was under consideration. I am corrected, however.

Mr. WALPOLE (in his seat). But you are right in your remarks.

Mr. SPANN. I go against foisting on the State any man, or set of men, in perpetuity, to do a thing that can be done by the Legislature in about six hours.

Mr. NILES. As I have said before, so I repeat again, that I am in favor of all reasonable reforms in the practice of law. But I am greatly mistaken, or there are gentlemen on this floor, who think that reform and distinction are identical. Judging from these debates, one would suppose that we have men among us whose crude ideas of the principles and practice of the law could be made to supercede the learning and experience of a thousand years. The purpose has been expressed that the commissioners shall be appointed from among those who are called, par excellence, the friends of the reform. Now, sir, if their action were to affect only themselves, I would not have a word to say. They might experiment to their hearts' content. But when experiments are to disturb all the interests of society, I would call upon them to stay their hand, and to act with some little caution. I see, or think I see, the disposition clearly manifested, to enter upon a system of innovation and change, following the guidance of theory rather than the light of experience. I have no sympathy with anything of the kind. I should look upon it as an unmitigated evil to have three theorizing lawyers set to tinkering with such a subject. And, sir, I would rather, to-day, trust three plain, sensible farmers, who never looked inside of a law book, to reform the practice and codify the laws, than three such lawyers. It would be a task upon which really great and leanned men would enter with the utmost caution. They would move slowly—would do what was clearly shown to be safe at the moment, and while experiments were being tried elsewhere, would

wait and observe the results. Your theorist would lay about him in the work of destruction as though he were building up instead of pulling down. He would be ready to rely upon some newspaper article, or a letter from a lawyer, or a judge, and destroy, by a stroke of his pen, the work of centuries. I fear, sir, that it was too much, in such a spirit, that this Convention adopted the section which, if fully carried into effect, may sweep away the whole system of equity jurisprudence. Have gentlemen considered what they are doing? That system of equity jurisprudence and practice is a more effectual protection to the innocent and undersigning, and more of a check upon fraud and villainy, and of a terror to evil doers, than all the fines, and jails, and penitentiaries in Christendom; and yet, it seems to be imagined that whoever can be the first to blot it out, will be entitled to lasting gratitude. And what is there so unreasonable in the practice in chancery? The best possible bill in chancery is the shortest, and plainest possible statement of the facts on which the party complaining relies for his right to recover, with scarcely any thing of technicality about it; and the best possible answer in chancery, is the shortest and plainest possible statement of the facts on which the opposite party relies for his defense. An unskillful lawyer may make, of either, a long, and formal, and awkward document. But if he does, it is entirely his own fault. A gentleman said the other day, that he once had a law suit to recover the value of some property, and that he could understand nothing of the pleadings. Now, sir, I have only this to say to that gentleman, that it was either his misfortune to have an incompetent lawyer, or that he could not understand plain common sense. We are perpetually referred to the forms in the action of ejectment. John Doe and Richard Roe have been denounced upon the stump all over the State; and one might almost be ready to believe that some men have found their way to this Convention upon such a hobby. But have those gentlemen told their constituents that there has been no necessity for using those forms in this State, for the last twenty years? We are authorized to use forms, in recovering the possession of land, as simple as any forms before a justice of the peace, and yet we have heard harrangues upon this floor, about the action of ejectment, as if the future prosperity of the State depended upon getting rid of John Doe and Richard Roe. We are perpetually referred to the example of New York, as evidence that law reform is of vital importance, and ought to be adopted here without a moments delay. Now, sir, I am glad that New York is making the experiment. I had rather that it be made at her expense than ours, and I would take a little time to see what her experience really is before doing the same thing. We are told that the cost of litigation to the people is

reduced by their new practice code, but gentlemen forget to tell us that the costs in New York are now ten times what they are in this State. With a very little cautious legislation, we may have the simplest and cheapest system of judicial proceedings in the world.

But, sir, it is plain to see that a general codification of the whole body of the law is intended. Until it is done, I apprehend that it is to be one of the favorite subjects of popular declamation, and after it has been done, another clamor will be raised against lawyers for making confusion worse confounded. I did hope that we had had enough of codification to satisfy the most zealous reformers for a score of years, at least.

The school laws and road laws have been codified till there is not a lawyer in the State, who can pretend to understand them. And this unwieldy volume, (referring to the revised statutes of 1843,) is but another evidence of the futility of such schemes. The revisors were able and faithful men, but it is enough to make any man's head swim to try to trace out any thing in such a book. And when, after calling in the aid of others, he shall have found something upon a specific subject, he can never know but that a few pages before or behind it in the volume, there may be something qualifying or conflicting with it. Our laws are less perfectly understood by courts, and lawyers, and justices of the peace, and the people at large, than before this attempt at codification. It would be a relief to all of us could we get back to the simple code of thirty-one or thirty-eight, which embodied mere statutory regulations, leaving the common law as embodied in the adjudications of the courts. When we remember that a single short statute, enacted in the last century, and drawn by one of the ablest men who ever sat upon the English Bench, has led to cart loads of adjudications upon its meaning and effect, we should be careful how we pile up cart loads of such statutes. Judge Story has been produced as an authority in favor of codification. He was a man of exalted worth, but after assisting to swell out some thirty volumes of reports, he wrote a dozen volumes of text books. Set such a man to codifying and you will have octavo piled upon octavo. [A voice—"Folios.""] And after the work is accomplished, every section and clause will become the subject of litigation and judicial construction, till by-and-bye the people would be ready in despair to sweep away the whole system of the common law, and to leave all questions to the sense of justice or the mere caprice of courts and juries.

I do not oppose the proposition to simplify the practice of the law. What I do oppose is destructive legislation in a Constitution, and the visionary scheme of doing or attempting at once what it must require time and experience to accomplish. I would introduce the reforms which are clearly right and none others. I would

rather stop short of than go beyond the proper point. I would not destroy by one section the whole system of equity jurisprudence, till the wisdom of such a step was made plain. By leaving the section as I proposed to modify it, we could secure all that is desirable. But if the scheme is to be carried out according to the ideas of some, I would prefer that the commissioners be plain common men, who will not, in their wisdom, discard common sense. I would give all credit to gentlemen for the benevolence of their motives, but I am compelled to fear that there is danger of acting rashly.

Mr. March next addressed the Convention; but his remarks are necessarily deferred.]

Mr. PETTIT. I have risen to call the attention of the Convention to a few remarks that fell from the lips of the gentleman from Laporte, (Mr. Niles,) and to call attention of my friend from Jennings, to the illustration he used in reference to the practice of law.

I have a sincere desire to see a radical change in the practice of the law. I want to say to the gentleman that, in my opinion, he has not made himself thoroughly familiar with the subject. Let us put a case: Let us suppose that I am indebted to the gentleman in the sum of five hundred dollars, upon a sealed note, given six months ago. (I am merely supposing a case, I am very glad it is not the fact.) [Laughter.] Suppose you hold my note under seal for five hundred dollars. You also have an open account against me for goods, wares, and merchandize, to the amount of three hundred dollars; and you have, also, a demand against me, for the malicious shooting of your horse, of the value of one hundred dollars. You have, then, three claims against me, all of them different in their character. And suppose that, on the other hand, you have killed some of my hogs, to the value of one hundred and fifty dollars, for which I have a claim against you. Now, shall we make four different suits at law out of these different claims, and four separate bills of cost—four trials, when they may all be merged in one? Under the present practice it would be necessary that you should bring three distinct suits upon the three different causes of action that I have supposed, and have three separate trials, and three bills of cost, whereas one would answer the purpose just as well. And I am compelled to bring one suit against you to recover for my hogs that you have killed, for I cannot set-off in this case. Indeed, it would be more consistent with reason and propriety that they all should be united in one suit.

Now, sir, a few words in reply to what was said by the gentleman from Laporte. The gentleman says that this beautiful system of law and equity—this system of practice—does more to ameliorate the condition of the State—that it does more to preserve order and good morals in the community than all the penitentiaries that were ever erected—that there is nothing but

beauty and perfection about it. Now, I ask the laymen of this Convention, as the gentleman from Allen would say, to hear me a moment in regard to this. [Cries of "Hear him," "hear him."] Our courts have decided that, however clear you make out an equitable case, how ever perfect your bill in equity, so long as all the ceremonials of the practice are not observed, unless you set out in your bill that you have no remedy at law, although you know that you have no remedy—unless you set it forth in your bill the court will dismiss the bill.

Mr. WALPOLE. That is good Wabash law.

Mr. PETTIT. It is good Supreme Court law.

Now, one other matter.

"No system to ferret out fraud is equal to that of equity jurisprudence." Now, I say of all the absurdities, and ridiculousnesses, and weaknesses that was ever brought out, or exercised, by the judiciary to ferret out fraud, this system of equity jurisprudence is about the weakest. How is it? A files a bill in chancery charging B with fraud. The bill contains the specifications or charges. Now, here is the error and weakness of it. B is called on to answer, and he goes to the office of a lawyer, a keen and shrewd one; he sits down writes his answer, and swears to it and files it in court; whereas, if a man charged with fraud was compelled to come before the court, and stand up, and undergo a rigid cross examination with the eye of the court upon him, if he would falter or prevaricate, he must stand self-convicted. Take a man to your office at midnight, and you can very easily make out a statement which will make the worse appear the better, whereas, if he were brought into court, the falsehood might be detected at once. It is the most puerile and worthless system for the detection of fraud that was ever invented. Sir, it is utterly impotent to accomplish the object for which it was intended, Mr. President, so far as this matter is concerned, I do not care anything about it one way or the other. If gentlemen want it to stand where it is, I can get along with it as well as they can. But I believe the community demand a reform in this particular. It is a relic of a barbarous age, and unfit, and unworthy to be retained as a part of our system of jurisprudence.

The question being upon the passage of the section,

The yeas and nays were ordered and taken, and there were—yeas 39, nays 93:

YEAS.—Messrs. Barbour, Beach, Beard, Bidle, Bourne, Bowers, Clark of Tippecanoe, Clements, Colfax, Davis of Madison, Davis of Parke, Dunn of Jefferson, Foster, Harbolt, Helmer, Hendricks, Hitt, Hovey, Howe, Johnson of D., Kelso, Kendall of Wabash, Kilgore, Mather, May, Milligan, Morgan, Murray, Nave, Niles, Pepper of Ohio, Rariden, Robinson,

Smith of Ripley, Spann, Steele, Walpole, Watts, and Wolfe—39.

NAYS.—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beeson, Berry, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hawkins, Helm, Huff, Johnson of O., Jones, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Newman, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Stevenson, Tague, Thomas, Thornton, Todd, Trimby, Wallace, Wheeler, Wiley, Work, Yocum, Zenor, and Mr. President—93.

So the section did not pass.

WABASH AND ERIE CANAL, &C., &C.

The next thing in the orders of the day was article number thirty-eight, upon its second reading. The article provides for the election of a Trustee for the Wabash and Erie Canal, a State Printer, and Warden of the State Prison, to hold their offices two years each; but shall only be eligible four years in any term of six years.

The article was read a second time, and

The question being, "Shall the article be engrossed for a third reading?"

Mr. PETTIT. I would make an inquiry of the gentleman who reported this article; is this: whether the Butler Bill, as it is generally called, does not require that this Trustee should be appointed by the Legislature?

Mr. READ of Clark. It does; but the committee did not think that that could prevent the Convention from changing the mode of electing the Trustee. As well as I recollect, the committee was instructed to report the article in its present form. We came unanimously to the conclusion that we have the right to change the mode of appointment, and that, in doing so, we would be guilty of no impropriety, or interfere with the obligation of the contract.

Mr. PETTIT did not care much about the section, one way or the other. He only wanted the State to carry out its obligation in good faith. The bond-holders, in the first instance, might have been more willing to enter into the arrangement, provided that their Trustees were to be appointed by the Legislature, and not by the people. They might have thought the Legislature would be more likely to elect a competent man than the people. Then, if so, we

should not alter one line or *scintilla* of our contract with them; but on the contrary should, in all its particulars and details, carry it out to its fullest extent. He therefore hoped the provision would be stricken out, so that the bondholders would have no cause of complaint against the State.

Mr. LOCKHART moved to amend by striking out of the section all that relates to the election of a Trustee of the Wabash and Erie Canal.

MESSRS. WALPOLE, KELSO, NAVE, and **COOKERLY** briefly expressed themselves as being in favor of the section as reported from the committee.

Mr. BARBOUR moved to lay the section, together with the amendment of the gentleman from Vanderburgh upon the table.

A division of the question being called for,

The question was first taken on laying **Mr. LOCKHART'S** amendment on the table, and

The yeas and nays, being ordered and taken, resulted—yeas 87, nays 42:

YEAS.—**MESSRS.** Alexander, Anthony, Barbour, Bascom, Beach, Beard, Beeson, Biddle, Bourne, Brookbank, Bryant, Butler, Carr, Carter, Clark of Hamilton, Clements, Coats, Colfax, Cookerly, Crumbacker, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Frisbie, Garvin, Gibson, Gootee, Haddon, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Maguire, Mather, Mathis, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Murray, Newman, Niles, Rariden, Read of Clark, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Tague, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wheeler, Work, and Yocum—87.

NAYS.—**MESSRS.** Allen, Badger, Berry, Bowers, Bright, Chapman, Chenowith, Clark of Tippecanoe, Cole, Crawford, Davis of Parke, Davis of Vermillion, Farrow, Foster, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hall, Hovey, Jones, Lockhart, Logan, March, May, Miller of Gibson, Morrison of Washington, Mowrer, Nave, Owen, Pepper of Crawford, Pettit, Ritchey, Smith of Ripley, Smith of Scott, Spann, Stevenson, Trimby, Wiley, Wolfe, Zenor, and Mr. President—42.

So the amendment was laid on the table.

The question then turned upon laying the section on the table, and was decided in the negative by yeas 49, nays 78:

YEAS.—**MESSRS.** Barbour, Berry, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Crawford, Dick, Dobson, Dunn of Jefferson, Farrow, Foster, Gordon, Graham of Warrick, Gregg, Hall, Harbolt,

Hawkins, Helmer, Hendricks, Hovey, Howe, Jones, Kendall of Wabash, Lockhart, Logan, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Washington, Nave, Newman, Pepper of Crawford, Pettit, Rariden, Read of Monroe, Ritchey, Robinson, Smiley, Smith of Ripley, Steele, Thomas, Todd, Trimble, Wolfe, Zenor, and Mr. President—49.

YAYS.—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beach, Beard, Beeson, Biddle, Borden, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carter, Clements, Coats, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Frisbie, Garvin, Gootee, Graham of Miami, Haddon, Hamilton, Helm, Hitt, Hogin, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kendall of White, Kilgore, Kinley, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Moore, Morrison of Marion, Mowrer, Murray, Niles, Owen, Read of Clark, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Scott, Stevenson, Tague, Thornton, Wallace, Walpole, Watts, Wiley, Work, and Yocum—78.

So the section was not laid upon the table.

Mr. ALLEN moved to re-commit the article with instructions to strike out all that part which relates to the election of the Warden of the State Prison by the people, and insert a provision to the effect that the Warden shall be elected by the convicts, on the joint stock principle. [Much laughter, and cries of "Consent!"]

Mr. SHOUP demanded the previous question.

The call was sustained, and the main question was, by consent, ordered to be now put.

The question was first taken upon the motion to re-commit, with instructions, and it was decided in the negative.

The question was then taken on ordering the section to be engrossed for a third reading, and was decided in the affirmative.

So the section was ordered to be engrossed for a third reading.

Mr. FOSTER offered the following as an additional section:

"All white male citizens of the age of twenty-one years and upwards, and of good moral character, shall be permitted to practice law in all the courts in this State."

The question being upon the adoption of the original section,

Mr. FOSTER remarked, that when he came into this State many years ago, no one was permitted to practice medicine, unless a graduate of the university, or who had obtained a license from the medical institutes of the State. That law had been repealed, so that now every one could practice in the medical profession, no matter of what grade, regulars, Homeopaths, Thompsonians, or Allopathists.

In divinity, it was formerly the custom for students not only to receive an education in divinity, but to reside for some years at a theological Seminary or university. It is different now days. Why should there be an exception made in favor of the law? These were the three liberal professions. In other States, the practice of the law had been thrown open to all persons of good moral character. The members of the bar would not fear competition with those who did not understand their business. Throw the profession open to all, like medicine and divinity; these were his sentiments.

Mr. STEVENSON moved that the amendment be laid upon the table.

The motion was not agreed to.

Mr. WALPOLE moved to amend by adding the words "medicine and surgery."

The question being upon the amendment of the gentleman from Hancock,

Mr. KELSO. I hope the question will not be encumbered with amendments: but that we may have a direct vote on the section, so that all the quacks that cannot make a living by practising medicine may resort to the law, and thereby save themselves from becoming paupers and chargeable upon the county. [Loud laughter.]

On motion of Mr. SHOUP,

The section and amendment were laid upon the table.

POLL TAX.

The section prohibiting the levying of a poll or capitation tax was then read a second time.

The question being upon ordering the section to be engrossed for a third reading,

Mr. FOLEY. I move that the section be laid upon the table.

Mr. MCCLELLAND. I want the yeas and nays on that.

The yeas and nays were ordered, and being taken on the motion to lay on the table, resulted—yeas 109, nays 18:

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Beard, Beeson, Berry, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Cookerly, Crawford, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hovey, Howe, Huff, Johnson of D., Johnson of O., Jones, Kelso, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, McFarland, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer,

Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Todd, Trimby, Wallace, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—107.

NAYS.—Messrs. Anthony, Bascom, Beach, Borden, Colfax, Crumbacker, Garvin, Hawkins, Kilgore, March, May, McClelland, Miller of Fulton, Milligan, Murray, Smiley, Walpole, and Work—18.

So the section was laid on the table.

On motion of Mr. MOWRER,

The Convention adjourned until Monday morning.

REMARKS OF MR. THORNTON,

In Convention, on Tuesday, January 21st, 1851.

MR. THORNTON. Having been the mover of the proposition under discussion, and as the same has been assailed with an unusual degree of hostility, by several gentlemen who have addressed the Convention on the subject, I must again invoke the indulgence of the Convention, whilst I attempt a reply to the remarks which have fallen from those gentlemen.

In the course of the observations heretofore made by me on this same subject, I intimated to the Convention, that we might expect opposition to the measure from members of the bar, or at least some of them. It will be remembered, too, that this intimation was made in a manner not intended or calculated to throw upon that honorable profession any imputation of a discreditable character. I gave to that profession due credit for all claims they may be entitled to, upon the public confidence; and I took the ground that their education, habits of life, &c., ever made them conservative, and opposed to innovations of any kind in the business of their profession. I certainly accompanied my remarks with a clear and explicit disclaimer of any intention to impute to my brethren of the bar anything farther, than that they as a body or class, from the very nature of their profession and pursuits, are more conservative than any other class, and more opposed to everything like innovation or change. I discover my friend from Owen, (Mr. Dobson,) seems to indicate something like opposition to the measure, but I was about to account for his course, for the reason that he was absent from the Hall on the other day, when the proposition was first submitted by me to the Convention, and that may, I hope, account for why he does not seem to understand the scope and purport of it.

I should have been quite willing to have dispensed with making provision in the Constitution, for the creation of a court of the description here suggested; but it appeared, however, to be so well understood that some tri-

bunal should be created for the transaction of probate business, and upon which jurisdiction might be conferred to try the lesser class of criminal cases, together with civil matters of a minor character, that I was induced to submit the proposition to the Convention. I did it, also, because I know it is demanded by the wishes and the wants of those I have the honor to represent here: and in addition to that, my humble judgment was backed by a number of gentlemen on this floor, who professed to coincide with me in opinion.

I am not ignorant of the fact, however, that this proposition is to be met with serious opposition from certain quarters. I am aware that a crusade has been got up against it. From the indications I have witnessed, I do not wonder at it, though I must confess, it seems to be waged with more earnestness and effort than I had anticipated. The gentlemen who oppose it so bitterly, have shown a zeal and effort, worthy of a better cause; and although I must insist that they are wrong, and in the prosecution of a wrong cause, yet I am free to accord to them full credit for sincerity of motive in their efforts to oppose its adoption.

I can assure you, Mr. President, the manoeuvrings of a certain clique over the way, have not escaped my notice. It was easily perceivable, and the gentlemen may find that notes have been taken of them, and may yet appear in print against them. And I am afraid, too, that my esteemed friend from Putnam (Mr. Badger) has been tainted by coming in contact with that same clique, from the motion he has just been induced to make, indicating hostility to the measure. I regret to witness it, as I was in hopes to have had his aid on the occasion.

I cannot but be surprised at the bitterness with which this proposition is assailed by the gentleman from Switzerland (Mr. Kelso). Not satisfied with denouncing the measure as one which should not be entertained by the Convention, he chooses to throw out some illiberal and unmerited imputations against me, as the originator of it. He has gone out of the usual road to arraign my motives for introducing it, as intended for something like Buncombe; and has very modestly assumed the part and tone of a very learned member of the legal profession, indeed, whilst he placed me amongst the class of humble pettifoggers. He also rants about "party," and affects to deprecate the consequences growing out of it. I do not think considerations of this kind should weigh very seriously with that gentleman, or cause him any uneasiness; for if I have read his political history correctly, "party" considerations would give him no trouble, as, if necessary, he could vault from one side to the other, with the most perfect facility, according to whichever he discovered to preponderate in strength.

Whilst I say this, however, I feel it due to that member to say, that I cheerfully accord to him talents and ability, by no means of a medium order, which has been fully indicated during the deliberations of this Convention; and though, according to my humble judgment, sometimes wrong, he has been often found as the able advocate of doctrines of a wholesome character, and such as I hope to see incorporated into the organic law of our State. Thus appreciating his abilities, I should have been glad to see him lend his support to the proposed measure. He has, as well as some others, for whom I feel great regard, thought proper to oppose it. This they have a right to do, in a becoming manner; but not doing so, they certainly have no right to arrogate to themselves, that they are the excellers in and special guardians of the law, and that every one who advocates the doctrines of reform, are ignorant pettifoggers or demagogues, and behind the times in point of intelligence. I cannot but think that when some of the learned gentlemen who here array themselves in opposition to all measures of reform, and undertake to denounce every friend of it, in the extraordinary and discourteous style they have done, it is difficult to determine, which feeling it is most calculated to excite, pity or contempt. When we reflect, that few of those gentlemen have enjoyed the opportunity of becoming deeply read, or acquiring a fundamental knowledge of law—that several of them are mere smatterers, who, if not watched, would mis-spell half the words in an ordinary decon or bill in chancery, it is matter of special wonder, that they could expect to escape rebuke at the hands of an intelligent community.

As to the gentleman from Jefferson, (Mr. Dunn,) I do not know exactly what his opinions may be, as to the policy and propriety of the measure under consideration, and although I have witnessed no overt act of hostility from him against it, I am fearful he will be found operating in the ranks of its enemies. I regret this, as I should have been very much gratified to have seen one of his ability and good sense, array himself on the side of reform.

Sir, I have been denounced, it seems, in terms by no means very complimentary, by certain gentlemen on this floor, on the account of my advocacy of this measure. It is stigmatized as *Buncombe*, and that every member of the legal profession who yields it his support, is either a pettifogger or a demagogue. This, to be sure, is not directly asserted, but it is broadly insinuated. The gentleman from Switzerland went so far as to intimate that I was trying to carve out a little petty county judgeship for myself, by favoring a county court system.

Now, Mr. President, so far as I am concerned, I hear this announcement with sincere regret. I would say to those gentlemen, that I certainly entertain for them, one and all, personally, the highest regard, and nothing would

have afforded me more gratification, than to have received the award of their good opinion. But considerations of a paramount character have influenced and dictated my action in this matter, which to have disregarded, would have rendered me justly obnoxious to the charge of having proved recreant to my trust, towards an esteemed and confiding constituency. Little do those gentlemen know of me, when such an insinuation is made. If they did, they would learn the fact, that unlike many of them, I indulge in no aspirations for official promotion, now or hereafter. I aim at manufacturing no materials which will serve as stepping stones towards the accomplishment of ulterior purposes; and I only have to add, that if *their* constituents, upon duly scrutinizing *their* course here, shall find them occupying the same position, those gentlemen will have great cause for self-congratulation. I have not been a candidate for *any* office whatever, for the last thirteen years, and perhaps may never be again. Had the member making this illiberal and unfounded charge practised the same self-denial which I have, he might have escaped some of the imputations which have been made against his political integrity and fair fame. Such imputations, when thrown at me, "pass by me as the idle wind, which I heed not."

And now, a few words as to the learned gentleman from Laporte, (Mr. Niles,) who is one to whom I ever listen with great gratification and deference, whenever he undertakes to address the Convention on any subject of interest. He, it seems, has seen fit to throw his weight into the scale against this great beneficent measure. From the tone of this gentleman's arguments generally, they had justly acquired a most enviable influence over the opinions of the members of this Convention. I can assure you, Mr. President, I was truly disappointed when I found him raising his voice against it.

In reference to the manner in which the measure has been assailed by those who have thought proper to oppose it, I cannot but admire the address and tact exhibited by them in the conduct of it. When the attack was about to be made, we could see them putting forward, as a van-guard, the very respectable, good looking, and able gentleman from Vanderburg, (Mr. Blythe,) to commence. His fair, plausible, and imposing manner, was well calculated for affect, and to carry alarm into the ranks of its friends. Fortunately, however, for our cause, although in making his onslaught, there was a pretty loud roar of small arms, the shots fell short of the mark, and no injury was sustained by any one. Soon after this, however, you could see the beligerents industriously mustering and arraying their forces. You might see them rising, like so many genio, in every part of the Hall. Even the gentleman from Crawford, whom I had hoped to see in the ranks of our friends, took sides with the enemy, and was not the last for-

ward in the fray—when I saw this, I must confess, it gave me sincere pain, and I felt almost disposed to cry out, in the language of Julius Cæsar, when receiving the paricidal stab from the hand of Brutus, *et tu Brute*.

I have said I expected to meet with opposition from gentlemen of the bar, and I regret to say that my apprehensions and predictions have been but too fully verified. I had no expectation, however, of encountering hostility from any other quarter, and more especially from the members of another learned profession, whose sympathies and countenance I hoped we should receive. You can imagine, then, what I felt at seeing my very sensible friend from Owen (Dr. Dobson), giving indications that he was also about poising his lance for an attack on us. Formidable as lawyers may be deemed in intellectual conflict, I feel more at home in a rencontre with them, as I am vain enough to believe, that I have some knowledge of their mode of warfare, and can be better enabled to parry their thrusts. But I must say, that I feel some secret dread coming over me when I discover that I must have a gentleman of the "*pill and lance*" pitted against me. They are so much better skilled in the art of killing, that I should feel almost disposed to come down ere awaiting a fire from one of them, especially from one possessed of the skill and experience of the gentleman from Owen. [Loud laughter.]

Mr. DOBSON observed that the only object he had in view in making inquiries of the gentleman from Tippecanoe, in relation to the section under consideration, was to obtain information, as he was not present at the time of its introduction. He fully concurred with the advocates of the measure, in the necessity of having some change in the present probate system.

Mr. THORNTON. I am sincerely gratified to hear this announcement of the gentleman, that I am to recognize him as an ally instead of an enemy. I am rejoiced to find so able an advocate on our side.

I am aware that when I voted against the plan of having 24 circuit judges, I was placed under the ban of the gentleman's interdict. This, as I have previously said, I could not conscientiously do. I believed it to be intrinsically wrong, and only calculated to provide places for a set of hungry, aspiring, half-fledged second or third rate lawyes, who could not live by their practice. I believed, too, whilst it would be productive of enormous expense, and a heavy draft on the public treasury, it would fail to furnish a convenient mode of administering justice by depriving us of convenient county tribunals. These considerations operated with me as conclusive reasons for rejecting it. I repeat it, we cannot dispense with some such domestic tribunal as proposed by me. In this I have been ably sustained by the unanswerable arguments of the gentleman from Tippecanoe, (Mr. Pettit,) the gentleman from Allen, (Mr.

Borden,) as also of the gentleman from Marion. (Mr. Morrison,) who has just demonstrated in a very sensible and forcible manner the salutary working of such a system in this county, by reference to the court of common pleas, established by a special act of the General Assembly. I firmly believe that if a system of county courts or tribunals—call them by what name you please—could be created, vested with such jurisdiction as I have heretofore suggested, it would greatly promote a prompt, cheap, and efficient administration of justice, and soon become a most popular and favorite tribunal with the people. And I can tell gentlemen who affect to sneer at such a court and its advocates, with such assumed airs of legal learning, that they will ere long find the public voice demanding its establishment in tones that will not be disregarded. I rejoice that we adopted the provision submitted by the gentleman from Wayne, (Mr. Newman,) leaving the number of circuit judges to be settled by the Legislature. This will enable us, if we wish to have the system here proposed take effect, to require the General Assembly to limit the number of circuit judges so as to warrant the creation of a county court as suggested. Ten circuit judges would be sufficient, if the amount of business should be withdrawn from the circuit court and conferred on the county court, as recommended by the advocates of the county court system. In fact, the number might possibly be reduced and still answer. I cannot but think but that the ends of justice and the public convenience would be greatly promoted by withdrawing from the circuit court jurisdiction of all matters except those of the higher grade, such as those involving titles to land, &c. I have been very much gratified to perceive, that upon recently looking into the journal of debates of the Ohio Convention, now sitting, the same subject has been most ably and elaborately discussed. I find that the ablest and soundest lawyers in that very intelligent body, composed of the ablest men of the State, are proposing and advocating the same plan of a court here proposed. Among them I find the names of such distinguished lawyers as Holt, Case, Clark, Archbold, Ranney, and particularly Stansberry, one of the ablest and most talented lawyers, and the Attorney General of the State. To be sure, I will do the opponents here of our plan, the justice to state, that the plan there proposed has to encounter, from the old hunker class of lawyers, who cling with characteristic tenacity to their old, musty, antiquated notions, the usual opposition. I am happy to see, however, that here they seem to dwindle to a miserable, low, and beggarly minority, so that the advocates of the reform system must eventually be triumphant, as I sincerely pray we may.

One word more and I have done. It will be recollected that I voted, as regards a supreme court, against the general ticket system for the

election of judges. I was induced to do this because I was and am most decidedly opposed to such a court, constituted on the plan proposed by the judiciary committee, and finally sustained by a majority of this Convention. I believed a court of dernier resort could be formed out of the body of the circuit judges; and, with all becoming respect for the opinions of the majority, I still confidently and firmly maintain that belief. As soon as the will of the majority was satisfactorily indicated, I felt myself bound to defer to it, and finally gave to the general ticket plan my unhesitating support. I was induced to do this under the conviction that it was more congenial with the theory of our republican system of government, than the district plan. I am aware that it was urged as a reason for adopting the district system, that it afforded the opportunity of having all the parties represented on the supreme bench, whereas, by the general ticket system, the dominant party could monopolize all the seats on the bench. I cannot believe that such considerations as these will operate to influence the election of our supreme judges. It amounts almost to a libel on the public judgment to moot such a question. The assertions of the advocates of the district system are not borne out by facts, for I find that in the State of Mississippi, where the democratic party are largely in the ascendant, Mr. Sharkey, who had been Chief Justice of the State, was re-elected over his democratic opponent by a most triumphant majority.

As to the pending motion of the gentleman from Putnam to re-commit with instructions to strike out "county court," if any of the friends of said plan have become convinced that it is best to leave it out of the Constitution, relying on the wisdom of the Legislature to provide for such a court, let them vote accordingly, and, for myself, I will be satisfied.

MONDAY, JAN. 27, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. FARROW.

The journal of yesterday was read and approved.

ADJOURNMENT.

Mr. FOLEY. I ask the indulgence of the Convention to suspend the rules so as to enable me to offer a resolution.

SEVERAL VOICES. Read the resolution. What is it?

Mr. FOLEY. The resolution is that this Convention adjourn *sine die*, on the sixth of February next.

The question being upon the suspension of the rules,

Mr. SMITH of Ripley demanded the yeas and nays.

They were ordered and, being taken, were—yeas 79, nays 46—as follows:

YEAS.—Messrs. Anthony, Barbour, Bascom, Beach, Beard, Beeson, Blythe, Borden, Bowers, Bright, Brookbank, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Duzan, Elliott, Farrow, Fisher, Foley, Frisbie, Gootee, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Helm, Hendricks, Hogin, Hovey, Howe, Huff, Johnson of D., Kendall of Wabash, Kinley, Logan, Mather, Mathis, May, McClelland, McLean, Miller of Fulton, Milligan, Moore, Morrison of Washington, Murray, Newman, Nofsinger, Pepper of Crawford, Prather, Rariden, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Tague, Thomas, Trimble, Watts, Wheeler, Work, Yocum, and Zenor—79.

NAYS.—Messrs. Alexander, Allen, Biddle, Bryant, Carr, Chapman, Davis of Vermillion, Dick, Dunn of Perry, Edmonston, Foster, Garvin, Gibson, Gordon, Graham of Warlick, Hall, Helmer, Hitt, Johnson of O., Jones, Kelso, Kent, Kendall of White, Lockhart, Maguire, March, McFarland, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morgan, Mower, Owen, Read of Clark, Read of Monroe, Robinson, Sherrod, Shoup, Smith of Scott, Spann, Thornton, Wiley, Wolfe, and Mr. President—46.

So the rule was not suspended.

Mr. BARBOUR. I move to re-consider the vote that was taken on Saturday last, by which the resolution and pending amendments in relation to the final adjournment were laid on the table.

The yeas and nays were ordered.

Mr. EDMONSTON. I have only one word to say in reference to this matter, and that is, I hope the time of the Convention will not be taken up with propositions for settling the period of adjournment.

The PRESIDENT. The Chair would remark that debate is not in order.

The yeas and nays were taken with the following result—yeas 88, nays 40—as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Beard, Beeson, Blythe, Borden, Bourne, Bowers, Bright, Brookbank, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hogin, Hovey, Howe, Huff, Kendall of Wabash, Kinley, Logan, Maguire, Mather, Mathis, May, McClelland, McLean, Miller of Fulton, Milligan, Morgan, Morrison

of Washington, Mowrer, Murray, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Schoonover, Sims, Smiley, Smith of Ripley, Steele, Stevenson, Tague, Thomas, Trimby, Watts, Wheeler, Wolfe, Work, Yocum, and Zenor—88.

YAYS.—Messrs. Alexander, Biddle, Bryant, Carr, Chapman, Dick, Dunn of Perry, Edmonston, Garvin, Gibson, Graham of Warrick, Hall, Helmer, Hitt, Johnson of O., Jones, Kelso, Kent, Kendall of White, Lockhart, March, McFarland, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Owen, Pettit, Read of Monroe, Robinson, Shannon, Sherrod, Shoup, Snook, Smith of Scott, Spann, Thornton, Wiley, and Mr. President—40.

So the vote was re-considered.

The question being on laying the motion and pending amendments on the table,

It was decided in the negative.

The question then recurred on the adoption of the amendment of the gentleman from Monroe, (Mr. Foster,) which proposes to amend the amendment by inserting the 17th of February, and being taken,

It was decided in the negative.

The question then being on amending the original section, by striking out the thirteenth of February and inserting the tenth day of February,

Mr. GREGG. I move to amend by striking out all after the resolving clause, and inserting the following:

"This Convention will adjourn *sine die* on Thursday, the sixth of February."

The PRESIDENT. The Chair would remark to the gentleman from Jefferson, that his amendment does not apply. There is no resolving clause in the amendment which he proposes to amend.

Mr. GREGG. My motion is to strike out "ten," and insert "six."

The PRESIDENT. The gentleman will send up his amendment in writing.

The amendment was accordingly sent up in writing.

Mr. MATHER demanded the previous question.

Mr. KELSO (at the same moment) moved to lay the amendment of the gentleman from Jefferson on the table.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 54, nays 73—as follows:

YEAS.—Messrs. Alexander, Biddle, Borden, Bryant, Carr, Chapman, Cookerly, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Fisher, Foster, Frisbie, Garvin, Gibson, Graham of Miami, Graham of Warrick, Haddon, Hardin, Helmer, Hitt, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Maguire, May, Miller of Clinton, Miller of Fulton, Miller of Gibson,

Milligan, Milroy, Mooney, Moore, Morgan, Mowrer, Owen, Pepper of Ohio, Pettit, Rariden, Robinson, Sherrod Shoup, Smith of Scott, Spann, Thornton, Wallace, Wheeler, Wiley, Wolfe, and Mr. President—54.

NAYS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Beard, Beeson, Blythe, Bourne, Bowers, Bright, Brookbank, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dunn of Jefferson, Duzan, Farrow, Foley, Gootee, Gordon, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hogin, Hovey, Howe, Huff, Johnson of Dearborn, Jones, Kinley, Logan, March, Mather, Mathis, McClelland, McLean, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Tague, Thomas, Trimby, Watts, Yocum, and Zenor—73.

So the amendment was not laid upon the table.

Mr. FOSTER addressed the Chair.

The PRESIDENT. The question is now on seconding the demand for the previous question.

Mr. FOSTER. I was not aware that we were under the operation of the previous question.

The PRESIDENT. The previous question has been demanded by the gentleman from Elkhart.

The demand for the previous question was seconded, and the main question ordered to be now put.

The question being on the adoption of the amendment of the gentleman from Jefferson, it was, upon a division—yeas 50, noes 58—decided in the negative.

The question then being on the motion to strike out from the original resolution, "the 15th of January," and insert "the 10th of February,"

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 111, nays 15—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom Beach, Beard, Beeson, Biddle, Blythe, Borden, Bourne, Bowers, Bright, Brookbank, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kendall of Wabash, Kendall of White, Kinley, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of

Gibson, Milligan, Milroy, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tague, Thomas, Trimby, Wallace, Watts, Wheeler, Wolfe, Yocum, and Zenor—111.

YAYS.—Messrs. Bryant, Carr, Chapman, Dick, Gibson, Graham of Warrick, Helmer, Kent, Mooney, Pettit, Robinson, Shoup, Thornton, Wiley, and Mr. President—15.

So the amendment was adopted.

The question being on the adoption of the motion, as amended,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 109, nays 12—as follows:

YAYS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beach, Beard, Beeson, Biddle, Blythe, Borden, Bourne, Bowers, Brookbank, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kendall of Wabash, Kendall of White, Kinley, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moorey, Moore, Morgan, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Thomas, Wallace, Watts, Wheeler, Wolfe, Yocum, and Zenor—109.

NAYS.—Messrs. Bryant, Carr, Chapman, Dick, Helmer, Kent, Pettit, Robinson, Spann, Thornton, Wiley, and Mr. President—12.

So the resolution, as amended, was adopted.

Mr. GIBSON moved a re-consideration of the vote by which the resolution was adopted.

Mr. PETTIT. I am satisfied that we cannot get through in two weeks; and if we reconsider the vote now, and confirm it, it will be unalterable, and we shall be precluded from enlarging the time hereafter, if we find that we are unable to finish our work by the tenth. I hope the gentleman will consent to withdraw his motion.

Mr. GIBSON declined to withdraw the motion.

The question was taken on the motion to reconsider the vote, and it was, upon a division—yeas 50, noes 45—decided in the affirmative.

The question then recurred on the adoption of the resolution.

The yeas and nays were demanded, and they were ordered.

Mr. BORDEN. Is a motion to lay on the table now in order?

The PRESIDENT. No, sir, the previous question is again in force.

Mr. BORDEN. I would inquire whether, in case the resolution be now adopted, a motion to re-consider may be made hereafter?

The PRESIDENT. The Chair thinks not. One motion to re-consider exhausts the parliamentary rule, and it is all that is permissible. A motion to re-consider cannot be entertained a second time without a violation of parliamentary law.

Mr. COLFAX. I would ask whether the rules are not within our own control, and whether they may not be rescinded at any time?

The PRESIDENT. The rule that is applicable to this subject is not one of the rules that have been specifically adopted by the Convention. It is a matter that is governed by parliamentary law.

The yeas and nays were taken with the following result—yeas 96, nays 30:

YAYS.—Messrs. Alexander, Anthony, Barbour, Bascom, Beach, Beard, Beeson, Biddle, Blythe, Bourne, Bowers, Brookbank, Butler, Chenowith, Clark of H., Clark of T., Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Kendall of Wabash, Kilgore, Kinley, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Milligan, Milroy, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Thomas, Trimby, Watts, Wolfe, Work, Yocum, and Zenor—96.

NAYS.—Messrs. Borden, Bright, Bryant, Carr, Carter, Chapman, Dick, Dunn of Perry, Foster, Garvin, Gibson, Graham of Warrick, Hardin, Helmer, Jones, Kelso, Kent, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Pettit, Read of Clark, Read of Monroe, Robinson, Shoup, Spann, Thornton, Wiley, and Mr. President—30.

So the resolution was again adopted.

PRACTICE OF LAW.

Mr. BORDEN, from the committee on law reform, reported a section providing that any

person of good moral character, having the right of suffrage, shall be entitled to practice law within this State.

The section was read a first time and passed to a second reading.

COUNTY BOARDS.

Mr. NEWMAN, from the committee on special and local legislation, reported back the section, amended as directed by the Convention, which provides that the Legislature shall confer on county boards powers of a local legislative character.

The question being, Shall the section pass?

Mr. PETTIT moved that the rule which requires the yeas and nays on the passage of a section be suspended.

The rule was suspended, and

The section passed, and was referred to the committee on revision.

CONTESTED ELECTIONS.

Mr. GRAHAM of Warrick, from the committee on the elective franchise, reported a section providing that county boards shall determine contested elections for members of the General Assembly, county officers, &c.

The section was read a first time and passed to a second reading.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the general orders of the day,

The first thing in order being the section which provides for the election of a Trustee for the Wabash and Erie Canal, a Warden of the State Prison, a State Printer, &c.,

The section was taken up on its third reading.

Mr. EDMONSTON moved that the section be re-committed, with instructions to amend by striking out Warden of the State Prison and State Printer.

Mr. PETTIT. My opinion is, that the section ought to be stricken out. [Cries of "consent!"]

A MEMBER suggested that it be laid on the table.

Mr. PETTIT. Very well; but before we do that, I want to read a section of the Butler Bill. The seventh section reads as follows:

SEC. 7. As soon as said sum shall have been subscribed, it shall be lawful for said subscribers to elect two discreet persons, both of whom shall be citizens of the United States, and one of whom shall be a citizen and resident of this State, as Trustees; and a notice thereof, accompanied with a copy of the subscription aforesaid, given to the Governor; and he shall appoint, if in the recess of the Legislature, but if not, the two Houses shall elect, by joint ballot, a third discreet person; and these shall constitute a board to be known by the style and description of the Board of Trustees of the Wabash and Erie Canal, and who shall hold their

offices for the term of three years from the time of their said election or appointment, and until others are elected and appointed in their places; *Provided, however*, that in the case of the Trustee on the part of the State, if he shall have been appointed in the recess of the Legislature, he shall only hold his office until his successor shall be elected, as aforesaid, by the two Houses of the next General Assembly."

Now, sir, it is well understood by the Convention that this was a matter of compromise between our creditors and the State, by which the matter was to go into the hands of three persons, two to be selected by the stockholders and one by the State. The two to be selected by the stockholders are to be citizens of the United States, and one is to be a citizen and resident of Indiana. Now, suppose they should appoint foreigners, and suppose we remonstrate against such action on their part, they may say they have a right to do so; that it does not interfere with the contract between them and the State. Suppose they elect foreigners, may we not say you are not faithfully complying with your contract, therefore we will abrogate it? It may make a material difference as to how these trustees shall be appointed, they might think that we would get much better men, if they should be appointed by the Legislature, than if elected by the people. They might say the people would make a bad choice. The bondholders might say we never consented to co-operate in regulating this trust fund with men thus elected. Sir, it may not be a violation of the contract; we may have power to do it; but I ask all gentlemen who are jealous and proud of the honor of their State, whether they would not only in substance, but to the letter, perform their contracts? There should not be even the appearance of the violation of the contract. There should not be reason given for even color of complaint in regard to the election of these officers. Is it not probable that the Legislature will carry out the trust as faithfully as the people would do.

Sir, another thing: This act especially provides that these officers shall be elected for three years. The section before us provides that the trustee on the part of the State, shall be elected once in two years. This, too, may be a matter of great importance with the bondholders. They elect their officers for three years, and we, when we entered into the contract, undertook to elect ours for the same period. Shall we, then, by making a change in this respect, violate in form and in substance our public faith.

Sir, the gentleman from Hancock, who is not now in his place, said to me on Saturday that I was claiming for this Convention the power to abrogate all vested rights; that I contended that we were about effecting a revolution as marked and decided as would be a revolution effected by force. Sir, I regard the action of

this Convention as being revolutionary, so far as our government is concerned; but I cannot go so far as to repudiate our public faith to abandon all obligations. But let me say to the gentleman, if he be a statesman, if he have a regard for the honor and credit of the State, if he has well considered the difference between domestic obligations, between the right of the people themselves to upturn their own government, and the right of nations to forfeit their obligations with foreigners, there is a very marked difference between your right to control your domestic institutions, and your right to throw off your obligation to foreigners or to foreign States. No nation that is jealous of its honor will fail to take care to comply with all its contracts. Our ancestors, in rolling from under the old federal articles, took express care to put in the Constitution of the United States that all the debts and obligations under the old system of government should be binding and obligatory under the new, and we ought to do the same. Sir, in matters where no principle is involved, where no good can arise from an abrogation of established usage, we ought to be particularly careful not only that we do not violate our pledged faith but that our conduct may not have the appearance of a violation of our obligation.

Mr. MURRAY. I have a few words to say in relation to this subject. I was pleased with the remarks of the gentleman from Tippecanoe. They are just and appropriate, and deserve the careful attention of the members of this Convention. But I arise principally to say a few words in reply to the remarks made by the gentleman from Switzerland, the other day, who said that the trustees on the part of the bondholders had violated their faith, and therefore we might violate ours. Sir, there was no violation of faith on their part. The gentleman said that they had neglected to re-appraise the land. Sir, the law provides that the bondholders shall appoint one commissioner, and the State shall appoint another, and these commissioners shall select a third; and that they should, on the premises, *personally* view the lands, and appraise them, and report to the next Legislature. But they had not time. The law involved an utter impossibility. It was not possible for them to comply with the act in this respect. The trustees, at the very first meeting of the board, appointed their commissioners, and the State appointed another; these commissioners selected another commissioner, and they went forward in good faith to execute their work, commencing with the Blue Cliff land; and they employed their time faithfully, and got through with as much as any one could reasonably expect. But before they finished the appraisalment the law expired by its limitation. The trustees then had no authority to appoint a new commissioner, nor would an appointment have had any validity without the consent of all the bond-

holders. But more than this, it was not their interest to appoint one. They had fulfilled and finished their duty under the law, and were bound no farther. It is well known that the re-appointment diminished the fund placed in their hands for the completion of the canal, and all know that whatever lessened the fund delayed its completion.

It may be well doubted, whether the interest of the State or of the bondholders, or, indeed, justice to the purchaser of the land, was duly considered in the enactment of the law. In regard to the purchasers of the land, the State had thought it all fair to sell high when it was their "bull," but when it was the bondholders "bull," it was quite another affair. But who was to receive the benefit of the re-appraisalment? This was a question on which there was much division of opinion. The land, in many instances, had been sold half a dozen times, the first purchaser always making a speculation on his purchase. Who, then, was wronged, and who should justly receive the benefit of a reduced price? At all events, the trustees were absolved from all further duty on the subject. The gentleman also charged the trustees with a breach of contract, in regard to certain side cuts. Let us look at this a moment: Let us inquire whether it was not more important that the main line should be first finished. Whether among the vast responsibilities they assumed, (and which I aver has been carried out most indelibly and in good faith,) there were not other obligations to the State of far more importance than the side cuts, which should be first attended to. Both the question and the answer, I presume, present themselves to the minds of every member, without my asking it.

The side-cuts were as a drop to the bucket, in point of importance. To be sure, if there had been no lack of funds, or more water to fill the side-cuts, then the work might have progressed. But every body knows there was a lack of funds, and every body ought to know by this time that there was a lack of water.

Why, sir, the engineers have not been able to supply the line with water, from Lafayette to Terre Haute, for a considerable portion of the season, and it is evident that water cannot be spared for the side-cuts without great injury to the main line, until the canal banks become saturated, and more impervious against breakage. Sir, I had hoped that the war upon the Trustees had ceased. I had hoped that the energy and fidelity with which they had progressed in the discharge of their duties, would not only have been seen, but felt and acknowledged.

Sir, I have always viewed this contract as a happy and beneficent one to the State, in every point of view. It relieved her from bankruptcy; it carried forward her interests, of all classes, when her credit was prostrate, and her citizens almost mutinous; it has restored her to an enviable position, and given new life and vigor to

her energies. Sir, I feel it to be not only ungrateful, but suicidal, in any manner to weaken the hands, or discourage the hearts, of the Trustees, in this vital improvement of the State.

Mr. LOCKHART. I rise for the purpose of renewing the motion that I made on Saturday, in another form. I moved, then, to strike out the whole of the section that related to the election of a Trustee of the Wabash and Erie Canal; but I had no opportunity to state to the Convention the reasons which prompted me to make that motion; I was prevented by the call of the previous question.

The PRESIDENT. The Chair would remind the gentleman that the motion pending now, is to re-commit the section with instructions.

Mr. LOCKHART. Yes, sir, I am aware of that, but desire to say a few words before I send up my amendments to the instructions. I concur fully with the gentleman from Tippecanoe in saying that the adoption of this section may be construed into a violation of our contract with the bondholders. I agree with him, further, in saying that we may possibly have a constitutional right, but not a moral right, to violate this contract; but, my word for it, if we do violate it, the State will have to pay the penalty for our dereliction of duty. I was astonished to hear the gentleman from Warren casting his vote on Saturday for this section, and against my amendment. If I have been correctly informed, that gentleman is now prosecuting a suit with great zeal and ability, against the Trustees of the Wabash and Erie Canal, for the purpose of enforcing the obligation of their part of the contract with the State, in the completion of a side-cut in the county of Warren. If he desires that the bondholders should comply on their part, ought he not to be equally anxious that the State should preserve inviolate her part of the contract, also.

Now I suggest to the gentleman, whether or no this is not a scheme gotten up by the connivance of the bondholders, so that they may obtain a pretext by which they may say that the State violated the contract on its part, and that they have a right to violate it on their part. I ask the gentleman from Warren whether this will not be the result?

Mr. BRYANT. I had not given the section much reflection, but I must confess that the idea, that to elect the Trustee by the people, instead of by the Legislature, would be a violation of the contract, had not entered my mind.

Mr. LOCKHART. I will now say to the gentleman from Warren that by the bill known as the "*Buller bill*," it is provided that the bondholders shall elect two Trustees, and the State one; the two that are to be elected by the bondholders are to be citizens of the U. S., and that one of them shall be a citizen of the State of Indiana; now I must ask him whether it would be a violation of the contract for the bondholders to elect a person one of these Trus-

tees who resides in London, and the other in Paris.

Mr. BRYANT. I think it would.

Mr. LOCKHART. This, it is admitted, would be a violation of the contract, yet it is maintained that to reduce the term of the Trustee to be elected by the State, from three to two years, and elect him by the people instead of the Legislature, is no violation of the contract. I regard the one as much a violation of the contract as the other. I now offer the following amendment to the instructions.

Mr. CARR moved that the section, with the pending amendments, be indefinitely postponed.

Mr. COOKERLY demanded the yeas and nays, and they were ordered.

Mr. BORDEN. Before the question is put, I wish to assign, very briefly, the reason why I shall vote against the motion to postpone indefinitely. I am in favor of the election of the Warden of the Penitentiary by the people, because I think it will change the mode of doing business in relation to the Penitentiary. I am opposed to hiring out our prisoners to be kept by contract.

Mr. HENDRICKS. The reason given by the gentleman from Allen is the very one that will influence me in voting against the section. This system of selling out the unfortunate persons who are sent to the Penitentiary, is to my mind extremely objectionable.

Mr. SHOUP. Is it in order to move to lay the motion on the table?

The PRESIDENT. Such a motion will be in order.

Mr. OWEN. If the gentleman will give way a moment, I have a single remark to make.

Mr. SHOUP yielded the floor.

Mr. OWEN. There is one principle which I think an important one, and it is, that executive officers should always be responsible to those for whom they perform service. The Legislature is the body that has and should have control over the Warden of the State Prison.

Mr. SHOUP moved that the section be laid upon the table.

Mr. COOKERLY demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 113, nays 17—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beard, Berry, Blythe, Bright, Bryant, Butler, Carr, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kendall of White, Kin-

ley, Lockhart, Logan, Maguire, Mather, Mathis, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Trimble, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—113.

NAYS.—Messrs. Beeson, Borden, Bourne, Bowers, Brookbank, Cookerly, Edmonston, Howe, Kilgore, March, McClelland, McFarland, Moore, Prather, Read of Clark, Robinson, and Wallace—17.

So the section was laid upon the table.

CORPORATIONS.

The section which provides that corporations shall not be created by special acts, but may be formed under general laws, and that all laws conferring corporate powers, may be altered or repealed, was read a second time.

The question being upon its engrossment,

MR. READ of Monroe. It will be recollected by the Convention, that we have already adopted, in another place, the provision that is contained in the first part of this section. The second part reserves to the Legislature the power to repeal all laws conferring corporate powers; but it is to be recollected that we have also provided that corporate powers shall only be conferred by general laws, and they are at all times subject to be repealed by the Legislature, without a special reservation of power for that purpose. It will be well, perhaps, to adopt the section as it stands, and leave it to the committee on arrangement and revision to arrange the provisions contained in it in their proper places.

MR. HELMER moved that the section be laid upon the table.

The yeas and nays being demanded and ordered, were taken, and resulted—yeas 53, nays 71—as follows:

YEAS.—Messrs. Allen, Barbour, Beard, Bidle, Bourne, Bowers, Brookbank, Clark of Hamilton, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Frisbie, Gibson, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Kilgore, Lockhart, Logan, Maguire, Mather, Milligan, Mooney, Morgan, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Spann, Stevenson, Thomas, Wallace, Watts, and Zenor—53.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Bright, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Tippecanoe, Coats, Crumbacker, Davis of Vermillion, Dick, Dobson, Duzan, Edmonston, Elliott, Fisher, Foley, Garvin, Gootee, Gordon, Gra-

ham of Miami, Graham of Warrick, Hardin, Howe, Johnson of Dearborn, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, March, Mathis, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Monroe, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Tague, Thornton, Trimble, Wheeler, Wiley, Wolfe, and Yocum—71.

So the section was not laid upon the table.

MR. COLFAX. It seems to me, sir, that the section ought to be made plain, in order that we may not undo what we have already done; the legal rule of construction being, I believe, that the latest provision repeals a former provision upon the same subject. I move to amend by adding, "except in such cases as are authorized in this Constitution."

The amendment was adopted.

The section was then ordered to be engrossed for a third reading.

INDIVIDUAL LIABILITY.

The section which provides for the individual liability of stockholders in proportion to the amount of their stock, &c., was read a second time.

MR. COLFAX moved to amend the section by striking out the words "in proportion to the amount of their stock," and inserting in lieu thereof, "to an amount over and above their stock, equal to the amount of their stock."

MR. BASCOM demanded the previous question.

MR. STEVENSON (rising at the same time) moved that the section and pending amendment be laid upon the table.

MR. PETTIT demanded a division of the question.

The question being, first on laying the amendment on the table,

It was decided in the affirmative.

The question then being on laying the section on the table,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 49, nays 81—as follows:

YEAS.—Messrs. Allen, Barbour, Beard, Bidle, Bourne, Bowers, Bright, Brookbank, Clark of Hamilton, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Dunn of Jefferson, Farrow, Foley, Frisbie, Gibson, Gregg, Hall, Hamilton, Hawkins, Helm, Hogin, Hovey, Huff, Kilgore, Lockhart, Maguire, Mather, Morgan, Murray, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Shannon, Sherrod, Snook, Spann, Stevenson, Thomas, Trimble, Wallace, and Watts—49.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Borden, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Tippecanoe, Clements, Coats, Crumbacker,

Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Fisher, Foster, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Hardin, Helmer, Hendricks, Hitt, Howe, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Logan, March, Mathis, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Nofsinger, Owen, Pettit, Read of Monroe, Schoonover, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Thornton, Walpole, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—81.

So the section was not laid upon the table.

MR. PETTIT. As the Convention seems to be very anxious to get along with business without debate, I move the previous question.

THE PRESIDENT. The previous question has been already demanded by the gentleman from Wells.

The previous question was seconded, and the main question ordered to be now put.

The question being on ordering the section to be engrossed for a third reading,

It was, upon a division—ayes 73, noes not counted—decided in the affirmative.

The article in relation to the trustees of the township of Clarksville, was taken up on its second reading.

MR. THORNTON. This is the article which I had the honor to report, as chairman of the committee.

MR. SHOUP. I move that the Convention adjourn.

The Convention refused to adjourn.

The question being on ordering the section to be engrossed for a third reading,

It was, upon a division—ayes 53, noes 28—decided in the affirmative.

On motion,

The Convention adjourned.

AFTERNOON SESSION.

The section in relation to lands sold for taxes was read a second time.

MR. BROOKBANK moved that it be laid upon the table.

The motion was agreed to, and the section was laid upon the table.

The sections which provide for an enumeration of white male inhabitants every six years, and the apportionment of Senators and Representatives in the several counties, were ordered to be engrossed.

MR. GIBSON offered an additional section, that it shall be the duty of the Supreme Court on the decision of every case, to give a brief statement in writing, of the questions arising therein, and their decision of each question respectively.

The first section of the article reported from the committee on education, was read a second time.

The section is as follows:

SEC. —. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition, as soon as circumstances will permit, shall be gratis, and equally open to all.

MR. BRYANT moved to amend by striking out the words "as soon as circumstances will permit."

MR. BRYANT. I will say that this clause was inserted inadvertently by the committee. It was not intended to retain anything more of the first section of the present Constitution, than those parts of it that were applicable to our system. We certainly did not intend to insert anything that would have the effect of preventing or postponing the establishment of free schools. I am satisfied that the chairman of the committee, as well as all other gentlemen, will concur in the propriety of striking out these words.

The question being taken, the motion was agreed to.

So the section was ordered to be engrossed for a third reading.

MR. MORRISON moved an additional section providing for the election of a State Superintendent, to hold his office for two years, his duties and compensation to be prescribed by law.

MR. READ of Monroe. The provision of this section, Mr. President, creating permanently the office of a superintendent of education for the State, meets my most hearty approbation; and, I trust it will be adopted as a part of the Constitution.

We are, sir, laying broader our political foundations. We are giving the election of all the officers of government—legislative, judicial, and administrative—not to a select portion of the people—but directly to the whole people themselves. The education of every child in the State has become simply a political necessity. It is a necessary measure of defense and self-preservation. We *must*—yes, sir, I repeat it, we *must* have a better devised and more efficient system of general education. On this subject, there can be but one opinion in this body, and indeed, among the people of the State at large.

Well, sir, in my deliberate judgment, the very first step, is provision for an officer to aid in forming such a system, and in supervising it when formed. Without this step, I pronounce every other step useless. Without such an officer, we may as well abandon at once the

whole policy of popular education by a public provision. I would as soon think of doing without an Auditor of State, a Secretary, or a Treasurer, as without a superintendent of education. Why, sir, when we shall add the "proceeds" which will arise from the sale of our recently donated swamp lands to our other educational funds, we shall have an aggregate of three millions of dollars for the support of our schools. Shall the management of this vast fund, its preservation and disbursement, and the system which it will support, have no controlling head? No man would erect a factory or a foundery, costing but fifty thousand dollars, or even a far less sum, without a proper superintending agent. Not a single plank road company, or railroad company in the State, would, for a moment, think of doing without a President, for the sake of saving the salary of such an officer. Had a superintendent of education existed long since, he would have saved a vast amount which for the want of proper supervision, has been forever lost to the children of the State. We have in this matter, been penny wise and pound foolish. We have saved the salary and expense of the office, and we have lost twenty times over the cost in mere money, for the want of it. And not only that, the whole policy of the State has proved simply a failure so far as the public provision for schools is concerned. We have had no system, no uniformity of action, no well directed general effort on the great subject of education, nor can we have, until we shall have the officer proposed in this section.

But, sir, we are not left to conjecture to determine the beneficial results of having such an officer. We have the light of experience coming to us from numerous States. It cannot be too strongly impressed upon the public mind, that the mere providing of funds, by taxation or otherwise, for schools, will never perfect the work of popular education. Something beyond this is required. You must have plan and organization. It is well known that the State of Connecticut had funds for schools beyond those of any other State; yet it is equally well known how little good these funds accomplished, until there was an officer to superintend the system which they were designed to support. In Henry D. Barnard, was happily found a man whose zeal, energy, and perseverance made the funds of the State available to the great purpose for which they were set apart. In Rhode Island, the results were similar. The great and general educational impulse in that State, which has existed within the few past years, was given by the State superintendent. The whole world knows what Horace Mann has done for Massachusetts. By letters, by reports to the Legislature, by going abroad among the people, by recommendations which procured the passage of suitable laws, by popular lectures, and other modes of arous-

ing the minds of the people, he infused new life and energy into the system, and raised the standard of common school education in every neighborhood throughout the State. There, sir, is our young sister, Michigan. How is it, that her educational system is such, that it has attracted the attention of the whole country; that in every neighborhood, there is the school library, as the accompaniment of the school; that her funds for education have been preserved and husbanded almost without loss? Why, sir, Michigan, almost from the first, has had a superintending agent for the great department of public education. Here, sir, is a book [Mr. Read holding up the book] on the subject of popular education, prepared in accordance with a joint resolution of the General Assembly of that State, by the Superintendent. It presents the most valuable instruction for all the families of the State, and presents to the young teacher information on the art of teaching, of the most useful character.

Here, sir, is another volume. It greets us from our still younger sister, Wisconsin. It is the educational document of that young State. She has her superintendent of education—an officer by the Constitution. So too has Iowa. Kentucky, also, has at last learned, that nothing valuable in this great work can be achieved without a proper superintending officer. By her lately revised Constitution, the office is made as permanent as the Constitution itself. It was first created some two years since, by the Legislature; and it is said that already the beneficial results are experienced in the improved condition of the schools, and the increased interest awakened on the subject, among the people of the State. No State has recently formed or revised its Constitution without providing this officer, by a constitutional enactment.

What, sir, will be the duty of the proposed officer? He will exercise a general superintendence over the school fund—recommend measures to prevent its loss—advise the Legislature of defects in the school laws—propose methods for the improvement of the schools—recommend to teachers the best modes of teaching—give advice as to the construction of school houses—receive reports and furnish statistical information in regard to the condition and progress of general education—in short, it will be his business, by his own effort, and by the co-operation of others, to give direction and energy to the whole scheme of public instruction.

Sir, if we create the office, I trust we shall have one of our ablest men to fill it—one who will do for Indiana the same work which Mann, Barnard, Mayhew, and others, have done for their respective States. A higher or nobler mission, or a better sphere for the exertion of talent, no man need desire.

If this office is created, I shall have hope for the schools of Indiana. If it is not, we may as

well postpone the whole subject of education. The provision of funds will do little good. A hap-hazard system without a head, does not deserve the name of a system.

If we are truly in earnest in this cause, let us adopt the section. Let us provide for uniformity and concentration of effort. Let us bring about a new era in the educational interests of the State, with the introduction of the new Constitution.

Mr. FARROW moved that the section be laid upon the table.

Mr. PRATHER demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 44, nays 78—as follows:

YEAS.—Messrs. Bascom, Beard, Beeson, Bright, Clark of Tippecanoe, Clements, Coats, Cookerly, Davis of Parke, Farrow, Gibson, Gordon, Graham of Miami, Hamilton, Hardin, Hendricks, Hovey, Huff, Jones, Kendall of Wabash, Maguire, Mather, Mathis, McLean, Miller of Clinton, Milligan, Moore, Nave, Pepper of Crawford, Read of Clark, Sherrod, Smiley, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Trimble, Walpole, Wiley, Wolfe, Yocum, and Zenor—44.

NAYS.—Messrs. Alexander, Anthony, Beach, Biddle, Blythe, Borden, Bowers, Brookbank, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Hamilton, Cole, Colfax, Crawford, Crumbacker, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Foley, Foster, Frisbie, Garvin, Gootee, Gregg, Haddon, Hall, Harbolt, Hawkins, Helmer, Hitt, Higin, Howe, Johnson of Dearborn, Johnson of Orange, Kent, Kendall of White, Kinley, Lockhart, Logan, March, May, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Prather, Rariden, Read of Monroe, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Scott, Steele, Thornton, Watts, Wheeler, Work, and Mr. President—78.

So the section was not laid upon the table.

Mr. MORRISON of Washington. Mr. President, I have no disposition to consume the time of this Convention. I know there is no desire on the part of the members, at this late hour, to hear a protracted discussion on this, or any other subject; but I hope that I shall be indulged for a short time, standing, as I do, as chairman of the committee on education, and offering this proposition, while I invite your attention to its favorable consideration. I feel that it is due to the cause of education, as well as to the position I have the honor to occupy, to say a very few words on the present occasion.

It has been frequently asserted by gentlemen on this floor, while advocating a favorite measure, that it was the most important to which the attention of the Convention had

been called. Now, without stopping to examine how far the facts, in any case, justified such a declaration, I think it may be asserted, with truth, that the section now under consideration, is second in importance to no other which has been submitted. It provides that the General Assembly shall provide by law for the election, by the people, of a State superintendent of public instruction, to hold his office for two years, and whose powers, duties, and compensation, shall be prescribed by law.

I have endeavored to persuade myself that a Superintendent is not necessary. I have looked over the whole ground, in order to comprehend, more fully, all our educational interests, and to find out, if possible, some plan by which we might dispense with his services, without any serious injury to the cause of education; but this examination has brought me to the conclusion, that the very salvation of our educational system in Indiana, depends upon the appointment of such an officer.

Mr. President, what are the interests that are involved in this question? We shall have a school fund ere long, of three millions of dollars. I ask this Convention to look at this, as a plain matter of fact—as a business transaction, and let each one answer this question for himself, whether if he had a fund amounting to three millions of dollars, he would allow it to be thrown broad-cast over the land, without any one to take care of it; or whether he would not provide for it a place of safety, and set a sentinel over it to guard and protect it. I regard such an officer as essential to watch over this money, and see that it be not diverted to other purposes, than those originally intended. In the present state of affairs, we have no means of ascertaining accurately, the true condition of this fund. The report of the Treasurer of State, *ex-officio* Superintendent of common schools, which was laid on our tables, a few days ago, in answer to a resolution offered at an early period of the session, furnishes abundant evidence of the danger to which the several educational funds are exposed. From this, and it embraces only seventy-three counties, \$23,886 11 are reported doubtful; and if the remaining eighteen counties are estimated in the same proportion, the doubtful may be set down at \$30,000, the greater part of which may be considered lost beyond recovery, under existing arrangements. How much of this sum might be saved through the vigilance of a Superintendent, I will not affirm; enough, doubtless, to pay for his services for fifteen or twenty years.

But we need such an officer for other and more important purposes. His services are indispensable to perfect our present school system, if indeed it deserve the name of system. Every man who has bestowed any attention upon the legislation of the State, for the last twenty years, knows that the laws regulating schools,

have been as changeful as the seasons. This admits of an easy explanation. With a view to make the laws more acceptable to the people, almost every representative has some particular amendment to propose, which, if adopted, may conflict with pre-existing provisions; and that by incorporating one amendment after another, the body of the law becomes a mass of contradictions and inconsistencies, unintelligible by the people, and inexplicable by the lawyers. A competent Superintendent, whose whole attention would be devoted to the subject, and who would make himself acquainted with the defects of the law, and the objections alleged against it, would be able, in his reports to the Legislature, to present such views and make such suggestions as would enable that body to legislate intelligently, and enact such laws as would be plain, and consistent, and suited to the wants and circumstances of the people.

Mr. President, it must be confessed that Indiana is much behind many of her sister States, in educational statistics. The startling facts revealed by the late census, that we have upwards of seventy thousand persons in our midst, over twenty-one years of age, unable to read and write, shows that more efficient measures should be adopted, in order to save the youth of the State, thousands of whom are now growing up without any opportunities of instruction from swelling this list, at a succeeding census. Besides, the most approved methods of instruction have not yet been introduced into but few of the common schools of the State. The standard of education in these institutions, does not correspond with the spirit and improvements of the age. Now, is it reasonable to suppose that the future condition of things will be better than the present, unless more persevering efforts are put forth to arouse the public mind to the importance of the interests involved. Every gentleman must be aware, that our common school system has not answered the purpose for which it was devised. The truth is, we have no uniform system. In one county, a particular course of instruction is pursued; and in an adjoining county, the course is altogether different. If we wish to have a system that will be general, uniform, and efficient, we must have an officer, whose special business it will be to direct, control, and guide that system.

Mr. President, the importance of the subject recommends it to the Convention; and no consideration will induce me to occupy your attention in making a long speech in its favor. I am convinced that the good sense of the Convention—the second sober thought, will pass the section unanimously.

The question being on the adoption of the section,

Mr. WOLFE. I do not feel like voting for this section. Ever since we have been in session we have been contending against this thing of creating so many constitutional offi-

cers. Why not let the subject go to the Legislature! And if it be found that the system does not work well it can be changed. But if we make a permanent constitutional provision upon the subject it will be impossible to reverse it.

The question was taken on the adoption of the section, and, by ayes 62, noes 43, it was decided in the affirmative.

The question being Shall the question be engrossed for a third reading?

The yeas and nays were demanded, and they were ordered, and being taken, were—yeas 78, nays 50, as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beeson, Biddle, Blythe, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chenowith, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Perry, Elliott, Fisher, Foley, Foster, Garvin, Gibson, Gregg, Haddon, Hall, Hawkins, Helm, Helmer, Hitt, Hogin, Howe, Kent, Kendall of White, Kinley, Lockhart, Logan, March, May, McFarland, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Scott, Steele, Thornton, Wallace, Watts, Wheeler, Zenor, and Mr. President—78.

NAYS.—Messrs. Beard, Beeson, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cookerly, Davis of Parke, Edmonston, Farrow, Frisbie, Gootee, Gordon, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Hovey, Huff, Johnson of D., Johnson of O., Jones, Kendall of Wabash, Maguire, Mathis, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Moore, Nave, Pepper of Crawford, Sherrod, Shoup, Smiley, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Trimble, Walpole, Wiley, Wolfe, Yocum, and Zenor—50.

So the section was ordered to be engrossed for a third reading.

Mr. EDMONSTON offered an additional section: That in each school district the qualified electors thereof may decide, by vote, whether they will have any other than the English language taught in the district.

The question was taken on the adoption of the section, and it was decided in the negative.

Mr. CLARK of Hamilton, moved the following additional section: "No school district shall be deprived of its share of the school fund from the want of a school house in such district, or from any cause, whatever."

The question was taken on the adoption of the section, and it was decided in the negative.

Mr. GIBSON offered the following additional section:

"It shall be the duty of the Supreme Court, in the decision of every cause submitted to them, to give a brief statement, in writing, of all the questions arising in said cause, and their decision of each question respectively."

Mr. GIBSON. In offering this section, the object I have in view, is to put an end to a species of dodging questions which has been practised in our Supreme Court from its first organization, and which has increased, from year to year, until it has become an intolerable evil. You try a cause before the circuit court involving large interests, or, perhaps, liberty, or life. The various questions of law arising on the trial, are placed upon the record, and the losing party brings his case to the Supreme Court for the purpose of having those questions passed upon by the highest judicial tribunal of the State.

The Supreme Court will, in some instances, affirm the judgment of the court below without giving any opinion in writing upon the questions involved; in other cases they will decide some one of the questions, reverse the case, and leave the other points untouched.

The case goes back to the circuit court to be tried over again, and again brought back to the Supreme Court, upon the very questions that they ought to have decided at first. Then the Supreme Court will tell the litigants, we will not decide those points, because they were before us once before, and so they ultimately avoid the responsibility of deciding them at all. This, I know, was done in at least one case, though the report of the decision carefully abstains from showing the fact. I allude to the case of *Doe on demise of Sheets, et al.*, vs. *Hobson*.

I can, perhaps, best illustrate the evil by a very recent case: A man was tried in Clark county, on an indictment for murder, convicted, and sentenced to be hung. He appealed to the Supreme Court, and sought to get his case reversed upon two points.

The first was, that the circuit court had improperly refused to grant him a continuance. The second, that the evidence upon which he was convicted, had been improperly admitted.

The Supreme Court reversed the case upon the first point, but made no decision upon the second. The case went back to the circuit court; the venue was changed to Floyd county, and the man was again convicted and hung. It so happened that after his first trial he had made a full confession of his offense, which relieved the second trial from the question of the admissibility of testimony. If such had not been the case, the cause would have come back a second time to the Supreme Court, to have the very question decided, that ought to have been decided at first.

The section I offer does not require of the court a long argumentative opinion—about that the judges can consult their own taste. All that it requires is, that they shall, in all cases, state what they do decide, and I think that the universal experience of the bar will bear witness to the necessity of some provision of the kind.

Mr. PETTIT. I think that it is important that this section should be adopted. If not for the reason assigned by the gentleman from Clark, for another reason. The Supreme Court have been in the habit when they have found knotty questions arising in a case, of either affirming or reversing the decision of the court below, without writing out an opinion—without assigning reasons. I am for having their reasons spread out upon the record. I think the section ought to pass.

The question was taken on the adoption of the section, and it was decided in the affirmative.

The section was then ordered to be engrossed for a third reading.

NORMAL SCHOOL.

The section which provides for a normal school in the State University, was read a second time.

On motion by **Mr. HAMILTON**,

The section was laid upon the table.

The section in relation to the funds of the State University was read a second time.

The section is as follows: "The University fund shall consist of the proceeds from the sales of the lands granted by the United States for a seminary of learning, and of such of said lands as remain unsold, together with such other grants, gifts, and donations, as have been, or may hereafter be made thereto. The principal of said fund shall forever remain inviolate, and the interest and income thereof shall be applied to the maintenance of the State University, in such manner as the General Assembly may direct."

Mr. HAMILTON moved to amend the section by striking out the word "other," and inserting at the end of the sentence "other than those made by the State."

Mr. KENT. I do not desire to discuss this question, but I believe it is the intention of the General Assembly, at its next session, or at some subsequent session, to devote this fund to common school purposes. I think, therefore, the section ought to be adopted.

Mr. FOLEY moved that the motion be laid upon the table.

The yeas and nays being taken upon the passage of the section, resulted—yeas 62, nays 61:

YEAS.—Messrs. Allen, Bascom, Beard, Beeson, Bowers, Bracken, Chapman, Chenoweth, Clark of Hamilton, Coats, Crawford, Davis of Madison, Dobson, Duzan, Edmonston, Elliott, Farrow, Foley, Frisbie, Garvin,

Gibson, Gootee, Graham of Miami, Hamilton, Hardin, Hawkins, Helmer, Hitt, Hogin, Hovey, Huff, Johnson of D., Kent, Kendall of Wabash, March, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Moore, Nave, Pepper of Crawford, Rariden, Read of Clark, Shoup, Sims, Smiley, Smith of Ripley, Stevenson, Tague, Tannehill, Trimble, Wiley, Work, Yocum, and Zenor—61.

NAYS.—Messrs. Alexander, Anthony, Barbour, Beach, Bicknell, Biddle, Bright, Brookbank, Bryant, Butler, Carr, Clark of Tippecanoe, Clements, Cole, Colfax, Cookerly, Crumbacker, Dick, Dunn of Perry, Fisher, Foster, Gordon, Gregg, Haddon, Hall, Harboit, Holman, Howe, Johnson of O., Kendall of White, Kinley, Lockhart, Logan, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Murray, Newman, Niles, Nofsinger, Owen, Pettit, Prather, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Scott, Steele, Thomas, Thornton, Wallace, Watts, Wolfe, and Mr. President—61.

Mr. PETTIT offered the following additional section:

"All trust funds held by the State shall be faithfully applied to the purposes for which the trust was created."

SEVERAL MEMBERS. ("That's right," and cries of "No," "no.")

Mr. PETTIT. It strikes me that no gentleman ought, on reflection, to cry "No" to this section. It is a simple declaration that we will faithfully apply the funds. No more, and no less. If we have received anything by gift, by donation—anything for a specific purpose, nothing, in any code of morals that I am acquainted with, can justify defeating the trust. I hope this simple declaration will be adopted.

Mr. OWEN. I hope, sir, that the section introduced by the gentleman from Tippecanoe will pass. I think if the Convention will reflect for a few moments, seriously, upon the vote which has just been taken, some of those who voted to lay the section on the table, will come to the conclusion that it had better not lie there.

The amount of our University fund is not large, but I doubt much whether, by the division from its original purpose, any fund of similar amount, we can bring greater discredit upon our State, than we shall if we take this grant from Congress expressly given for a seminary of learning, and apply it in any other way, whatever. Such action will redound little, we may be assured, to the credit of our State throughout the United States, and the world.

If it is desired to alter the plan of the present University, it is easy to do so. It may be made to embrace normal schools. An appropriation of ten thousand dollars annually is made by New York for such schools.

There is another thing which it behooves us to bear in mind. You cannot obtain for your University such talent as you ought to have, if there be any uncertainty connected with the period of its existence. If you do not know, from year to year, whether the University is to be permanent, every one who has any experience in regard to the faculty of such an institution knows well, that men of the proper stamp cannot be obtained. To the success of a State University, it is essential that its existence shall be placed, by Constitutional provision, beyond the changing influences of annual legislation.

Mr. WALPOLE moved to amend the section so as to provide that nothing in this section shall be so construed as to prevent the Legislature from diverting the University Fund, with the consent of the General Government, to the use of common schools.

Mr. FOSTER. I have but very few words to say in reference to this matter. I trust that the motion of the gentleman from Hancock will not prevail.

Some gentlemen have raised an objection to this section, because it contemplates other lands. That is a mistake. The situation of the college in regard to it is simply this: There were two townships originally granted, but out of those two townships four thousand acres had been sold anterior to the time of the grant; and when we say other lands, it is only to make up this deficiency of four thousand acres.

If the University is done away with, the State will have no claim upon the General Government for these four thousand acres, because the lands were donated for the purpose of maintaining a State University, and no other purpose. This is the only thing contemplated by the phrase "other lands." I make this suggestion because I think that gentlemen who voted to lay the section upon the table, if they had known the true position of affairs, would not have done so.

Now, permit me to say, inducements were held out to people to settle in that county on account of the University there. Land sold as high as six dollars and twenty-five cents an acre, while other and better land in the State could not command one dollar and twenty-five cents an acre.

It would not only be an injury to the county of Monroe, but it would be an act of bad faith on the part of the State to withdraw these funds, when it is very well known that two-thirds, at least, of the means for the support of the University were obtained by selling those lands at an enhanced price, which could not have been obtained if they had not been located there. Many Southern people availed themselves of the privilege of having their children educated there.

What has been the effect? There have been every year about one hundred and eighty students, and some sixty of these have been edu-

cated gratuitously, and the institution is ready to receive two from every county in the State, making in all one hundred and eighty beneficiaries.

But this is not all. The General Government granted the lands for a specific purpose, and to divert them to another purpose, would not only be a violation of the compact entered into with Congress, but it would be a violation of vested rights. Now, the whole amount of the fund will probably amount to fifty-four thousand dollars, and there is not an acre remaining unsold in Monroe county, notwithstanding some of the land is as sterile and worthless as any land can be. All that we contemplate is, getting the four thousand acres to supply the place of that which was sold previous to the donation to the University.

I will remark further, that the fund amounts to about fifty-four thousand dollars, as I have said; and if the interest on that sum should be divided among the children of the State, between the ages of five and twenty-one, it would amount to one cent and two-thirds to each. Will you, then, disgrace the State, in the estimation of all, by depriving us of a State University, without conferring any advantage in any other quarter? I think not. I think that, after the sober second thought, when the Convention have duly reflected upon the matter, I am satisfied they will not divert this sacred fund—yes, I maintain it is a sacred fund—to a purpose for which it was not originally intended, thereby destroying an institution which has done honor to the State—which has produced some of the ripest scholars that have graduated in any State in this Union.

I shall not protract my remarks. I intended merely to make a statement of facts. I hope the vote by which the section was laid upon the table will be re-considered.

Mr. SHOUP. Mr. PRESIDENT: I hope the amendment of the gentleman from Hancock will prevail. It simply provides that the Legislature may, with the consent of the General Government, apply the funds to the use of common schools. The donation was made by the Government for educational purposes, and should be faithfully carried out. But, sir, suppose this institution should go down by mismanagement, or otherwise, and prove to be of little or no advantage to the people of the State, I would ask why should the funds not be applied to common school purposes?

Mr. President, we have a number of colleges in our State that are under the patronage of individual enterprise; and I believe they are all in a healthy and prosperous condition. Such being the fact, the great necessity for a State University does not exist as would otherwise. Some of those institutions cannot be surpassed, East or West. Then, sir, the man who has the means need not be deprived of giving his children a collegiate education. The

object that the General Government had in view is fully accomplished by individual enterprise. To educate the children of our State to that of a common school education, is all that we can hope to accomplish at the public expense; and, sir, this will never be done unless we collect together and husband all the various funds within our reach.

The gentleman from Monroe (Mr. Foster) says the amount is so small it can accomplish no good. Would the gentleman have us understand that, on account of its being so small, we should therefore give it to the citizens of Monroe county? Such would seem to be the argument of the gentleman. Now, sir, I am for gathering up every small item, and collecting together every means within the reach of the State to increase our common school funds. The gentleman tells us that lots have been sold and property bought, with a view to the advantages of the University, and that it would be a breach of good faith to divert the funds. Sir, the gentleman need have no fears from that quarter. The college buildings are all there, and will remain; if not under the patronage of the State, it will be under individual patronage and enterprise, and no doubt more successful. The average number of students is not over eighty or ninety.

Mr. FOSTER. Let me correct the gentleman from Franklin, by informing him that there is an average of one hundred and eighty.

Mr. COOKERLY. There never has been more than eighty-three within the last six years.

Mr. SHOUP. Mr. PRESIDENT: Perhaps I am mistaken in regard to the number of students, and stand corrected. But, sir, I am not mistaken about one thing—that this fund has been a bone of contention, and ever will be, and I think should be distributed to common schools, in order that all may participate in its advantages, though ever so small.

Mr. BIDDLE. I am opposed to the amendment of the gentleman from Hancock, (Mr. Walpole), and in favor of the section offered by the gentleman from Tippecanoe (Mr. Pettit). I am not so much opposed to the amendment on principle, for, if I understand the gentleman, he relies upon the same legal view of the question. But I oppose his amendment for the reason that the construction of the trust must be the same, whether we adopt the amendment or not.

Now, what is the university fund? The Congress of the United States has granted certain lands for a certain purpose, and those lands have been appropriated to that purpose. What title has the State of Indiana to them? She has no right whatever, to control them to any other use, without the consent of Congress; and I will undertake to say that the moment the State of Indiana diverts that fund from the purpose for which it was granted by the United

States, to any other purpose, it will work a forfeiture of the fund; and it will be within the power of Congress to resume the fund, if they see proper. Gentlemen may say that Congress will never do it; but Congress may do it, and cut us out of the fundentirely. The State has, what is called by lawyers, a *qualified or base fee* in the college lands, subject to be defeated on breach of the condition. That is the legal point of view, and I have no doubt every gentleman will concur with me. We ought not, therefore, for fear of the consequences, divert this fund from the purpose to which it was originally intended. With the concurrence of the Congress of the United States, and of our State Legislature, it can be diverted—it can be changed with the consent of the contracting parties. It is like two persons making a contract—they, and they alone, can alter or abrogate it. This Convention, not being the legislative voice of the State, is not one of the contracting parties. It is impossible for us to divert the fund from its original purposes, without a violation of the compact, and the moment we do violate it, we are at the mercy of Congress. The amendment of the gentleman from Hancock, then, is useless.

Now, one word as to the propriety of the section introduced by the gentleman from Tippecanoe. In the first place, how any gentleman can vote against a proposition which merely declares that we shall, as a State, be bound to execute a trust confided to us, is surprising to me. Common honesty and common morality, as it seems to me, dictate the passage of the section. Shall we do that as a State, which will bring the indignation of the christian world upon us? Shall we betray a trust that has been confided to us? Suppose Congress should divert the fund of the Smithsonian Institute, granted for the increase and diffusion of knowledge among men, to some other purpose—would we not hear one general denunciation from the civilized world? Let us look at the results. Gentlemen are for building up common schools at the expense of the University. I am in favor of common schools as far as any gentleman on this floor, but I would not give up the University funds for that purpose. Look at the matter dispassionately. Congress has been more liberal and munificent to common schools than to the University. While the General Government has given forty-two thousand acres to the University, she has given a million and a quarter of acres to common schools. Vote down the proposition of the gentleman from Tippecanoe, and your common school fund will lie at the mercy of your Legislature. They may divert it to build a canal or railroad. You may also jeopardize your canal and road land, and even the soil on which your capitol rests. Congress may take away the appropriation for common schools, on breach of condition, just as well as to take away the University fund. If gen-

tlemen would secure the common school lands, they must secure the University fund. Common schools are the more important, but I would never make provision for them by robbing the University. Let us sustain them both—they are mutual aids. A State cannot be prosperous in either her University or her schools, when she will, before the christian world, violate a trust confided to her. Bring the question down to a practical shape. I repeat, if we do not regard the trust for the support of our University, the fund confided to us for common schools, is not safe. Give repose to your institutions of learning; without this they cannot be prosperous and useful. I hope the section proposed by the gentleman from Tippecanoe will be adopted, and that no trust that has been confided to this State, will ever be violated.

Mr. WALPOLE. Perhaps if I had had the advantage of a seminary or a college education as my friend from Cass has had, I might feel as strongly attached to a university as he does. I know that we are a good deal biased by early associations. I never went far up the ladder of learning.

The gentleman says that my proposition amounts to nothing, because the high contracting parties can rescind the trust at any time, and such will be the case if the power be left to the General Assembly. But the gentleman proposes to take away the power from the Legislature, and to insert a provision upon the subject in the organic law of the State, prohibiting the contracting parties from making any different application of this fund. I object to placing such a provision in the Constitution, because you thereby preclude the Legislature from ever rescinding the trust. It has been proposed to appropriate the seminary funds to the use of common schools, and the gentlemen who oppose my amendment have themselves yielded to that proposition. They have agreed that the seminary fund shall be given to common schools, but they adhere, tenaciously, to the University fund. My opinion is, that we ought not to put it out of the power of the Legislature to control these funds. The gentleman from Tippecanoe says they should never have been granted, and I will go with him in support of his proposition, if he will leave it within the power of the Legislature to devote the fund to common school purposes; otherwise I shall be obliged to oppose it.

It is urged as an argument in favor of sustaining the University, that the several counties of the State have a right to send pupils to this institution free of cost. This is the case with every institution in the State, and it is proper that it should be so; it is a bonus for extending to them the extraordinary privileges they enjoy.

I trust we shall leave this whole question with the Legislature. I do not propose to abolish the University by Constitutional provision, but

I propose to leave it in the hands of the General Assembly, from time to time, as circumstances may dictate their action to make such provision as may be necessary.

I trust that my amendment will be adopted as a compromise. It is not going so far as the State of Arkansas went. A large amount was given to her for a University, and that State, without the consent of the General Government, appropriated the donation to common schools, and that disposition of the funds has been ever since acted upon.

Mr. DAVIS of Madison. I move to amend the instructions by adding the following:

"Or for the establishment of a Normal school."

The PRESIDENT. The gentleman's amendment is not in order. There is an amendment to an amendment already pending.

The question being on the amendment of the gentleman from Hancock,

Mr. BRACKEN moved that the amendment and the amendment to the amendment be laid on the table.

Mr. PETTIT asked for a division of the question.

Mr. READ of Monroe appealed to the gentleman from Rush to withdraw his motion to lay on the table.

Mr. BRACKEN declined to withdraw his motion.

The question being first on laying the amendment to the amendment on the table,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 58, nays 56—as follows:

YEAS.—Messrs. Alexander, Anthony, Beach, Berry, Biddle, Blythe, Bourne, Bracken, Bright, Bryant, Butler, Carr, Chenowith, Clark of Tippecanoe, Clements, Cole, Colfax, Crawford, Crumbacker, Dunn of Perry, Elliott, Fisher, Foster, Frisbie, Gibson, Gordon, Gregg, Haddon, Hall, Harbolt, Hendricks, Hovey, Howe, Jones, Kendall of White, Kinley, Lockhart, Logan, May, McFarland, McLean, Miller of Clinton, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Niles, Nofsinger, Owen, Pettit, Read of Monroe, Robinson, Schoonover, Snook, Smith of Scott, Steele, Thomas, Wallace, Watts, Wolfe, Yocum, Zenor, and Mr. President—68.

NAYS.—Messrs. Allen, Ballingall, Bascom, Beard, Beeson, Borden, Bowers, Chapman, Clark of Hamilton, Coats, Cookerly, Davis of Madison, Davis of Parke, Dick, Dobson, Duzan, Edmonston, Farrow, Foley, Garvin, Gootee, Graham of Miami, Hamilton, Hardin, Hawkins, Helmer, Hitt, Hogin, Huff, Johnson of D., Johnson of O., Kent, Kendall of Wabash, March, Mathis, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Prather, Rariden, Read of Clark, Shannon, Shoup, Sims, Smiley, Smith of Ripley, Spann, Stevenson, Tague, Tannehill,

Thornton, Trimble, Walpole, Wiley, and Work—56.

So the amendment was laid on the table.

The question then being on laying on the table the section offered by the gentleman from Tippecanoe.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 39, nays 80—as follows:

YEAS.—Messrs. Allen, Barbour, Beard, Berry, Borden, Bowers, Bracken, Chapman, Clark of Hamilton, Cole, Cookerly, Davis of Madison, Dick, Dobson, Duzan, Edmonston, Farrow, Foley, Garvin, Gootee, Graham of Miami, Hardin, Helm, Helmer, Hitt, Johnson of O., Kent, Kendall of Wabash, Mathis, McClelland, Rariden, Shoup, Sims, Spann, Stevenson, Tague, Tannehill, Walpole, and Work—39.

NAYS.—Messrs. Alexander, Anthony, Ballingall, Bascom, Beach, Beeson, Biddle, Blythe, Bourne, Bright, Brookbank, Bryant, Butler, Carr, Chenowith, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Davis of Parke, Elliott, Fisher, Foster, Frisbie, Gibson, Gordon, Gregg, Haddon, Hall, Hamilton, Harbolt, Hendricks, Hogin, Hovey, Howe, Huff, Jones, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Newman, Niles, Owen, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Smiley, Snook, Smith of Scott, Steele, Thomas, Thornton, Wallace, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—80.

So the section was not laid on the table.

The question then being on the adoption of the section,

The yeas and nays were demanded and ordered, and, being taken, resulted—yeas 81, nays 61—as follows:

YEAS.—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Biddle, Blythe, Bourne, Bright, Brookbank, Bryant, Butler, Carr, Chenowith, Clark of Tippecanoe, Clements, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dunn of Perry, Elliott, Fisher, Foster, Frisbie, Gordon, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hendricks, Holman, Hovey, Howe, Huff, Jones, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, May, McLean, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Monroe, Robinson, Schoonover, Shannon, Smiley, Snook, Smith of Scott, Steele, Thomas, Thornton, Wallace, Watts, Wolfe, Yocum, Zenor, and Mr. President—81.

YAYS.—Messrs. Allen, Beard, Borden, Bowers, Bracken, Carter, Chapman, Clark of Hamilton, Cole, Davis of Madison, Dick, Dobson, Duzan, Farrow, Foley, Garvin, Graham of Miami, Helm, Helmer, Hitt, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Mathis, McClelland, Nave, Prather, Rariden, Read of Clark, Sherrod, Shoup, Sims, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Walpole, and Wiley—41.

So the section was adopted.

The section was then ordered to be engrossed for a third reading.

The section on consolidation of various funds for common school purposes, was taken up on its third reading.

Mr. MILROY moved to add the following words:

“That bonds belonging to the State devoted to no particular purpose, shall be applied to common schools,” after the words “after the payment of the public debt.”

Mr. BORDEN. It seems to me that this is a matter for legislative action. I do not see any necessity for filling up the Constitution with provisions about common schools. I therefore move that the section and amendment be laid upon the table.

The motion was agreed to.

The question being on the adoption of the amendment proposed by the gentleman from Carroll,

It was decided in the negative.

Mr. DOBSON. It seems to me that we are getting along rather too fast. I wanted to say a word about the section that was offered by the gentleman from Tippecanoe, which was adopted a few minutes ago, because it comes in conflict with some other propositions that we have adopted. The proposition of the gentleman from Tippecanoe is that no trust fund shall be diverted from its original object, and in this section we find that the surplus revenue fund is proposed to be applied to a purpose which was not originally contemplated.

Again, another fund which is a trust fund, has been swallowed up by the internal improvement system. I mean the sinking fund, amounting to more than a million of dollars, and which we have guarantied that we will pay back when called upon to do so, a thing that we cannot do without taxation; and I for one, will never vote to tax the people of Indiana to raise that fund.

I should not be opposed to adopting such a provision as that contained in this section, had we not adopted the other; but having adopted the proposition of the gentleman from Tippecanoe, I contend we ought not to adopt this one.

Mr. COLFAX moved to strike out the following words, “The fund to be derived from the sale of county seminaries.”

A VOICE. We will have the yeas and nays on that.

Mr. COLFAX. Certainly But I wish to explain the proposition first. I go as far as any man, in providing, as the people so unanimously desire, that all fines and forfeitures, hereafter accruing shall go to the common schools, instead of the county seminary fund. That portion of this section, I do not desire to strike out, nor would I vote to strike it out.

But the section goes further. It seems to enact, that the seminaries shall all be sold; and there is no reservation of private rights in those buildings. If it is decided that they shall be sold, surely private rights should be respected. Nearly every seminary in the State, has been built, in part, by liberal contributions of individuals, donated to secure the erection of a building in their town, in which the higher branches should be taught. All that I wish is, that the matter of their sale should be left to the Legislature—so that if they should deem it expedient, they may secure the rights of individuals, out of their proceeds, as well as those to whom the seminaries may be in debt.

A VOICE. That's what we want.

Mr. COLFAX (resuming). Certainly the rights of the creditors of seminaries, whose only lien may be upon the building itself, should be preserved and maintained. Let us increase the resources of the common school fund, as far as possible, that the blessings of education may be increased and widened. But, in doing this, let us not lay violent hands on private property—or property that in part belongs to private persons, without providing that some just and equitable arrangement shall be made relative thereto.

Mr. PETTIT. Mr. President, I am not willing to put my hand upon private property, and convert it to the use of the State; nor does this section contemplate any such thing. It contemplates the sale of the county seminaries. The funds by which the seminaries were built were not trust funds, and therefore in selling them we violate no principle of law or of morals. They belong to the State.

Mr. BASCOM moved that the amendment be laid upon the table.

The motion was agreed to.

Mr. HAWKINS moved to add the following: “Debts due individuals for donations, shall be first paid.”

Mr. COLFAX. That will answer the purpose contemplated in my amendment.

Mr. HAWKINS said: Mr. President, it must now appear evident to every one, that not only the fund heretofore constituting the life-blood of county seminaries (the fines and forfeitures) is to be taken away from their support, but in addition to that, this section clearly contemplates the sale of seminary buildings and other property connected with these institutions, and the appropriation of the funds arising from

such sale, to be made a part of the common school fund. Now, sir, to all this, I have no objection to offer; on the contrary, I am in favor of diverting that fund from its present channel, and bidding it flow out in such a manner as that all may reap the advantages in an equal degree.

But, sir, much as I may be disposed to see this fund diverted, and made a part of the common school fund, accessible to all, I am not willing that the property shall be sold, and the proceeds disposed of, without making some provision by which the honest debts and proper liabilities of county seminaries shall be paid. The old Constitution recognized and fostered, in a limited degree, these institutions. Under the laws of the State, buildings have been erected in most of the counties, and furnished with apparatus and furniture, to make them useful. And in many cases within my knowledge, under special laws for that purpose, monies have been borrowed, and the fines and forfeitures pledged for the payment of the debt. In many cases, where the fund has been insufficient for the erection of buildings and furnishing these institutions, the liberality of the citizens to be immediately benefited by the establishment of seminaries in their midst, has extended the necessary aid, by donations made for that purpose. These donations have been made, and the debts created in good faith, and should be re-funded and paid *first*, out of the proceeds of the sale. Sir, in the county in which I reside, there is a county seminary in operation, built in part out of the proceeds of the seminary fund proper—in part by a loan authorized by law, and the residue, being about one-third of the cost of building, &c., raised by subscriptions from citizens of the county, as a donation. These donations were made in good faith, not expecting that in two short years the object of their liberality would be offered in the market, and the proceeds diverted from the uses intended by the donors.

In the county of Randolph, they have a splendid seminary, well supplied with the necessary apparatus. This institution has also incurred debts and liabilities, for the purpose of making it useful. These debts should be provided for.

A VOICE. "The debts are bound to be paid. Lay the proviso on the table."

Mr. HAWKINS. I think it very doubtful whether the debts will necessarily have to be paid out of the proceeds of the sale, unless this proviso, or something similar, is adopted. At all events, sir, unless the "donations" are provided for here, those making them will have no remedy. I, sir, am as much the friend of that system of schools that has for its object the education of all the children of the State at the public expense, out of one common, general fund, as, perhaps, any man in the State. I would like to see that fund large enough to furnish a constant school in every district in the State, dispensing its blessings upon all alike.

For that purpose, I would take any legitimate step. But, sir, I do not wish to violate private rights, in order to enlarge that fund. I am unwilling to have a sale of these institutions, unless the liabilities shall be paid out of the proceeds. It is for these reasons, that I have moved this proviso. If it will do no good, it can certainly do no harm. I therefore hope it will be adopted.

Mr. BASCOM. I do not think this provision is quite specific enough. Under this section they may take some of the school fund and pay their debts. I want them paid out of the sale of the seminaries, without taking the school funds.

The question was then taken on the amendment of the gentleman from Jay, and it was decided in the negative.

Mr. BRYANT moved to amend so as to appropriate the proceeds of the swamp lands, after the expense of selecting and drainage is paid, for the benefit of common schools.

The amendment was adopted.

Mr. NAVE moved to strike out so much as makes counties liable for trust funds loaned out in such counties.

If it is the object, said Mr. Nave, of the drafters of this section to make counties responsible for these funds, I am opposed to it—it is wrong in principle. It is wrong for a county to accept a trust fund for the purpose of loaning it out, and in case it be loaned to irresponsible persons, to tax the people to meet the deficit. I repeat, sir, it is wrong in principle. I, therefore, make the motion that I have made. I hold that it is wrong for a county to loan out trust funds, and in case they are lost, to compel honest men to be taxed to meet the deficiency.

A VOICE. "The people must elect honest men to the Legislature."

Mr. NAVE. I care not how honest they may be. It is wrong to hold a whole county responsible for the acts of its officers in such cases. And for one I enter my protest against any such principle, as being inconsistent with principles of equity.

Mr. MORRISON of Washington. I am surprised that the gentleman has not entered a protest against some of the articles in the revised statutes, one of which I will call his attention to. It reads as follows:

[See Revised Statutes, page 252, article 7, section 97:]

"The several counties shall be held liable for the preservation of said fund, and the payment of the annual interest thereon, at the rate established by law."

And a similar section he will find in respect to all the trust funds there mentioned.

Mr. DOBSON. One word in regard to the amendment of the gentleman from Hendricks. I am in favor of it and I will make this one additional remark in regard to this fund. It was originally distributed by the general govern-

ment in the several States. The Legislature assigned a portion of it to the counties, not to the county officers in the county, in their corporate capacity, but persons appointed to act as agents in the counties. The counties have nothing to do with it. Some forty or fifty individuals have received the money. What they did with it I am not going to stop to inquire. But I ask is it proper to hold the counties responsible when they had nothing to do with it? As to what has been said by the gentleman from Washington, about the revised statutes—I trust in God we are not going to put the whole revised statutes in the Constitution. But we are verging fast towards it.

Now, by the section that was introduced by the gentleman from Tippecanoe, we are going to bind ourselves to pay back all these funds to the General Government. Now, this is getting along a little faster than I am willing to go. I hope the amendment will prevail.

Mr. MOORE. I cannot but think that gentlemen who have spoken upon this subject, do not take the right view of the case. Now, to whose benefit does the interest derived from this fund go? Why, for the benefit of the common schools in the county. And if it be lost, who loses it? The county. It remains county fund, and if it is lost, it is lost to the county, and if the county is taxed to make it good, the county is taxed for its own good.

Mr. DOBSON (interposing). I ask the gentleman if we have not bound ourselves, in a former sections to pay back these funds?

Mr. MOORE. If the General Government demands that we should pay them back, no matter whether we have passed a section or not, common honesty requires that we should pay them back. But until the General Government should require it, we are under no obligation to do so. I say that this fund is now a county fund.

Mr. CLARK of Tippecanoe. The object of the General Government in making this donation, undoubtedly, was to maintain the schools of the State. But the gentleman says, if they are lost we must pay them back. Pay to whom? To the county itself. What is the use of this provision, if that be the case? Why not tax the county for schools, at once? The object is not to maintain a fund, but to maintain schools. And if you should appropriate funds for that purpose directly from the treasury, it would be cheaper than if you distribute the college funds, and afterwards collect funds and divide them among the colleges again.

Mr. WOLFE. I hope the motion to strike out will prevail. If a few reckless men within the county squander the money, would it be right that the people of the county should be held responsible? I think not.

Mr. LOCKHART. It seems to me that gentlemen do not understand what is proposed to be stricken out. If the motion of the gentle-

man from Sullivan (Mr. Wolfe,) should prevail, the section will be valueless; the words which he proposes to strike out are only an affirmation of what the law now is and has been for many years. The section provides that the several counties shall be held responsible for the preservation of such of the school funds as may be entrusted to them. Nothing, sir, can be more just than this. I hope the amendment will not be adopted.

Mr. NEWMAN. The law now requires that all these funds shall be accounted for. I propose to amend the amendment by inserting in lieu thereof, "that the sale of any county seminary shall be made subject to all contracts, liabilities, mortgages, &c."

Mr. NAVE accepted the amendment as a substitute for his own.

The question being on the adoption of the amendment, it was, upon a division, yeas 36, noes 45, rejected.

The question then being on the engrossment of the section,

Mr. WALPOLE moved that it be laid upon the table.

The motion was not agreed to.

The section was then ordered to be engrossed for a third reading.

Mr. HOGIN offered the following additional section:

"All debts that may have accrued in the building of said seminaries shall be paid out of the proceeds of such sale, &c."

The PRESIDENT. The Convention has just voted down a proposition of that character.

The section which provides that — per cent. of the dividends of certain incorporated companies shall be applied to the support of common schools, was read a second time.

Mr. BASCOM moved to amend by striking out the words, "in whose charters the General Assembly have reserved the right to repeal or amend the same."

It will be recollected, (said Mr. Bascom,) that this Convention has passed a section prohibiting the Legislature from repealing bank charters. If this amendment be not adopted, the provision will operate only upon incorporated companies, such as railroad and canal companies, and not upon banking corporations. I am willing that all shall be taxed, including banks, as well as railroad and other corporations.

The amendment was rejected.

Mr. WALLACE. I would ask the chairman of the committee if he is prepared to suggest the proper amount of per centage with which to fill the blank.

Mr. MORRISON of Washington. That is a matter which the committee thought proper to leave to the Convention to determine.

Mr. HOWE moved to fill the blank with "five."

Mr. CLARK of Tippecanoe. I do not perceive why this section should be adopted at all.

We have already provided that the capital of all corporations should be taxed, and it is now proposed that their profits shall also be taxed. I see no reason why private corporations should be taxed more than any other. There are many cases where men may invest their money for other than selfish purposes.

If we adopt this provision, we are going to make a complicated system of taxation. I think this section ought to be voted down altogether. We have already provided that all corporations shall stand upon an equality—that is, that there shall be no exclusive privileges granted; and we ought to provide that all taxation shall likewise be equal.

Mr. PRATHER moved to amend the amendment, so that it should read, "not less than five per cent."

Mr. HOWE accepted the amendment of the gentleman from Jennings as a modification of his own.

The question was taken on the amendment, and it was decided in the negative.

Mr. HUFF moved that the section and pending amendment be laid upon the table.

The motion was agreed to.

Mr. MORRISON of Washington offered an additional section, that every bank that shall be established shall pay a bonus of one quarter of one per cent. for common schools.

Mr. HAMILTON said—

PRESIDENT: I hope the section will not be adopted. I am decidedly for taxing banks and all other corporations, for every dollar they own, in money or any other kind of property by them held, in the same manner as I would tax a merchant, a miller, or a money-lender. My opinion has ever been that all ought to contribute to the support of the government in proportion to their property. If, sir, you have ten thousand dollars, and I only one thousand, you ought to pay ten times the amount of taxes on your property that I do on mine, because you have ten times as much to be protected.

By a former section, we provided that the banks shall not charge an amount of interest greater than individuals loaning money are allowed to charge. That they should pay taxes for everything they hold, the same as private property; placing them as to taxes, upon the same footing as an individual money lender, giving them no exclusive privileges; they should have none.

This amendment, as the gentleman from Wells has truly said, would add additional taxes on the capital invested in every other improvement made under corporate powers. But not on banks—for that is settled under another section. Yet, sir, my colleague either does not understand this question, or in his zeal to destroy all banks of every kind, has for some time seemed to be running wild, eternally talking about banks and bankers; it seems to be the first and last theme with him morning and

evening. I would ask that gentleman in his zeal, to tax all plank roads and other necessary improvements, how would he like an income tax embracing the salary of State and county officers? Why should they not pay some of the expenses of government for the protection they enjoy? Do they not fare sumptuously upon the spoils of office? Why this zeal to get a double tax on such improvements as are made for the public good? Why does not my colleague show his desire to economize by a reduction in salaries of officers? No, sir; increasing them is all we have heard since we came here.

I should like to know how much of the public burthens some of these office holders bear; I think it would not be hard to carry. I can see no good reason why an income tax, arising from salaries, should not be assessed. I want, sir, to see taxes so assessed that all shall bear their proportion of the public expenses according to the means they possess, and at the same time, that these public burthens should be as light as possible. I do trust, Mr. President, that this section will not pass.

Mr. BORDEN moved that the amendment be laid upon the table.

Mr. PETTIT moved to amend the motion so as to lay both the section and the amendment on the table.

Mr. BORDEN asked for a division of the question.

Mr. HAMILTON withdrew his amendment.

The question being on laying the section on the table,

Mr. BORDEN demanded the yeas and nays.

The yeas and nays were not ordered.

The motion was, upon a division—ayes 69, noes 37—decided in the affirmative.

So the section was laid on the table.

Mr. WALPOLE. In order that we may have the yeas and nays upon this section, I move that it be taken from the table, and ask the yeas and nays upon that motion.

The yeas and nays were ordered, and being taken, resulted as follows—yeas 46, nays 76:

YEAS.—Messrs. Alexander, Ballingall, Beeson, Berry, Borden, Bowers, Bryant, Butler, Carter, Cole, Davis of Parke, Dobson, Duzan, Edmonston, Fisher, Foley, Foster, Garvin, Haddon, Hardin, Hawkins, Hitt, Howe, Huff, Johnson, of D., Johnson of O., Kelso, Logan, Maguire, March, Mathis, McClelland, Miller of Gibson, Moore, Morrison of Washington, Mowrer, Prather, Schoonover, Smith of Ripley, Smith of Scott, Tague, Walpole, Watts, Wolfe, Work, and Zenor—46.

NAYS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Beard, Bourne, Bracken, Bright, Brookbank, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Crumbacker, Davis of Madison, Dick, Elliott, Farrow, Frisbie, Gibson, Gootee, Gordon, Gregg, Hall, Hamilton,

Harbolt, Helm, Helmer, Hogin, Hovey, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, McLean, Miller of Fulton, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Robinson, Sharron, Shoup, Sims, Smiley, Snook, Spann, Steele, Stevenson, Tannehill, Thomas, Thornton, Trimble, Wallace, Wiley, Yocum, and Mr. President—76.

So the section was not taken from the table.

On motion of Mr. SHOUP,
The Convention adjourned.

REMARKS OF MR MARCH,

In Convention, January 25th, 1851.

Mr. MARCH. The gentleman from Laporte has unwittingly just pronounced one of the most scathing sarcasms that could well be uttered, upon the system of practice and pleading at common law. He tells us that three farmers can, in a few short sentences, draw up a code of practice.

Mr. NILES (interposing, and Mr. March giving way). What I said was, that it would not require more than three short sections, and that those should be well considered and carefully worded. I did not say that three farmers could do it.

Mr. MARCH. He now tells this Convention, and he is high authority, that three short sections can take the place of what we have proposed to abolish—this stupendous system of practice and pleading which now fills hundreds of volumes.

What stronger admission could be made against it? If that is the nature of the system, is it strange that any one should come to the conclusion, in relation to it, that reform and destruction were not far apart? What stronger argument could be used for sweeping it away, and substituting in its place a plain, common sense method of procedure in our courts of justice? Of what worth is the gathered rubbish of a thousand years, if three sections are all that is required to supply its place? The system has a strong hold upon the feelings and sympathies of those whose minds have been trained in its rules, but it will soon be forgotten, except as one of the curiosities of a past generation. For one, I am ready to say, "Sweep it out of existence." Let it be gathered together and decently buried, with the honors of war, if it will be any gratification to its friends, alongside of the theories and speculations of the alchemists and metaphysicians of the middle ages. Let a monument be erected to its memory, from the contributions of those in whose pockets it has put money. Let its epitaph be the sentiment which has just been

uttered by the gentleman from Laporte—"three short sections in the English language, fill the place of all this rubbish, these relics of a bygone age." [Loud applause.]

But it is said that the law reformers follow the guidance of theory, rather than the light of experience. This sentiment sounds very well, when expressed in words; but it is unfortunate for its intended effect, that it is not supported by facts. It is far more applicable to the opponents of law reform, than to its supporters. This system of pleading, in its rude origin, was undoubtedly the creation of circumstances, without much reference to its general scope or tendency. But its modern commentators and defenders contend that it is founded in the purest theoretical principles of logic. Now, sir, when the experience of centuries has shown its absurdities—has proved it cumbersome, and burdensomely expensive, and that it thwarts the ends of justice—yet gentlemen blindly shut their eyes to this bright light, streaming all along the track of the past, and still fondly cling to their beautiful theory of logic. It is the bitter experience which the people have had of the effects of the system, which has brought about an almost universal cry for reform.

The gentleman is startled at the idea of abolishing the distinction between law and equity, and administering justice in an uniform mode of pleading, and fears the consequence will be the destruction of equity jurisprudence. He also pronounced a high eulogium on the bill in equity, as a method of stating a case, and enforcing and protecting the rights of parties.

Courts of equity originated in the fact that courts of law could entertain a case only in a prescribed form. The existence of courts of equity is the strongest evidence of the defects in the common law method of remedies. In it the form of an action is made of far more importance than the substance of the action itself, or than even the rights of the parties. It is perfectly consistent with the spirit of the age in which it originated, but it is wholly at war with that of the present. It is arbitrary, barren, inflexible, and without any philosophical basis. Cases are made to bend to forms, and not forms to cases. It occupies the same place in the administration of justice, compared with that system which we wish to see established, that are occupied in philosophy by the theories of Aristotle, compared with the great experimental results of Bacon. The ancient philosopher laid down a theory, and then distorted facts to support it. This system of pleading lays down certain rigid forms, and then distorts all the principles of the law, and facts of a case, in order to suit the forms, or entirely excludes them from its cognizance. The cobwebs of special pleading have so far blinded gentlemen, that they do not appear to see or comprehend the nature and purpose of the proposed reforms.

The abolition of the different forms of action, and of the distinction between law and equity will not take from courts the power to grant any kind of redress which is now granted, but will enable them to grant that redress irrespective of any mere forms of action or complaint now in use, either in law or equity.

The tenacity with which gentlemen cling to these forms and distinctions in modes of procedure, confounding them with the principles of the law, shows the defects in the system, and the injurious effect it has upon the human mind, and the administration of justice. As in this discussion, the great principles of the law are lost sight of in the zeal for form, so in a court of justice, the merits of a case are often postponed and neglected in discussing the mere questions of pleading.

We do not propose to abolish or amend a single principle of the law or equity jurisprudence, which now governs the rights of parties. They will remain the same, so far as any action denoted by the section which we have proposed is concerned. Wherever any person now has a right to redress for any grievance, he will still possess it. But instead of being compelled to choose between a court of law and a court of equity, and between some ten or fifteen forms of action, at his peril, there will be but one court in which to file his complaint, and he will be permitted to make his own form of action.

In a philosophical or common sense view, it is difficult to perceive any necessity for a distinction between law and equity, in the administration of justice. Whatever is recognized by courts as a rule to govern them in deciding upon the rights of parties, and applying remedies, is the law of the land, whether it is called law or equity; and one court can just as well administer it, as two. In fact, in this State it is all administered in one court, but it must be done in two different capacities, possessing a kind of an amphibious character, one minute sitting upon the hard, dry land of the common law, and the next afloat upon the boundless sea of equity. But wherever the principles of the law are made to yield to forms of proceeding, and a narrow, inflexible system of practice, like that of the common law, is adopted for the administration of justice, something like equity must necessarily come into existence, or half the grievances in society go unredressed.

If the English system of practice and pleading had been founded, in the first place, upon a broad basis, with suitable principles of expansion and adaptation, equity jurisprudence, distinct from the common law, would never have been known. Neither will the proposed reforms necessarily abolish anything that is excellent in a bill in chancery, as a form of pleading. A bill in chancery is a clear and concise statement of the facts in a case, and an answer is a like statement of the defence. This is the very form of pleading, with some rules in regard

to joinder of causes of action, which we wish to see adopted in all our courts, without any of those quibbling technicalities, which now perplex and obscure on every hand.

Then the only questions presented for decision will be the merits of the cause of action and defense, as presented on paper, and how they are sustained by the evidence. No one will then expect to have a case decided upon anything but its merits, and thereby greatly check the spirit of litigation; for one of the greatest promoters of litigation, at the present time, is the prevalent idea, that, with the aid of a good lawyer, by some trick or quibble, a party can gain his cause, right or wrong.

What is an action of law? Simply a complaint of one person against another. Well, we propose that all that should be required of any one having a cause of action against another, is to come into a court of justice and state his grievance in plain language, in his own way, and if, under the law of the land, he is entitled to redress in any form, don't turn him out until justice has been administered. How does the matter stand now? If you go upon the equity side of the court, the court has to decide, in the first place, whether you have a cause coming within the equity jurisdiction. If you have got as it were, the proper "pass word," the "open sesame," it is all right—if you have not, you may go as far as you please, and yet at any time before the highest tribunal has given its final judgment, the court, by turning to some old musty volume of decisions, made, perhaps, hundreds of years ago, discovers that you have come in at the wrong door; you should have commenced on the law side, and not in equity; so you have to go out of court smarting with cost, and either stay out or rap at another door, and dress up your case in a different "suit." But when you get into the vestibule of this boasted temple of justice, what do you perceive? You find some twenty doors opening into the inner temple, and upon which are inscribed such terms as replevin, assumpsit, trover, ejectment, debt, covenant, trespass, trespass on the case—and I will not call the roll any farther on the present occasion. [Laughter.] If you make a mistake as to the door you will enter, which is very likely to be done, though you have a dozen lawyers to give direction—if you call your action "debt," when some old judge five hundred years ago, in England, who, perhaps, did not know enough to make a respectable justice of the peace in Indiana, decided that such a cause should be termed something else, you are told politely that you may have a very good case, but you did not come in at the right door. The consequence is, you are turned out of court again, and have to commence anew or give up your case entirely; and many a suitor, who has had a good cause of action, after years of fruitless litigation has died before he got justice done him, or anything approaching to it.

The section directing the appointment of commissioners to simplify the practice, &c., has already passed, but gentlemen are constantly wandering back to that subject, and seem anxious to fight the battle over again, and I have thought it right and proper to say thus much in reply to some of their remarks.

The section now on its final passage proposes three things: First, that the commissioners already provided for shall be elected by the people: Second, that they shall continue in office for two years: Third, that the code of practice shall not become the law of the land until sanctioned by the Legislature. I can see no necessity for that last provision. No one ever dreamed that what the commissioners do shall be the law without the action of the Legislature being first had upon it. It is difficult to conceive how any man could have had the ingenuity to discover the necessity of such a provision.

The gentleman from Switzerland has urged in favor of the passage of the section, that, if it be necessary to have the men elected by the people who sit in our courts of justice, then those who make the laws for us should be elected in the same manner. These commissioners are not to make laws for us; they are only to draw up and arrange into a condensed form, a code of practice, and present it to the Legislature. I do not see the necessity of this provision in relation to their office continuing for two years. The duties of the office, possibly, may not last for six months. We should not make a positive provision of this kind, because the work may be done during the session of the first Legislature under the Constitution.

Sir, all this comes from the wrong quarter. It is not, I judge, from any friendliness to the cause of reform, that the gentleman made these propositions. In fact, he has ridiculed the idea from the beginning, and "damned it with faint praise," every step he has taken. He has pronounced the experiment in New York, as a perfect failure. Sir, some of the most distinguished lawyers in the State of New York, were appointed to draw up a code. They did so, and it is now in force, and has received the fullest approbation of the people, and the approval of the best lawyers in the State. It has facilitated business, and greatly reduced the expense of litigation in that State. And yet the gentleman gets up here, and, with a majestic and oracular air, tells the Convention that it has proved a perfect failure.

I understand that the gentleman from Floyd (Mr. Thornton) has with him the highest evidence of the success of the New York code of practice, which, with the permission of the Convention, I will thank him to read.

ALBANY, May 8, 1850.

Hon. David Dudley Field:

My Dear Sir—I take pleasure in answering your favor of the 6th inst., asking my opinion

on the subject of certain inquiries made by Mr. Loughborough, of Kentucky.

I regard the uniting of law and equity jurisdictions in the same tribunal, as one of the most desirable of modern reform. There were great difficulties to encounter. There was a deeply rooted prejudice against breaking up two distinct and complicated systems of practice, with which all had become familiar; and it was exceedingly difficult to frame one system of practice applicable to both remedies. The principal obstacle was one of practice—not of principle; for every one was ready to concede that it seemed palpably absurd that a court which was authorized to pronounce the law should not have the power to administer justice between the parties. I think every day that passes will increase our surprise that a separation of law and equity was ever tolerated.

It will take some time to reconcile all our lawyers to the change. Much is to be unlearned, and the system of practice to be learned must be perfected. This it will take years to accomplish. The necessary machinery, though in most respects exceedingly well put together, cannot be made complete without the aid of experience in perfecting its details. But of the ultimate and entire success of the change I entertain no doubt.

Our present plan of taking testimony in open court at the circuits, has many advantages over the late practice of taking proofs in chancery. I often try at the circuit, in a few hours, an equity cause that would have occupied several days before the Examiner, under the old system. When the parties are before the court, it is easy to ascertain the real point in controversy, and to direct all the evidence to it. Having taken the evidence, and being, of course, familiar with it, much less time is consumed in the argument of counsel.

Very few such causes are tried by a jury. The counsel generally waive a jury, and try, the cause before the court. But if there is a jury, the judge has only to sift out the real question of fact, and submit it in the form of a question to the jury. He then declares what remedies the parties shall have, on the facts admitted or found.

I am, very truly, yours, &c., &c.,

AMASA J. PARKER.

NEW YORK, 10th May, 1850.

David Dudley Field, Esq.:

Dear Sir—I cheerfully comply with your request, "to give you the result of my observation on the practical operation of our blended system of law and equity, that you may communicate it to Mr. Loughborough," of Kentucky.

In the extensive practice which has come under my notice since the amalgamation, I have as yet seen no evils arising from it, nor any inconveniences which would not have occurred under the former system. In short, I have no

hesitation in saying that the change has worked well. In the outset, efforts were made to obtain equitable remedies in cases to which they were not equitable. The minds of some members of the bar seemed to be entirely afloat, and I was applied to for an injunction, by way of attaching property, in a suit simply for goods sold; but this confusion appears to have been dispelled. * * * * *

Where there are distinct systems of law and equity, *administered by the same Judge*, I have no hesitation on the subject. Unless each could be administered by a distinct judge, I would amalgamate the forms of procedure at once. Our experience while our Circuit Judges were Vice Chancellors, was abundant to show, that there should be either an entirely distinct set of judges, or a single and uniform system.

With great respect, I remain,

Very truly yours,

LEWIS H. SANDFORD.

ALBANY, Sept. 20, 1850.

David Dudley Field, Esq.:

* * * * *

The leading principles upon which the reform embodied in the code is founded, are such as no government, when once adopted, will ever relinquish. There is, at this day at least, no reason why the distinction between the equity and common law proceedings should be preserved. Nor is there any more reason for preserving the different forms of actions at law. The provisions of the code, in this respect, abolishing the distinctions between law and equity, and the different forms of actions at common law, are, with perhaps here and there a single, if not a *singular* exception, approved and commended by our entire judiciary and bar.

The abolition of chancery proceedings under the operation of the *constitution* and *code* together, have been the means, in my judgment, of saving our present judiciary system from the evils which wrought the destruction of the former. My own deliberate conviction is, that had the old chancery system continued, our courts, by this time, would have been irretrievably *swamped* with the accumulation of business.

* * * * *

I have thus, my dear sir, frankly and cursorily expressed to you my own views of the *practical working of the code*. Its adoption was a great step in improvement, as well as *progress*. The great and leading features of the system can never be abandoned. In its details it is yet defective. Some of these defects will be cured by legislation, others by experience. Although I have sometimes felt discouraged, for reasons at which I have already hinted, it is still my purpose, while I am honored with the station I now occupy, to give my best efforts to carrying out and perfecting a system, resting, as I am per-

sueded this does, upon the only sound basis of legal practice.

I remain, dear sir, with great respect,

Your obedient servant,

IRA HARRIS.

—
New York, December 26, 1850.

D. D. Field, Esq.:

Dear Sir—You have requested my opinion respecting the practical operation of our code of procedure, and particularly that part of it which abolishes the distinction between actions at law and suits in equity. I should have complied with your request earlier, but my time has been so much engrossed of late, as to prevent my doing so, and, even now, I must be very brief.

The opportunities I have had to judge of the new mode of proceeding, and of the practice under the code, have been sufficient to satisfy me of the great advantage we have gained over the old system of practice. The common law distinction of actions being abolished, and as a necessary consequence, all forms of pleading as heretofore used, and the informal pleadings described in the code, and only to the extent therein allowed, being substituted, seems to me an improvement, which I think cannot fail to be acknowledged in proportion as the profession become familiarized to it.

In the trials of causes, I have found no difficulty in readily understanding, from the pleadings as now generally framed, what are the disputed points or issues to which testimony is to be adduced, or the evidence applied; and those who are called to the work of "distributive justice," are now spared the necessity, which was many times a disagreeable task, of non-suiting a plaintiff, or over-ruling a defense, merely because of a mistake in the form of action or of a plea, or of a variance between the pleadings and the proof; a result oftentimes of the most technical character, producing expense and delay, if not entirely defeating the ends of justice.

I am likewise in favor of the code, wherein it has abolished the distinctions between actions at law and bills in equity. I confess I was always partial to the Court in Chancery as a distinct court, but when it was overthrown in our State, and the administration of equity jurisprudence became blended in the same tribunals with that of law, under our new Constitution, which took effect in 1847, there appeared to me no longer any very good reason for keeping up such a distinction as the equity side and the law side of the same court, in respect to its proceedings. The act passed May 12, 1847, for the purpose of carrying into effect the provisions of the Constitution in relation to the judiciary, did indeed recognize that distinction, and we were called upon to frame two sets of rules, one for the practice in equity suits, and the other in actions at law. At that time I ventured to ex-

press a hope that the necessity for such a distinction might soon be removed; and I think the code has wisely ordered a uniform course of proceeding in all actions, both for law and equity.

I am, with great respect,
Your obt' servant,
WM. T. McCOUN.

The opinions of these judges, who have administered the law under this new code of practice, may not be good authority with some, and yet they would yield the most implicit faith to the decisions of the pimps of Charles II, of the tools of the VIIIth Henry, and of a Jeffreys, a judge that would disgrace the judicial bench of the king of darkness. For my part, I give the preference to the authority of the judges in New York.

TUESDAY, JAN. 28, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRUMBACKER, a delegate from Lake county.

The journal of yesterday was read and approved.

WOMAN'S RIGHTS.

Mr. OWEN. I desire to make a motion having reference to the committee on revision. The sub-committee has already had several meetings and is anxious to submit the result of its labors to the Convention. They have completed the bill of rights, preparatory to submitting it to the committee itself, and to its presentation here for approval.

Upon examining that article, we find that there is a single section of three or four lines that has not yet been acted upon by the Convention. It relates to the rights to property of married women. We are desirous that it should be acted upon now, and either voted down or passed, so that the article may be modified accordingly. I suppose gentlemen will not desire discussion, as the section has already been debated at length. If so, the matter can be settled in ten minutes.

I move, Mr. President, that article fifty-two be made the special order for now.

The motion was agreed to.

The Secretary read the section as follows:

"The real and personal property of married women and a liberal provision for widows, shall be and remain secured to them respectively, under equitable conditions by law."

Mr. OWEN. I move the previous question.

Mr. BUTLER. I move to lay the section upon the table.

Mr. SHOUP. I move a call of the Convention.

The motion was not seconded.

The question being upon laying on the table—upon a division—ayes 55, noes 71,

The section was not laid upon the table.

The demand for the previous question having been seconded, the main question was ordered to be put.

The PRESIDENT. The main question is, Shall the section be engrossed for a third reading?

Upon this question the yeas and nays were demanded and taken with the following result—yeas 70, nays 58:

YEAS.—Messrs. Alexander, Allen, Ballingall, Bascom, Beard, Beeson, Berry, Blythe, Bourne, Bryant, Carr, Chapman, Chenowith, Clements, Coats, Cole, Cookerly, Crumbacker, Dunn of Perry, Duzan, Edmonston, Elliott, Frisbie, Gibson, Graham of Miami, Graham of War-rick, Gregg, Hall, Hamilton, Hawkins, Hendicks, Hitt, Hovey, Johnson of O., Jones, Kelso, Kent, Kendall of White, Kilgore, Kinley, Maguire, McClelland, McFarland, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Mowrer, Murray, Nave, Newman, Owen, Pepper of Ohio, Prather, Rariden, Read of Monroe, Shoup, Sims, Smiley, Smith of Scott, Spann, Steele, Tannehill, Thomas, Thornton, Wheeler, Wiley, and Mr. President—70.

NAYS.—Messrs. Barbour, Beach, Biddle, Bowers, Bracken, Bright, Brookbank, Butler, Carter, Clark of Hamilton, Colfax, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Far-row, Fisher, Foley, Garvin, Gootee, Gordon, Haddon, Hardin, Helm, Helmer, Hogin, Howe, Huff, Johnson of D., Kendall of Wabash, Lockhart, Logan, March, Mather, Mathis, Miller of Fulton, Morgan, Morrison of Washington, Niles, Nofsinger, Pepper of Crawford, Pettit, Read of Clark, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Stevenson, Tague, Trimble, Walpole, Watts, Wolfe, Yocum, and Zenor—58.

So the section was ordered to be engrossed for a third reading.

Mr. LOCKHART reported an article defining the boundaries of the State, which passed to a second reading.

Mr. WALPOLE reported an article requiring that a vote should be taken by the qualified electors of the State, on the first Monday in June, for the adoption or rejection of the new Constitution, and that a separate poll should be opened to decide on the article in relation to the exclusion of negroes, which passed to a second reading.

CORPORATIONS.

The section providing that corporations shall not be created by special acts, but may be formed under general laws, and that laws conferring corporate powers may be altered and repealed, was read a third time.

Mr. COLFAX, I am convinced, Mr. President, that this is one of the most dangerous sections which has been engrossed in the Convention. Its language is broad and comprehensive—"all laws conferring corporate powers may be repealed." Not all laws hereafter passed—not that they may be repealed for good cause shown—not that a two-thirds vote shall be required to guard against hasty violation of vested rights. But under it, all laws heretofore or hereafter passed, which have granted or shall grant corporate powers, are placed at the caprice of a bare majority of any session of the Legislature. The same majority that is now required to authorize a State road, can, influenced by a few prominent men, revoke, without notice and without adequate cause—on unsubstantial grounds, or none at all—the charter of a company which has constructed an important and expensive work, from which they are just beginning to reap some recompense for their investment.

Believing, therefore, that it is an unwise and dangerous proposition—that, under it, vested rights will become a by-word—that investments in plank roads, railroads, and other works of improvement will necessarily cease—that those now interested in such enterprises will rather withdraw their investments than trust them to the uncontrolled whim or caprice of an accidental majority in the Legislature; and believing, further, that no harm can possibly ensue by leaving the Legislature to reserve, in every case that they desire, the power of repeal, and define the restrictions under which, and the causes for which, such power may be exercised. I move to lay the section on the table, and do sincerely trust that a majority of this Convention will resolve that this section shall not be incorporated into the Constitution we are framing.

The section was, upon a division—ayes 73, noes, 52—laid upon the table.

The section providing that stockholders shall be liable to the amount of their stock, &c., came up on its third reading.

Mr. OWEN moved to re-commit, with the following instructions:

Strike out and insert—

"Stockholders in all corporations shall be individually responsible to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of the corporation."

The Convention will recollect that we have already passed a provision with reference to banks, similar to that which my amendment proposes to insert in this section; that each stockholder shall be liable, in addition to his share of stock, for an amount equal to that share. I think we ought to put all corporations upon the same footing. If we prescribe this rule for the government of banks, it seems

right that we should also prescribe it for the government of corporations generally.

I think it is quite as effectual as a provision that stockholders shall be liable for all debts, in the proportion of their stock; and, as being more definite, I think it less likely to deter the investment of capital in useful enterprises.

Mr. FOLEY moved to lay the section and pending instructions upon the table.

Upon this question, the yeas and nays were demanded and ordered, and, being taken, the Secretary reported the following result—yeas 57, nays 71:

YEAS.—Messrs Alexander, Ballingall, Barbour, Beard, Blythe, Bourne, Bowers, Bright, Brookbank, Carr, Clark of Hamilton, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Dunn of Jefferson, Farrow, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Gregg, Hall, Hamilton, Hawkins, Helm, Hogin, Hovey, Huff, Jones, Kelso, Kilgore, Lockhart, Maguire, Mather, Mathis, Mooney, Morgan, Mowrer, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Spann, Stevenson, Tannehill, Thomas, Thornton, Wallace, Watts, and Zenor—57.

NAYS.—Messrs. Allen, Anthony, Bascom, Beach, Beeson, Berry, Bracken, Bryant, Butler, Carter, Chapman, Chenowith, Clark of Tippecanoe, Coats, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Elliott, Fisher, Garvin, Graham of Miami, Haddon, Hardin, Helmer, Hendricks, Hitt, Howe, Johnson of D., Johnson, of O., Kendall of Wabash, Kendall of White, Kinley, Logan, March, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Trimble, Walpole, Wheeler, Wiley, Wolfe, Yocum, and Mr. President—71.

So the motion did not prevail.

Mr. STEVENSON said that he was opposed to the principle contained in this section, of making the liability of stockholders so great. Those farmers who should unite in subscribing to the stock of a road would be responsible for the full amount of their subscription, so that, in the event of the failure of said company, their farms would be subject to forfeiture. Their farms and not the road would be looked to as security, and would be levied on by the purchasers of the stock. In his opinion, this was a provision for the benefit of the rich.

Mr. NEWMAN moved to amend the instructions, so that corporations, other than banking, shall have such responsibility imposed on stockholders as may be provided by law.

Mr. N. remarked that it seemed to him the Convention should be careful how they restricted enterprise in the State, so far as public

improvements were concerned. It should be recollected that, if they inserted a restriction of such a character in the Constitution, if the Constitution was adopted, the people would be left without remedy. But if the Convention left the matter open, so that the Legislature might pass general laws upon the subject, would any gentleman doubt but what that body would throw around the subject sufficient and necessary restrictions? Take, for instance, the Indianapolis and Terre Haute railroad, which was commenced with less than one hundred thousand dollars worth of stock subscribed, and which took half a million of dollars to complete it. Now, if the stockholders had been made individually liable for the amount of the stock subscribed to, what man on the whole line would have taken a dollar of stock? Not one. And thus it would be with the other railroad enterprises of the day. By this restriction the energies of the people would be depressed, and the public good greatly affected. The doctrine was monstrous, that a man who subscribed to one hundred dollars worth of stock in a plank road or railroad should be held responsible to the full amount of his means.

Mr. NILES. There has not been a truer sentiment uttered upon this floor, than that which was expressed a few moments since, by the gentleman from Putnam, (Mr. Stevenson,) that this is a provision for the benefit of the rich. The capitalist can carry on any business in which he may see fit to engage, without assistance from his neighbors. He needs no law to encourage associated enterprise, and the concentration of small sums from various sources, aid in promoting the public good, in connection with his own interests. And the wealthy are not always the men of the most public spirit. But men of small means must combine their efforts and capital, or they can engage in no great public enterprise. Without associated effort, we could have no plank roads—no railroads—no cotton or woollen mills in the State. It is an Ishmaelitic spirit which would frown upon associated efforts. They are connected with all that is progressive and hopeful in the present condition of the world. Every man's hand has been raised against his neighbor, and every man has been for himself, against all others, too much and too long already. Corporations are but associations organized to effect lawful and useful objects, which could not or would not be accomplished by individuals. Why, then, this ceaseless clamor against them? When has a plank road company or a woollen mill endangered our liberties, or done violence to private rights?

By adopting the section as reported by the committee, or the amendment offered by the gentleman from Posey, you will, in effect, prohibit all such associations, or so limit their number that the few wealthy and sharp-sighted men

shall make large profits, and men of small means, who must unite in large numbers, will never risk the experiment. Look, for example, at the condition of the county of Laporte. We have a large wool crop. A woollen manufacturing establishment is much needed among us. We have no one, two, or half a dozen capitalists, who have the ability and the enterprise to go into the business. We can accomplish the object only by inducing a large number to form a joint stock association. An individual may be able and willing to invest a thousand dollars, but would wholly refuse to make himself liable for over another thousand—much less indefinitely for all the debts which might ever be contracted by the company. And the question is simply presented, shall such associations be tolerated, or shall they be prohibited altogether? It is said that partners are liable, indefinitely, for all the debts of the firm. But a partnership is one thing, and a corporation is entirely another, and is designed to accomplish objects which are beyond the reach of partnerships. A partner chooses his associates. The co-partner has no power to sell out his interest in the concern and bring in a stranger, for whose acts the other shall be liable. The partnership would be dissolved by such a transfer. The stock in corporations is assignable without the consent of the individual members, and must remain so, or the distinctive character of corporations will be destroyed. You could have no partnerships if you made partners liable for the acts of strangers, and you will have little of the benefits which may and do result from corporations, if you adopt these provisions. The conditions upon which corporations are organized, are understood by the public. No man is compelled to give them credit. If he deals with them he may require his pay in advance, or he may use the largest liberty in making his own terms or going anywhere else. With banks it is otherwise. Bank paper circulates as money, and men are all but compelled to receive and pay it out. We have very properly guarded banks against failure, but this section proposes to impose even severer restrictions upon corporations organized for other purposes—upon plank roads than upon banks. Now, sir, I hold that corporations, which would be in effect prohibited by this section, are to-day doing more to improve the country than all the money of individual capitalists put together, and I hold further, that there is not a larger proportion of failures by corporations, as organized under our present laws, than by individuals. By refusing to pass this section, we do not say that there shall be no individual liability in any case, but we leave the whole matter to the Legislature, to be regulated by wholesome laws, such as experience may prove to be necessary and useful. I hope, then, that, if anything is to be adopted, it will be the amendment of the gentleman from Wayne.

Mr. OWEN. The gentleman from Laporte (Mr. Niles) says, this provision that stockholders in corporations shall be liable, is a provision in favor of capital and of capitalists.

If honesty be in favor of capitalists; if to pay a man's just debts be in favor of capitalists, then so is this provision. It but imposes upon the corporator similar liability, though not to the same extent as an individual incurs under our laws, when he runs into debt.

An "Ishmaelitish sentiment," the gentleman says it is; a provision tending to "raise one man's hand against every man, and every man's hand against him." Ishmaelitish! In what possible sense can the gentleman make such an assertion as that? Is it an Ishmaelitish sentiment, that when a corporation incurs a debt, it should be made to pay it?

A wool mill, the gentleman gives as an example; an incorporation associated for the very useful purpose of making woollen fabrics. Well, sir, let us take up that particular case. Of whom does such a company obtain their raw material? Of whom is the wool they manufacture purchased? Usually of the farmers in the neighborhood. Suppose the company mismanage their affairs and lose money; so that their capital stock is insufficient to pay their debts. Suppose the individuals who compose the corporation amply able to pay all debts. Is it an Ishmaelitish sentiment that the law should hold them responsible to the farmer for the wool with which he furnished them? Is it not far more Ishmaelitish that they should suspend payment full handed, and secure behind the immunities of their character, bid the farmer seek his remedy where he could find it.

I would not run into extremes, sir, in this matter. I consider this a compromise between the opinions of those who hold that all stockholders should be responsible to the full amount of their property, and of those who would free them from all individual liability. And as such, I hope it will be adopted.

Mr. LOCKHART was opposed to the section, because, if the doctrine therein contained was carried out, it would put a stop forever to the construction of railroads and plank roads. In the section of the State from which he came, men took their axes upon their shoulders and went out and gave fifty dollars, worth of labor and material in the construction of a plank road, and if, in addition, they had been made responsible to the amount of fifty dollars, these roads would never have been constructed. If this section was put in the constitution, he did not believe that they could get stock taken in any plank road or railroad in the State.

Mr. DOBSON said, he was in favor of the section as it stood. He desired to see the people of the country protected from any injustice which might be done them by corporations. He took the broad ground that corporations were no more than artificial persons, and he thought

that artificial persons should have no more rights than natural men.

Mr. READ of Monroe. Mr. President, as chairman of the committee reporting this section, it is proper that I should say, that in committee it was not presented by myself. The principle was brought forward by the gentleman from Greene, (Mr. Butler,) and was unanimously adopted by the committee. The gentleman from Jefferson, (Mr. Gregg,) a member of the committee, was not present upon its adoption. My own agency was confined to putting the section in proper form, and to making such liability as the section prescribes relate to debts contracted during the time the stockholder should hold stock in the corporation. The object of this was, to prevent a stockholder escaping liability, by selling out his stock in an insolvent company to Jack Straw, or some other equally notable personage, and giving him three drinks of grog to take it, the said Jack Straw assuming at the same time the liabilities as well as the ownership of the stock.

Sir, I have no hostility to associated wealth. On the contrary, I do not hesitate to say, that I consider it one of the great instruments of modern civilization. I would afford all proper encouragement to the union of capital for promoting the various improvements of the country.

While I was at first averse to the principle here presented, and in consequence kept back the report of the committee to a late period, after, in the mean time, conversing with numerous capitalists of this State, and with a number belonging to other States in regard to the true ground to be taken on this delicate subject, I became satisfied that there is none of the danger in the section which is apprehended by some gentlemen.

The principle of unmitigated individual liability is not the principle of the section. It is liability in proportion to stock—in proportion to ownership. I say, sir, that the more I have reflected on this principle the more it has commended itself to my mind as sound and just. Look at it, sir: if there are gains, these gains are in proportion to stock. If there are losses, why should not the losses be in the same proportion? Can any man answer? I confess, sir, I can not. If there are losses, somebody must lose. This is clear. Now, upon whom should the losses fall? Would it not seem to be most obviously just, that they should fall upon those who would be the gainers, if gain there should be in the enterprise, and precisely in the proportion of the gain? To make the loss fall upon those who cannot have any of the gains, seems to me not right. It is giving to men the power of winning without any risk of losing. In regard to the expediency of the principle, I hold that what is just is always expedient.

But, sir, I do not believe that this principle, if adopted, would have any other than the most

salutary effects upon all joint efforts in the various improvements of the country. It might prevent some wild and headlong schemes which throw the losses, not upon their authors, but upon the innocent and unsuspecting.

Unlimited liability makes the stockholders liable for all debts. The limited liability of the section, as proposed by my friend from Greene, makes the liability, in case of loss, fall, not upon the public, but upon the stockholders; but still in proportion to their stock. The principle is a safe one—it is just. To do right is always safe; it is the highest expediency. Wild speculators and schemists always tell us, if they are not permitted to speculate and gamble at the risk of others, all enterprise will be destroyed, and the country will be ruined. Sir, we have but one thing to do in the case, and that is to prescribe the simple rule of justice.

While I say this for the principle, I must also say that I can never consent to lay a less liability upon banks than upon other corporate enterprises. There is every reason why higher responsibilities should rest upon moneyed institutions than upon other corporate enterprises. Why? Because moneyed capital can be more easily transferred than other capital. It more readily evades the creditor. Because, again, such institutions in the privilege of having their credits circulate as money, enjoy a great and extraordinary advantage.

Sir, I have known a man living in a palace, yes, sir, literally in a palace, with his ill-gotten wealth screened by the iron bar of corporate privileges; when the poor woman holding his paper, earned by the toil of the needle, could not with a five dollar bill buy a pound of coffee. One of the bills signed with his name, I have this moment in my pocket. I would hold him and his associates responsible to the last dime.

You have adopted the principle of liability for banks in the amount of the stock, and of still another amount equal to the stock. This is better than heretofore. It is something gained upon the "divine rights" of such institutions in behalf of common justice. It may, sir, be enough. In all ordinary cases I think it will be. But, let me tell gentlemen, that in England, even in aristocratic England, the idea of a joint stock company not being liable for the paper credits which they issue would be scouted. Such an exemption is unknown there. It is reserved for our land of equal rights to confer upon classes of men privileges and immunities which in no other country upon which the sun shines would they dare to claim. I rejoice, sir, that so much has been gained.

My chief object in rising was to say, that in regard to other corporations, those corporations designed for improving the country, for the promotion of education, for other great objects of common interest, I am willing to commit the amount of the personal liability and the mode of enforcing it to the Legislature, to be adapted

to each particular class of corporations. That, sir, was my proposition in committee.

At the same time, I must say, while I feel no manner of anxiety for the fate of the reported section, I see in it none of "the hydras and chimeras dire" which some gentlemen have conjured up to their imagination from its adoption. I do not believe it would put a straw in the way of any honest enterprise in the country.

MR. BUTLER. I am a member of the committee on banking, and had the privilege of bringing forward the principle contained in this section. I believe the principle set forth in the section to be strictly correct. I am, Mr. President, for guarding the rights of the people, above everything else. This section was not hastily acted upon, but deliberately examined and the chairman of the committee hesitated longer in regard to it than any member of the committee; finally it was adopted unanimously. I trust the section will pass.

MR. FOSTER. I do not care how stringent this provision is made in regard to bank corporations, but I think that a distinction should be made between plank road and railroad corporations and banking companies. Without occupying further time, I would merely observe that I am opposed to the section, and hope it will be indefinitely postponed.

MR. NAVE said that he considered it true democracy to make stockholders liable for the amount of stock they hold in a company. He believed that fifty or more individuals who organized themselves together for the purpose of carrying on business, should be as responsible for the debts they contracted, as one man, or as a partnership composed of two or more individuals are responsible. He favored the section as reported by the committee.

MR. READ of Clark remarked that he was opposed to the passage of the section, because he considered that its adoption would cripple the enterprise and energy of capitalists in going forward with works of enterprise in the State. He would just tell gentlemen who advocated this measure, that if it was adopted there would not be another railroad or plank road built in Indiana. He hoped the section would be rejected.

MR. BASCOM moved the previous question.

The call having been seconded, the main question was ordered to be put.

The question being on the adoption of the amendment proposed by the gentleman from Wayne (Mr. Newnan) to the pending instructions, upon a division, yeas 60, noes 42, it was decided in the affirmative.

The question then being upon re-committing the section, with the instructions as amended,

The yeas and nays were demanded and ordered, and, being taken, the Secretary reported the following result—yeas 69, nays 56:

YEAS.—Messrs. Allen, Ballingall, Borden, Beach, Beard, Blythe, Bourne, Bowers, Bright, Bryant, Carr, Clark of Hamilton, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Dunn of Jefferson, Farrow, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Graham of Miami, Gregg, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Johnson of D., Jones, Kelso, Kent, Kilgore, Lockhart, Maguire, Mather, Mooney, Moore, Morgan, Mowrer, Murray, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Smith of Scott, Spann, Stevenson, Tannehill, Thomas, Thornton, Watts, Wheeler, Wolfe, Zenor, and Mr. President—69.

NAYS.—Messrs. Alexander, Bascom, Beeson, Berry, Biddle, Bracken, Butler, Carter, Chapman, Chenowith, Clark of Tippecanoe, Coats, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Elliott, Fisher, Gordon, Haddon, Hardin, Hendricks, Howe, Johnson of O., Kendall of Wabash, Kinley, Logan, March, Mathis, McClelland, McFarland, Miller of Gibson, Milligan, Milroy, Morrison of Washington, Nave, Nofsinger, Pepper of Ohio, Pettit, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Steele, Tague, Trimby, Walpole, Wiley, and Yocum—56.

So the section was re-committed with instructions.

MISCELLANEOUS.

The section in relation to the appointment of trustees for the town of Clarksville, was read a third time and passed.

The section providing for an enumeration of the inhabitants of the State every six years, was also read a third time and passed.

The section providing that the first session of the Legislature under the new Constitution shall be held under apportionment made this winter, was read a third time and passed.

The first three sections embraced in article 45, reported by the committee on education, were read a third time and passed.

The fourth section of the same article was then taken up for consideration.

It was read by the Secretary, as follows:

"SECTION 4. The Common School Fund shall consist of the Congressional Township Fund, and the lands belonging thereto;

"The Surplus Revenue Fund;

"The Saline Fund, and the lands belonging thereto;

"The Bank Tax Fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

"The fund to be derived from the sale of County Seminaries, and the moneys and property heretofore held for such Seminaries, the fines assessed for any breach of the penal laws of this State, and all forfeitures which may accrue;

"All lands and other estate, which shall escheat to this State, for want of heirs or kindred entitled to the inheritance;

"All lands that have been or may hereafter be granted to this State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof;

"All corporation taxes that may be assessed by the General Assembly for common school purposes, as hereinafter provided;

"The several counties of this State shall be held liable for the preservation of so much of said funds, as may be entrusted to them, and the payment of the annual interest thereon."

Mr. WOLFE moved to re-commit the section with instructions to strike out the words, "the several counties of this State shall be held liable for the preservation of so much of the said funds as may be entrusted to them, and the payment of the annual interest thereon."

Mr. MORRISON of Washington expressed himself in favor of the section as it stood; believing that the funds entrusted to the counties should be duly taken care of; and that the only way to have them secured and applied to the purpose for which they were raised, was to make the counties responsible for them.

Mr. CLARK of Tippecanoe said he thought the motion to re-commit with the instructions proposed by the gentleman from Sullivan ought to prevail; even though his argument might be, as the gentleman from Posey describes it, not a good one. The chairman of the committee on education had said that the money loaned in the counties belonged to the people of these counties, and was a sacred fund, and if it was lost they should be taxed to replace it. Now, (continued Mr. C.,) I understand it to be designed by the creation of a school fund to assist the people of the counties in the education of their children. The design is undoubtedly to promote education by the use and expenditure of the money in aiding parents to pay for the tuition of their children; not to collect a large fund for mere show, and call such policy a devotion to the cause of education. Well, sir, if the State, by bad laws, entrusts the loaning of these funds to unfaithful or ignorant officers, and if it is lost, the people in the county where such loss occurs, by the provisions of this section, are to be taxed to replace the fund so lost. I ask how this is to help the parent in such instances to educate his children? When you tax the people to replace this fund, you withdraw from them, to the amount of the tax, the means of providing for the education of their children. Why not levy the tax at once to maintain the school, instead of the roundabout method of replacing the fund, to distribute back to them the interest upon it? The money will be entrusted to the hands of other agents, and perhaps be lost again. Then a new tax is to be levied to supply the second loss.

The object to be attained is not to maintain the fund at the expense of the schools, but to make the fund aid in the support of schools. Our school laws have all been mere paper systems, impracticable and inoperative—contrived to make a great figure in the statute book, but so theoretical and expensive in practice, that the pretended assistance offered to parents, to aid in the purposes of education, has always cost more than the money so obtained was worth. Gentlemen talk eloquently about the sacred nature of this fund, the blessings of education, and the propriety of entering into these details by constitutional provisions, so as to secure the fund, and, in the usual phrase, to prove our devotion to the cause of education. Heretofore, the friends of education, as they called themselves, said the school fund was so sacred that it was right to loan it at 10 per cent., although individuals could receive but six. The result was the obvious and natural one; those who borrowed these funds were embarrassed or improvident, and consequently their lands were sold under the mortgages given to secure such loans. In other words, the money was lost. And, in the distribution of the interest of these funds, so many oaths and certificates were required, and so much labor to be performed in getting a pittance from each of the various funds, and no pay allowed the persons who finally distributed the money to support the school, that no good whatever was accomplished. It was hard to find anybody willing to undertake the difficult business of obtaining the distributive share of a school district, and without any compensation. I say, Mr. President, that in my judgment, if these funds had been heretofore scattered to the winds, as gentlemen seem to fear they will be, the people of the State would have been as well off in the matter of schools. If each district were required to levy a tax, and support a school, without all this parade of funds, the system might be so simplified that it could be carried out, and with far less expense than by the circuitous system of levying a tax to raise a fund to be loaned out, and then to distribute the interest back again to the people.

I have very little faith in the visionary schemes of projectors of any sort, and we are not without them in reference to schools. The real school is kept in little obscure districts, and the parents, or those who have care of the children to be taught, must provide the house and pay the teacher. The funds, (if any there be,) or the tax, ought to be brought to their aid and encouragement. Any contrivance by which the ability of the parent is diminished, (even though it be to create a *sacred* school fund,) so far operates as a discouragement and hindrance to the business of education, and therefore I hope we shall amend this section as proposed by the instructions to the committee.

Mr. WOLFE stated that he desired to have a vote upon the motion he had made, believing

that to tax the people to replace a fund which might once have been squandered or lost, was unjust. He was in favor of having penalties attached for the punishment of any embezzlement that might be made of the funds, but he did not believe in taxing the people for any wrong which might be committed by the officers having charge of these funds.

Pending the question,

On motion,

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the fourth section of article forty-five, relating to the disposition of the common school fund. The pending question being a motion to re-commit, made by the gentleman from Sullivan (Mr. Wolfe) with instructions—

Mr. KILGORE. I move to amend the pending instructions by striking out and instructing the committee to add a section providing that the fines and forfeitures now constituting the seminary fund, shall in no case be applied to common school purposes, until all the debts of the seminaries heretofore contracted, shall be fully paid.

Mr. BRYANT. I hope this section will not be re-committed. The provisions which it contains are precisely those of the Revised Statutes, and which have been the law for years, and no one until now has ever made the slightest objection to them. The statute provides that the several counties of the State shall be responsible for the safe keeping of the Surplus Revenue and Congressional Township Funds, and for the payment of the annual interest thereon. I am astonished at the remarks of the gentleman from Sullivan, (Mr. Wolfe,) and the gentleman from Tippecanoe, (Mr. Clark). They speak of these school funds as of funds belonging to the present possessors, and in which posterity can have no interest; that if they are lost, it is our loss only. Sir, it is a sacred fund which belongs not merely to the present, but to all future generations. Every child which now is, or which may hereafter be born in the State, is interested in its preservation, it is a fund which belongs to the orphan and the friendless equally with those whom circumstances have rendered independent of it. Take away this responsibility from the counties to which you have entrusted this fund and what becomes of it? Where there is no responsibility there is no vigilance, and where there is no vigilance there is no security. I know of one case in my own county, where a loan of Surplus Revenue to the amount of three hundred dollars, had been secured by a mortgage on land, altogether insufficient to produce the amount. A knowledge of the fact, that by the statute, the county was responsible for the fund, induced the commissioners to take the necessary steps to secure the loan, which they did. Another case

has occurred in my own county. A former school commissioner absconded with a large amount of school funds in his possession, and after the lapse of many years, and ineffectual attempts to recover the money from his securities, when many of them were dead or removed from the State, the people of Warren county, I believe a majority of the voters, petitioned the General Assembly to release them from any further liability as such securities. An act was passed at the last session of the General Assembly releasing them from their obligation. The Governor interposed his veto at the commencement of the present session, but the General Assembly, acting on the principle that the people of Warren county being ultimately responsible themselves, had a perfect right to determine this matter, passed the bill again by a constitutional majority, notwithstanding the objections of the Executive.

The people of Warren county have never been known to shrink from any responsibility belonging to them. Most of the petitioners knew of the legal effect of such release by the Legislature, and they have not asked, nor will they ask for any exemption from liability. When I call this educational fund a sacred fund, I speak as their representative—I do but give utterance to the sentiments which animate them. This is not the only case of the kind within my knowledge. A similar act was passed some years ago, releasing the securities of the school commissioners of Montgomery county, upon a similar petition. All the counties of the State have been entrusted with large amounts of this fund—a fund which belongs not to themselves, but which belongs to all time and generations, who are to succeed us, and of which we have merely the use. I am opposed, therefore, to any provisions which shall say to those having charge of this fund, this is your own fund, waste, squander, or destroy it, as you may, you shall be held to no accountability therefor. Another reason why I favor this section is, that at the expiration of the Charter of the State Bank, a very large portion of this fund heretofore employed in the Bank, will be seeking other investment. It may become necessary to deposit it with the counties. Are you prepared to say that they shall not be responsible for its safe keeping? The section applies to moneys which may hereafter be entrusted to them, it is not necessary so far as the funds heretofore placed in their charge are concerned. The law has already fixed and determined their responsibility for them, and even if you strike out this section, their liability for past losses will not be changed nor affected. I trust, therefore, that no re-commitment will be made, that no amendment diminishing the security which ought to be required, will be adopted, but that looking to the great interests of those who are to succeed us, we shall exact a strict accountability from those who have the management and use of these

funds. It is a precaution which time and experience has sanctioned, and which ought not inconsiderately to be abandoned or omitted.

Mr. CLEMENTS. I trust this last amendment will prevail. I know that many of the members of this Convention, are cognizant of the fact that debts have been contracted and are now due in the form of seminary certificates which should be paid out of this seminary fund.

There can be no doubt as to the propriety of the provisions, and I trust it will prevail. There is no good reason why the proceeds arising from the sale of county seminaries, should be appropriated entirely to common schools, leaving the individuals engaged in erecting and repairing them to go unpaid for their labor.

Mr. CHAPMAN. The great difficulty in regard to this section, appears to consist in the sentence providing for a fund derived from "the sale of the County Seminaries." It seems to me that we can obviate that difficulty very easily, by leaving out that sentence entirely. We should thus leave the matter of adjusting private rights and claims to the Legislature, where it properly belongs. Probably, however, the Legislature will protect those rights, in any act which it may pass, even if we retain the sentence objected to by several gentlemen.

But, sir, I am inclined to vote against the whole section, whether it be amended as I have suggested, or not. I very much doubt the policy of seeming to recognize the propriety, as we shall appear to do by the specifications of this section, of perpetuating the present division of the school funds. I consider that division a great evil, and one which should be remedied if it be possible. While we continue the present mode, the evil will certainly predominate over the good. Can any good reason be given for continuing the division of the school moneys into a dozen different funds, to be scattered all over the State, and entrusted to the custody of an army of officers, whose fees and perquisites must necessarily consume a large part of the income of the various funds, if they be ever so well managed? The whole concern, as it has been heretofore managed, is to me utterly odious, in every respect. I detest the idea of establishing loan offices in every neighborhood of the State; for the purpose of either shaming the people for the support of schools, or of holding out inducements for them to run into debt improvidently.

I hope, therefore, that the section will not be adopted. But if it should be, I shall offer a section to this effect: That the Legislature shall have authority to consolidate, so far as may be legal and practicable, all the school funds, and invest the same, or the proceeds thereof, in the bonds of the State, constituting the State debt; the principal of the same to be placed to the credit of the general school fund, and the inter-

est to be forever applied, equitably, to the support of common schools.

In this way, we can reduce the present complicated and improvident system to one safe, economical and profitable; and what is equally important, we can by this judicious arrangement, reduce the amount of our foreign debt some two or three millions of dollars. I consider this latter object, of quite as much immediate importance as any other which we can consider. But it seems to me that the Convention have hardly given it that degree of attention which it deserves. It is true that we have adopted the general sinking fund section, reported by the gentleman from Gibson (Mr. Hall,) and we have incidentally provided for a gradual recall of the bonds, under the general banking clause, if it should be carried into effect. But this is not as much as we ought to do, nor as much as we probably would do, if we could have time to deliberate carefully. At this late period of our labors, and under the great anxiety which is manifested by all, to close our session as soon as possible, I cannot hope for that kind of action in regard to the State debt, which I should desire to see. Yet we can and should do something. We have hardly begun to feel the full pressure of the debt as adjusted under the Butler Bill. But we shall feel it in 1853, when we shall be required to pay an interest annually abroad, exceeding \$300,000 in hard cash. [Cries of "consent," and "that's right."]

It is chiefly with a view of bringing home our State bonds, while at the same time, we can by the same means, best secure and economically invest and administer our school funds, that I make these remarks. Our present system is extravagant and wasteful; the management of our school funds costing annually, one-third as much as that of the State government. The proposition which I offer, will avoid this extravagance—will be safe and profitable, so far as it affects the interests of common schools, or the common school fund, while at the same time, it will reduce our foreign debt to a considerable degree.

THE PRESIDENT. The question is upon the amendment offered by the gentleman from Delaware to the pending instructions.

MR. KILGORE. It may not be the case in the older counties, but in, perhaps, a majority of the new counties, where they have but recently finished their seminary buildings, a large indebtedness is hanging over those establishments, based upon the credit of the seminary funds, and if, by the new Constitution, they divert those funds entirely to school purposes the honest and hard working mechanics who constructed those buildings will have no means of coercing payment for their labors; no means, unless the county treasurer provides for their payment. The object of my amendment is to reserve the present seminary fund in each

county until the debts hanging over those institutions are entirely extinguished.

The question having been put upon the adoption of the amendment offered by the gentleman from Delaware, it was decided in the negative.

THE PRESIDENT. The question is now upon the adoption of the instructions offered by the gentleman from Sullivan. The question was put and decided in the negative.

MR. SHOUP. I move the previous question.

The call for the previous question having been seconded by the members, the main question was ordered to be put.

THE PRESIDENT. The main question is Shall the section pass?

The yeas and nays were taken upon this question, under the rule, with the following result—yeas 112, nays 8.

YEAS.—Messrs. Alexander, Allen, Anthony, Ballingall, Bascom, Beach, Beard, Beeson, Biddle, Blythe, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chenowith, Clark of Hamilton, Clements, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Dunn of Jefferson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer Hitt, Hogen, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimble, Wallace, Watts, Wolfe, Yocum, Zenor, and Mr. President—112.

NAYS.—Messrs. Chapman, Clark of Tippecanoe, Howe, Nave, Pettit, and Wiley—7.

So the section passed.

SUPERINTENDANT OF COMMON SCHOOLS.

The section providing for the election of a State Superintendent, to hold his office for six years, &c., was read a third time.

MR. MILLIGAN. I move, sir, to re-commit the section with instructions, to strike out and insert a provision for the election of county superintendents, whose duties shall be regulated by law, and that nothing shall prevent county auditors from acting as such superintendents.

MR. WALPOLE moved to lay the section and instructions upon the table.

A division of the question was called for.

THE PRESIDENT. The question is upon the motion to lay the section and pending instructions upon the table.

Upon this section the yeas and nays were demanded, ordered, and taken, with the following result—yeas 33, nays 63:

YEAS.—Messrs. Ballingall, Barbour, Bascom, Berry, Butler, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Duzan, Farrow, Foley, Frisbie, Gootie, Gordon, Graham of Miami, Haddon, Hamilton, Hendricks, Hovey, Huff Johnson of D., Kendall of Wabash, Maguire, Mathis, McClelland, Miller of Fulton, Milligan, Mooney, Moore, Morrison of Marion, Nave, Pepper of Crawford, Read of Clark, Ritchey, Smiley, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Trimble, Wiley, Wolfe, Youcum, and Zenor—53.

NAYS.—Messrs. Alexander, Allen, Anthony, Beach, Beard, Beeson, Biddle, Blythe, Bowers, Bracken, Bright, Brookbank, Bryant, Carr, Chenowith, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonson, Elliot, Fisher, Foster, Garvin, Gibson, Gregg, Hall, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Howe, Johnson of O., Kelso, Kent, Kendall of White, Kinley, Lockhart, Logan, March, May, McFarland, Miller of Gibson, Milroy, Morgan, Morrison of Washington, Mowrer, Murray, Newman, Nofsinger, Owen, Pepper of Ohio, Pettit, Prather, Read of Monroe, Robinson, Schnoover, Shannon, Shoup, Sims, Smith of Scott, Steele, Thornton, Wallace, Watts, and Mr. President—73.

So the motion to lay upon the table was negatived.

THE PRESIDENT. The question will be now upon re-committing the section with the instructions offered by the gentleman from Jay, (Mr. Milligan). The motion to re-commit was lost.

THE PRESIDENT. The question is, Shall the section pass?

Upon this question the rule requiring the yeas and nays was suspended, and the section passed.

SUPREME COURT.

The section relating to decisions of the Supreme Court was read a third time and passed.

TRUST FUNDS.

The section providing that trust funds shall not be diverted from the object for which the trust was created came up on its third reading.

Mr. ALLEN moved to re-commit, with instructions, providing that the State University fund may be diverted to the use of common schools, under authority of the Legislature.

Mr. ALLEN. Mr. President: The instructions offered does not contemplate, or involve any violation of public faith, but simply seeks

to leave the matter in the hands of the Legislature, so they can, with the consent of Congress, divert the State University fund to the cause of common school education.

Sir, we are not asking, at this time, to take that fund from the State University and apply it to common schools, but we are asking the Convention to leave it in the power of the Legislature, with the consent of the general government to so appropriate it, if they shall deem it consistent with the best interests of the State. Now, sir, suppose that this State University should go down. Suppose that she could no longer get pupils, would not the necessity of her longer continuance cease? Yet, if you pass the section without the amendment which I have offered, it will be impossible for the Legislature, even with the consent of Congress, to divert that fund to any other purpose only that for which it was created by the general government.

Mr. DUNN of Jefferson. I desire to say, in reply to the argument of the gentleman from Carroll, (Mr. Allen,) that if he wishes to keep up an everlasting agitation in Indiana upon the subject of appropriating the funds and property of the University, the adoption of his amendment will secure that desirable object. This fund amounts to some sixty thousand dollars, and if divided among the counties of the State, hte proportion, would be but small; and, therefore, I think the best mode of action with regard to the fund, will be to reserve the fund sacred to the purpose Congress donated it. I do not think the matter should be left open for agitation, as its donation to any other purpose than to be used as a University fund. The people living near the site of this University have purchased lands and property there with the expectation of its being the permanent seat of that organization, and I think they are also entitled to be protected in their rights by the Legislature.

Mr. OWEN. In addition to what the gentleman from Jefferson has stated, I would remark that, as a matter of business, every one who has had any experience with such institutions must be aware that it is better that such an institution should be voted down at once, and done away with by the action of this Convention, than that it should be left in the precarious condition of being frustrated from year to year. Such a course will endanger its reputation, and its prosperity.

Mr. FOSTER. I consider that the donation of six thousand acres of land, appropriated exclusively for a University in this State, by Congress, shows very clearly that to devote the fund arising from the use of those lands to any other object than that contemplated by the donors, would be unjust. Notwithstanding all the discouragements that have hitherto beset the action of this institution, it has been attended with a prosperity entirely unexampled. We

have not yet had the requisite means of a people going there. The roads conducting to it have not hitherto been easy of access; but there will soon be a railroad completed going right to the spot.

I need not remark that I am a conservative in principle, and a friend to vested rights, and that I consider this a right which should be strictly guarded, and in the maintenance of which the honor of the State is involved.

Mr. BASCOM. I hope this amendment may prevail. I desire that this matter should be left open to the action of the Legislature, so that the fund may not be expended in keeping a few professors in office, doing nothing. I am willing to sustain the institution so long as it performs its work aright. This amendment of the gentleman from Carroll proposes no change in vested rights; it simply provides for contingencies.

Mr. McCLELLAND. I am a friend to common schools, Mr. President, and consider that our government owes to every child in the land the education which should be given it, and I desire that all the spare money which we have should go to the support of common schools, and not of college seminaries. How is it, sir, with this University? Is it free to every child in the State? No, sir, it is only free to those children whose parents are able to pay their board at Bloomington? I hold, sir, that all schools endowed by the public—all sources of education should be within the reach of the meanest individual in the community as well as the wealthiest. The remark has been made that this fund is a vested right of many years standing; but if it has been in use so long for the purposes of the University, it appears to me it is high time that if the common school fund is entitled to any benefit from it, it should receive it at once.

It is also said that this fund is so small that it would amount to but a very small sum when distributed throughout the State. Now, as to the amount, it appears to me it makes no difference, in respect to the principle involved. It might as well be urged that, because this institution has had the use of sixty thousand dollars so long unmolested, that, therefore, it is entitled to several times that amount, properly belonging to the common school fund. Whether one dollar, or a million of dollars, the fund should be fairly distributed.

It is partially admitted that this fund should revert to the support of common schools, and I find that the Legislature has spent more time in quarrelling about it than it is worth; but if they have a right to appropriate it in aid of the common school fund, I want them to do it. I do not want the hands of the Legislature to be tied up, so that this fund shall be held in perpetuity. If the Legislature, with the consent of Congress, has the right to appropriate this

fund to the support of common schools, let it be done.

It was remarked that this institution was in a flourishing condition; and so are other seminaries of learning in the State in a prosperous condition. But I do not want this institution to be kept up for foreign students, students coming from other States, when we have so many poor young men in our own State unable to pay their way so as to derive any benefit from this institution. If there must be a school fund kept up at the expense of the State, let it be for the benefit of all; let there be an equality and not an aristocracy of learning.

Mr. DOBSON. I should not now make a remark on this subject were it not for the fact that my course has been misunderstood by gentlemen, upon this subject. I have not been heretofore, nor am I now disposed to destroy the State University. I had supposed that the ordinance of '87, together with the propositions made by Congress to the people of the Indiana territory, 19th April, 1816, would be retained and published with the new Constitution, as they were with the old one. It is known that we entered as a State into several agreements with Congress, some of which we carried out in good faith, and others, with the consent of Congress, we departed from. They gave us the Salt Springs, together with a sufficient number of acres of land to work them, which have been diverted to another purpose. We have had five per cent. upon the sale of the public lands given to us, for which we agreed not to tax any land sold by Congress for five years; two townships were given for a seminary of learning; also, every sixteenth section was given to the townships, for common schools. The General Government gave us four sections of land on which to locate a seat of government; and, sir, I suppose that as all these propositions had been accepted by the Convention in 1816, and published with the old Constitution, though not a part of it, that they would be published as a matter of course, with the new Constitution, but not as a part of it, and would be binding upon the Legislature and upon Congress, as they were heretofore. If gentlemen will read the obligations we have put ourselves under to the General Government, they will see that there is no necessity for saying a word about the University in the Constitution, the act of Congress approved 19th April, 1816, having been accepted and agreed to by the Convention June 29, 1816, was binding upon both parties from that date, and we could not if we would, discharge ourselves from the obligations that that acceptance laid upon us. This question, in my opinion, should never have been raised here. I want the University to remain. I would not disturb it; and if I was in the Legislature I would not vote to divert a dollar of the fund to any other purpose whatever. I would cherish and encourage it.

Sir, I may be wrong, but my opinion is that there is no necessity for this provision in the Constitution. If I thought there was, I would vote for it.

Mr. READ of Monroe. I would be glad, Mr. President, to have the hearing of the House for a few moments, on the subject now before it. [Cries of "Go on! Go on! We will hear you."] I need not say that it is a subject of deep interest to a large portion of my constituents. Nay, sir, I think it is more; that the honor and interests of the State itself are involved in the question.

Here, sir, is a fund, not a single dollar of which the State of Indiana ever gave; a fund of which the State is the mere trustee, and in regard to which the State has but a single duty to perform; and that is, in all good faith to carry out the purposes of the trust in such manner as shall best subserve the great purposes for which it was created. It is now proposed in this body, with the sanction of Congress, to procure a diversion of the purposes of the trust, or else to leave the subject afloat for the agitation of every succeeding Legislature, and for political tricksters of the smallest class all over the State, to use as a hobby for gaining a seat in the Legislature. I hope, before sitting down, to show that fair dealing with our own citizens as well as the honor and interest of the State, equally require a faithful discharge of the trust according to the terms and uses designated in the original grant by Congress.

The section proposed by my friend from Tippecanoe, (Mr. Pettit), and presented after consultation with myself, is designed to secure the fund arising from the sale of the two townships given by Congress for "the use of a seminary of learning," and now appropriated to the support of the Indiana University, to the sole and exclusive purpose for which it was granted; and not only this, to secure all other funds held by the State in trust in like manner to the purposes for which such trust was originally created, and as long as the Constitution shall last to foreclose all question or agitation for an unfaithful application of such funds. Let it be written broadly and boldly upon the Constitution, in direct terms, that the faith of the State is, in regard to these funds, to be preserved sacred and inviolate, that public faith is a part of the Constitution of Indiana.

Mr. President, I will say if you leave the question an open one, you may just as well destroy the University at once. If the question is with every recurring session of the Legislature to be brought forward, and there is to be a never-ceasing agitation as to the diversion and dispersion of the fund, better—far better—do the work at once; strike down, by the action of this Convention, the seminary which has so long existed among us; secure the assent of Congress, and disperse the fund over the State. The institution cannot flourish while there is

uncertainty hanging over its very existence. No institution of learning can flourish under such circumstances. No competent man will remain in it as a Professor; nor, as chairs of instruction become vacant, will competent men come into it. Students will not resort to an institution the tenure of whose existence is uncertain and doubtful.

Why, sir, the law suit which has been pending in regard to the funds of the institution, has inflicted upon it the most serious injury. Let me show the effect in a single instance. The chair of mathematics and civil engineering became vacant; a correspondence was opened with Professor Ross, known as one of the most distinguished mathematicians of the country, since of the Free Academy in the city of New York. Well, sir, but for this unfortunate suit we should have had among us an instructor of our youth this gentleman, so eminent in his profession. Again: subsequently to this Professor McCartney, another distinguished mathematician, and who is the author of the well known work on the application of the calculus to geometry, was by the Board of Trustees elected to the chair, and signified his acceptance of the place; but on learning that a suit was pending involving the whole endowment of the University, he promptly declined the place. Stability and uniformity of policy are essential to the prosperity of any institution of learning, and without them any such institution will dwindle and die out.

But the gentleman from Owen (Mr. Dobson) supposes the fund already sufficiently secure, that there are existing guaranties in our compact with the General Government which will secure its faithful application. Does not that gentleman know that, on this very day, the question is pending across the street in the Capitol, whether Congress shall be memorialized for permission to divert the fund to common schools, and are we not now here in this body debating the same question? If left open, the agitation will be kept up to the ruin of the institution. In my judgment, upon the decision of the question on the section proposed by the gentleman from Tippecanoe, depends the question of the continuance of the University.

It has, sir, been a matter of amazement to me, that this small fund, amounting to some four thousand dollars a year—a fund not raised by taxation—not borrowed upon the credit of the State—but a gift—a mere gift for a specific purpose, and a fund most usefully and beneficially employed—should seem to some politicians a subject of more serious import than the millions squandered, and for which the people are paying taxes. Sir, the influences and considerations which produce this state of things are beyond my power of comprehension or understanding.

The gentleman from Carroll (Mr. Allen) asks, with an air of triumph, what would be done

with the fund if tied up by this section, in case the University should go down? I might just as well ask him, what would be done with the common school fund, in case common schools should go down? The presumption, sir, is, unless civilization should be blotted out, that both common schools and higher institutions of education will continue to exist; and I trust the Convention will hardly deem it necessary to provide for the contingency, when they shall cease.

Sir, I hope my own position and relations will not, in the estimation of any member of the Convention, render it improper for me to refer to the condition of the University. What, then, have been the results of this fund, as actually applied in times past? You have an institution of learning, with suitable buildings, organized with different departments of instruction, with an annual average number of students, during the seven years past, of one hundred and eighty. Of these, the number of sixty, from different counties, receive their tuition free of all charges.

The several departments of the University are those of law, moral philosophy, of chemistry and natural philosophy, of mathematics and civil engineering, of languages, and a department for the general preparation of students for the other departments. With an accurate knowledge of the standard of education in most of the higher institutions of learning in the United States, I say with entire confidence, that, in your own University, your sons may obtain as complete an education as anywhere else in the country. To the gentleman from Owen (Mr. Dobson) I might say, that a young man from his own county, in the institution, not a year since, (now, alas! no more,) I would have been proud to compare, in every department of scholarship, with any young man in any college in the whole country—East or West.

In this Convention, sir—in each of the two Houses now sitting in the Capitol—you find those who have received their education in the University. You cannot go into any body of men, whether professional, political, or literary, in this State, in which you will not find the sons of your University. Young men of genius and ambition, struggling with poverty, through its provisions have obtained all the advantages of education which wealth can bestow. The rich can send their sons to distant institutions. Not so with the poor and those of moderate means. They must have institutions near at hand, or be excluded from their advantages.

The institution, with more ample means, doubtless might have accomplished more. But when I consider its actual means, and look at the results, I am astonished; and still more so, when I compare it with those colleges which fill the land with the fame of their glory.

But, Mr. President, there is still another view. Is nothing due to your own citizens, who bought the seminary lands, after the site of the seminary had fixed upon one of the townships, and fixed there for the avowed purpose of increasing the price of the lands, and thereby increasing the fund? After this has been done, and the funds have been by these means made what they are, is it fair and honorable—is it just and honest—to scatter the fund, and deprive the people of an institution who were, under these circumstances, drawn around it?

And, sir, let me ask, what great public good is proposed by this measure? You strike a death blow at one of your towns, which has grown up with boarding houses and other accommodations adapted to the institution; you disappoint the just expectations of those who have bought property and gathered around the University for the sake of its benefits; you violate that which, if not forming a part of the contract, was, in the price of the lands, a consideration in the contemplation of both parties. For all this, what do you gain? Why, sir, with the now existing population, you actually distribute to each child one cent per annum toward educating him in a common school!

But gentlemen say, let some denomination buy out the University property at Bloomington. The buildings are there, and the people will be equally benefited. First of all, I ask, what denomination wants it? There must be two parties in the operation of buying and selling. How much could be had for all the property compared with cost? The merest song. Besides, while the process of diverting the funds, of selling out, &c., is going on, the institution is broken down, its students and professors are dispersed, and every man, who knows anything on these subjects, knows that it is an easier work to build up two new colleges than to resuscitate one old one. Break down the University, and were I an agent for a religious denomination, I would not receive as a gift the University property, and undertake to build up a college upon its ruins. The history of numerous institutions shows the truth of this statement; and, did time permit, I could easily show the philosophy of it.

But, sir, the idea prevails to some extent in our State, that all colleges ought to be under the control and patronage of particular churches. No man ever heard me utter a syllable against the noble and persevering efforts of some of our religious denominations in building up institutions of education. I honor them for these efforts. This is a broad land. There is room and work for all. Besides, the State University—not claimed as its own by any denomination—is needed to fill precisely the ground which it occupies. But for it, there is a class of young men, who would either go out of the State, or not enter any public institution.

I feel quite sure that could I have the suffrage of all the colleges in the State to present to this body, it would be that the State University has a work to perform which is needed in the field of education in Indiana.

I must also say, that those great institutions which form not only the pride of their respective States, but a part of the glory of our nation, such as Yale, Harvard, Princeton, Union, Columbia, &c., do not belong to any particular religious denomination. If at any time, the professors in these institutions, or in any of them, shall be of one particular denomination, (and they seldom are so,) that circumstance no more makes the institution denominational, than our Supreme Judges, happening to be of a given denomination, would make the Supreme Court denominational. In our best known and most celebrated American colleges, no synod, council, or other ecclesiastical body, has any right of interference or control whatever. No denomination can claim them. I do not, therefore, assent, that denominational control is an essential element of prosperity in colleges. Such a conclusion I do not think is warranted by the history of American colleges.

But, Mr. President, when you shall have added the swamp lands to the other lands given for common schools, the donation of government lands for the great purpose of common school education will amount to considerably over two millions of acres. Of this immense gift, it has not been sought to take a dollar for institutions of higher education. Well, sir, where Congress has given for the specific purpose of a seminary, such as has been established with the gift, shall we be the first American State, disregarding all the considerations of fidelity in the performance of a trust—disregarding the just claims of our own citizens, without thereby accomplishing any public good worth the name—shall we, I ask, as a State, in the reckless spirit of tearing down our existing institutions, proceed to destroy the University and take away its funds? Our votes must answer.

Mr. HAMILTON. I desire to know from the gentleman from Tippecanoe, (Mr. Pettit,) whether it is his opinion that in voting for this section as it stands, I am voting to make the State pay back such portion of this University fund as it may have used; if so, I shall vote against it.

Mr. PETTIT. The State has already squandered a large portion of it, I trust I may be permitted to say sir, that the State has wantonly put her hands upon one of the trust funds which she plighted her faith to secure, and if I should properly express myself, I would say that she had brought a deep stain upon her honor as a State. I deeply regret to hear that any such thing has been done. The best thing the State can do is to tax our people for the re-imbursement of this squandered money

and regain her honor. I do not know whether this section goes so far as to provide for this amount so unjustly diverted from its legitimate object, or not. This may be the case, however.

I would remark, further, Mr. President, that I consider it the bounden duty of the State to guard sacredly the trusts confided to her charge. Whenever a nation or a State so far forgets herself as to begin to waver in and shrink from the faithful discharge of its public duties—and that course is continued—then ultimately must that nation or State sink into utter nothingness, and become an object of scorn in the great family of nations.

I would not care, sir, whether this college fund was to remain a perpetuity for a thousand years; the General Government gave it to us for a good and a particular purpose, and our reputation and honor as a State imperatively demand that we should carry out the purpose of the trust—having accepted it in the manner we did—without any hesitation whatever.

Mr. BRYANT. Mr. President: I am perfectly satisfied that the framers of our present Constitution, when they penned the section which has just been read by the gentleman from Owen, (Mr. Dobson,) had the true idea of a proper system of popular education. They were far in advance of many in this Convention who claim to be the friends of common schools, and who attempt to manifest their friendship for them, by open hostility to every institution of learning, other than common schools. Those who framed that Constitution provided for a general system, ascending in regular gradation from township schools to a State University; and in that provision they gave us the germ of a perfect system.

I am surprised to hear from the gentleman from Randolph (Mr. McClelland) that he wants nothing but common schools—that he is opposed to high schools, and low schools, and all schools except common schools. Many who profess, and honestly I have no doubt, to be the friends of common school education, have no other idea than that of voting money to them; they would sell all your colleges, all your academies, and pay the proceeds into the common school fund. Sir, it will be a long time before any efficient system of education is established by these gentlemen. You might as well attempt to establish a planetary system, without a sun and centre, as to expect that the lower grades of education can flourish, whilst the higher are neglected, or discarded. Sir, without your colleges, and higher schools, your common schools would be worse than worthless; and if gentlemen would give as much of their time and attention to this subject as I have done for the last five years, they will repudiate the heresies which they now thrust before as orthodox truth. It is not money we want for the support of common schools, so much as a proper system.

I appeal to the experience of every member of this Convention, and I ask them if the defect in our system does not consist more in want of competent teachers than in a deficiency of means. (Applause.) The State of New York, and Massachusetts, and Connecticut, now prominent as educational and intelligent States, after passing through the same process of ill advised expenditure upon a defective system of education, have, by long and costly experience, approached the true system. In the former State there is an annual expenditure of ten thousand dollars for normal schools, in which well educated and qualified teachers may be prepared for service in their common schools. Without well trained teachers, what would their model system be worth? Without them what is our system worth in its practical operations. What is the character of your teachers? Some of them are young men, of respectable attainments, who have ulterior objects in view, and who will teach one or two terms, until their present necessities are supplied, and then abandon your schools; but the large majority of them ought to be seized by the public authorities and sent to school themselves.

The school examiners of the counties are frequently censured because they give certificates to those who are not properly qualified, but they are compelled, many times, to authorize the employment of teachers who do not possess the proper qualifications, or have your common schools abandoned altogether. Can it be expected that any common school system will flourish under such an arrangement as this! Surely not. We want professional teachers; men, every way fitted and qualified for their responsible duty, and devoted to it. And, yet, how hard it is to convince men, even the enlightend members of this Convention, that with our present system, we are engaged in a profligate expenditure of the public funds, without any beneficial results, and in defiance of all the lessons of experience, continuing that system from year to year. I fear that the subject does not enlist sufficient interest, either in the General Assembly, or in this Convention. It surely is an important one; one which should engage the attention of every man upon this floor, and the best talent of the State; and I am persuaded that those who now manifest such undisguised hostility to every thing like a well regulated system, would be entirely open to conviction if they would only consent to investigate. Year after year we have had addresses prepared by individuals interested in this subject, printed at private expense, and laid upon the tables of the members of the Legislature. We have had them here, during our session; who reads them? Every body is a friend to common schools in general, and few care anything about the particulars. Sir, if we could have calm and deliberate examination of this whole subject, instead of the restless-

ness, and impatience, which is too apparent whenever it is approached, we should soon have a different order of things. We must have higher schools in our State for the training of teachers. That we have not, constitutes the principle difficulty which we have to encounter.

I know there is a society in existence which has for its object the supplying of our schools with teachers from abroad. As a temporary expedient it may subserve a useful purpose, but as a system it will fail. We must have teachers of our own people; acquainted with our habits and peculiarities, and those of our children. The materials are abundant, if we will only employ them. Admitting that our University has not been, in times past, as efficient an ally of our common schools as it might, and ought to have been, furnishes no reason, whatever, for its abolition; it is rather an evidence of the very superficial attention that has been bestowed upon our educational affairs, and that we have neglected making it what it should be. The fact that people are demanding the abolition of our county seminaries, and the diversion of their funds to the common schools, establishes no such position as has been taken in this debate. It is not because the people are opposed to seminaries, but because the county establishments have been unprofitable. They never were properly endowed—never were made efficient for the purposes for which they were intended, and have degenerated into mere district schools for the county seats; but the people themselves, who call for their abolition, are erecting academies and seminaries from their own means, all over the State, thus furnishing the most indubitable evidence that they properly appreciate their value. The increase of these institutions should be encouraged, and those which have been established assisted by a judicious application of the public funds. Give us normal schools, well regulated academies, and school district libraries, in aid of our common school operations, and the people of the State will not long complain of the inefficiency of our system. We cannot afford, in the present condition of our State, a very large appropriation from the treasury for normal schools, but there is no reason why the University Fund may not be made to subserve this great object. With the adjuncts which I have named, we can educate the children of the State, and we stand more in need of them than of money. It was to carry out this view that the committee reported the action laid upon the table yesterday, whereby ample power would be given to the Legislature to establish schools for the training of teachers.

I know that this subject has been treated, both in the Legislature and in this Convention, as a matter of minor importance, but it is as vital an interest as any that has been brought to the notice of this body. Sir, we do not realize the

true condition of our State, in regard to education. What is it? In 1840, by the census then taken, this State, which we boast of here, as being the fifth State in the Union, in size and population, was clearly proven to be the most ignorant of all the free States, and far, very far, behind many of the slave States. We had then thirty-eight thousand one hundred persons over the age of twenty years, who could neither read nor write. The friends of education were startled into action, they assembled in Conventions at our State Capital, and declared that it was our true policy to adopt some system of general education in accordance with that marked out by the framers of our present Constitution, and that then we should have an efficient system. The subject was agitated among the people, and in the Legislature, a bill was passed through the House of Representatives, and defeated in the Senate. The question was submitted to the people, whether they would have free schools or not. They responded in the affirmative by a majority of about sixteen thousand in the State. The next House of Representatives passed a bill establishing a system of free schools with a limited tax, the Senate referred that to the people, by a provision that the law should only operate in such counties as should by a popular vote adopt it. It was adopted by more than sixty counties, with an average majority in the State, of about seventeen thousand, exhibiting the fact that the people were far in advance on this subject, of many of those who had aspired to represent them. One would suppose that with this state of feeling among the people we were steadily if not rapidly increasing in intelligence. I awaited the taking of the census in 1850, with much anxiety, to ascertain what the measure of our progress was. We know now what our condition is, and it is proper that this Convention should know and ponder upon it. Sir, we have forty thousand voters in our State, who cannot read the ballots which they use. (Marked sensation.) Yes, sir, and thirty thousand mothers who are rearing our successors and destitute of the very first elements of education. We have, sir, according to the late census, (extracts from which I hold in my hand,) seventy-three thousand two hundred and ninety-nine persons over the age of twenty years, who cannot read and write. This paper shows fully the condition of the State:

Counties.	Attended School.	Over twenty years of age & cannot read & write.	Population of the County.
Adams,	1071	161	5,774
Allen,	no return		
Bartholomew,	2758	1125	12,852

Benton,	326	96	1,144
Blackford,	610	155	2,864
Boone,	3341	828	11,629
Brown,	824	879	4,846
Carroll,	2706	1009	11,025
Cass,	2222	117	10,922
Clark,	2920	977	15,836
Clay,	1023	382	8,134
Clinton,	2468	1032	11,871
Crawford,	1057	905	6,318
Daviess,	1124	1173	10,354
Dearborn,	4938	1317	20,165
Decatur,	3861	1288	15,100
DeKalb,	1980	605	8,257
Delaware,	2384	1009	10,976
Dubois,	572	452	6,230
Elkhart,	3181	1070	12,903
Fayette,	3028	549	10,140
Floyd,	2580	1022	14,876
Fountain,	3790	1457	13,260
Franklin,	4301	422	17,914
Fulton,	1401	487	5,864
Gibson,	2451	1343	10,782
Grant,	3709	1238	11,092
Greene,	2246	1513	12,247
Hamilton,	2700	1422	12,686
Hancock,	2445	646	9,714
Harrison,	1990	88	15,538
Hendricks,	3236	1333	14,077
Henry,	4987	1218	17,668
Howard,	1151	157	6,567
Huntington,	1257	583	7,850
Jackson,	2174	1494	11,030
Jasper,	932	191	3,424
Jay,	1870	422	7,051
Jefferson,	4366	1533	23,931
Jennings,	2570	562	12,541
Johnson,	2836	496	12,228
Knox,	2199	814	11,086
Kosciusko,	2455	1105	10,243
Lagrange,	2287	134	8,424
Lake,	1051	130	3,991
Laporte,	5755	613	12,169
Lawrence,	1457	1135	12,210
Madison,	2762	1135	12,497
Marion,	4332	999	24,289
Marshall,	1025	416	5,348
Martin,	644	1131	5,955
Miami,	2648	1131	11,349
Monroe,	2509	1000	11,283
Montgomery,	4881	1233	18,227
Morgan,	3406	1362	14,654
Noble,	1888	371	7,948
Ohio,	979	37	5,310
Orange,	2791	1468	10,818
Owen,	2636	1126	12,040
Parke,	3377	1104	15,049
Perry,	929	1101	7,251
Pike,	875	1101	8,599
Poter,	1418	264	5,250
Posey,	2543	1469	12,367
Pulaski,	455	173	2,595
Putnam,	5123	2134	18,612
Randolph,	3646	453	14,694

Ripley,	3572	2075	14,822
Rush,	4611	1600	16,445
Scott,	1565	900	5,889
Shelby,	2135	1985	15,446
Spencer,	1260	1021	8,664
Stauben,	1689	761	6,107
St. Joseph,	3142	278	10,955
Sullivan,	1269	755	10,163
Switzerland,	3410	126	12,953
Starke,	55	88	558
Tippecanoe,	4184	547	19,269
Tipton,	558	467	3,534
Union,	1678	97	6,881
Vanderburgh,	1720	147	11,415
Vermillion,	2163	718	8,601
Vigo,	3618	1709	14,693
Wabash,	3090	822	12,109
Warren,	1995	284	7,423
Warrick,	2126	343	8,822
Washington,	3759	1292	17,088
Wayne,	5285	1065	25,900
Wells,	1487	590	6,152
White,	1211	421	4,760
Whitley,	1278	331	5,190
	216,682	73,299	975,877

If the present Constitution be correct in asserting that "knowledge and learning generally diffused through a community, (is) essential to the preservation of a free government," what have we a right to expect from the state and condition of learning among us? An impression seems to be general that we have done a great deal for education in the State of Indiana. This arises, in part, from the fact that it always makes a prominent item in the stump speeches that are annually made. Many prophesy in its name, and teach upon our streets and cross roads, and are great and devoted friends of common schools *just before an election*, but with all our professions, what have we done? I can sum it all up in a few words. We have received from the United States the Congressional Township Fund, the University Fund, the Surplus Revenue Fund, the Saline Fund, and by a tax upon the State Bank for school purposes, we have collected from two to three thousand dollars a year to be distributed among ninety-one counties, the highest sum to any one county eighty-one dollars thirty-six cents, the lowest, three dollars seventy cents. Not a dollar, sir, from the State Treasury for any educational purpose. We have been the passive recipients of the bounty of the United States, and have by our neglect and mismanagement wasted thousands of dollars of the principal of this bounty, whilst we have applied without system, and to very little purpose the interest which has accrued upon it. If posterity does not look upon us with surprise and indignation, it will be because by our own neglect we have plunged them so deeply in ignorance, that they cannot appreciate the du-

ty which belonged to us, and which we have not discharged. Under these circumstances we should pause and seriously consider every section of this article, before we either adopt or reject it. I am persuaded that if the members of the Convention will give to the particular section now under consideration, the calm, yet earnest attention which it should receive, they will not be found changing the direction of this University Fund and applying it to the common schools. To strike out this section and divert the fund from the legitimate object of its donation by Congress, is to strike at the very root of the system which the friends of education desire to have adopted. Those who hope to assist common schools by the abolition of colleges, are mistaken—sadly mistaken. Let me state a fact. I reside in a school district which numbers perhaps one hundred and thirty children of the age prescribed by law for pupils of the public schools. Last winter we had application after application from those professing to be teachers, for our school, but totally unqualified to take charge of it. For a long time we were in doubt whether we should embrace the one or the other alternative, of having no school at all or employing a teacher whom our judgment did not approve. In this extremity, it occurred to me to call for assistance from the nearest college. I accordingly addressed a letter to Professor Hovey, of Wabash College, stating our situation, and requesting that if possible, one of their students might be sent to our assistance. That gentleman, with a promptness for which our people are much indebted to him, immediately sent to us a member of the junior class of the College, without whose services we should have been destitute of any efficient school during the entire winter. This circumstance illustrates the connection which subsists between colleges and common schools; they are all parts of the same great system, acting harmoniously together, and all assisting in the accomplishment of the same great purpose. Let us cast aside any prejudices we may have in this matter, and let those who profess to be the friends of common schools be persuaded that without schools for the education of teachers, any system they can devise will be worse than worthless. I trust that the section, which has received the full investigation and sanction of the committee on education, may yet be taken from the table and adopted without further opposition.

Mr. ALLEN. Mr. PRESIDENT: The gentleman from Tippecanoe (Mr. Pettit) mistakes the question. He argues the question as though the instructions which I have offered, contemplate a violation of good faith on the part of the State towards the General Government. Sir, it contemplates no such thing; and if the gentleman will take the pains to examine it for one moment, he will see that he is mistaken;

for the very language of the instruction is, that the Legislature, *with the consent of Congress*, shall have the power to divert that fund to common school education. Now, sir, does this amendment contemplate any violation of good faith on the part of the State towards the General Government? Then it seems to me that all this great blow of the gentleman from Tippecanoe, about violated faith and broken contracts amounts to nothing. He says that the State would be disgraced. Now, sir, suppose that the Legislature of this State should believe that this fund was doing no good where it now is, and suppose that the General Government and the State should mutually agree to divert this fund from the State University, and appropriate it to common school education: I ask if there would be any great disgrace in this? or if there would be any contracts broken or faith violated?

The gentleman from Warren (Mr. Bryant) says, that it is necessary to have a State University, to act as a great centre, around which the smaller institutions could revolve; so that we could educate our common school teachers. I ask him if this State University is *such* an institution as he so vividly portrays in his able speech? I ask him, where are the common school teachers that it has furnished the State? Where are the great benefits that we have received from this boasted and pampered University? I, sir, have lived in the State all my life, and I have yet to see the first benefit which we have derived from that University. The gentleman asks where we are to get our common school teachers, if we do not have a State University? Sir, I can only say to the gentleman, that, unless this State University does better in future than it has heretofore, that we shall *never get them there*. Sir, look around and see which are the most flourishing colleges in this State. Is the State University one of them? No, sir, they are those that have been established and put into successful operation, unaided by public donations, or government appropriations. But, sir, I am not disposed to make war upon the State University, nor does the amendment which I have offered, do any such thing. I only ask this Convention to leave the matter where it has ever been since the organization of our State Government.

The gentleman from Warren (Mr. Bryant) says that we have some seventy thousand persons in the State of Indiana, over the age of twenty-one years, who can neither read nor write. Sir, I think that this is a very strong argument in favor of common schools, and perhaps if this University fund had been appropriated to the support of common schools, that the number who can neither read nor write would have been much less than it now is. Sir, it was for the purpose of giving to the cause of common schools every support that is consistent with justice and honesty, that I introduced

this amendment. Sir, if there is any cause that should call to its aid the universal sympathies and unflinching support of this people, it is the cause of common schools. We should cherish it as one of the strongest safeguards of human freedom; we should encourage it by every legitimate means in our possession; and we should not stay our efforts until we shall have placed within the reach of every child within the State, poor or rich, the means of a common school education. When we have done this, we shall have accomplished more for the cause humanity, more for the safety of our free institutions, more for the permanence and security of society, than by any other act of legislation which we could adopt. And, sir, it was for the purpose of securing to common school education, with the consent of Congress, the benefit of this University fund, in the event that it could not be profitably used in its present situation, that induced me to offer this amendment. For, sir, if this section is adopted without this amendment, the door will be forever closed, and the fund will have to remain where it is for all time to come, whether it is of any value or profit to the State or not. I do hope, Mr. President, that this amendment will be adopted. It will then leave the fund where it always has been since the donation was made. By doing so we surely cannot injure the University so long as it continues to be of any importance to the State; and when it ceases to be of any utility, the fund by which it is supported should be taken away from it and applied where we know that it would be of the greatest importance and where it would accomplish the object for which it was donated. Sir, I have heard many loud professions in favor of the cause of common schools by gentlemen upon this floor, and I do hope that they will now come forward and show by their votes that those professions were real.

Mr. STEELE. I cannot see, for my part, what the gentleman from Carrol (Mr. Allen) means by this trade he talks so much about. It appears to me there can be but one side to it, and that is, that by it this University will be robbed of her funds for the benefit of the common schools. In my plain way, allow me to illustrate the case. My father gives, for instance, two of us, his sons, a cloak apiece, and yet proceeds, very soon thereafter, to take that cloak from me, and gives it to my brother, leaving me destitute of necessary protection against the inclemencies of the weather. Sir, it is proposed to deprive this University, in like manner, of a fund necessary to its support, and give it to the common schools. It astonishes me that this fact is not apparent to every member of this Convention, that this will be the result of the amendment offered by the gentleman from Carrol. I think, sir, it is as necessary that we should have universities and a higher order of schools in Indiana, as it is to have

common schools. Would to God that sources of education had been so common in my youth as that I could have had access to a State Seminary or University; then, instead of being able to defend the interest of my countrymen with only a pocket pistol of learning, I should have been able to vindicate their rights in the thunder tones of a *brass piece*, as is the case with the gentleman from Tippecanoe (Mr. Pettitt). [Laughter and applause.] I desire, for one, to see the higher grade of schools flourish as well as the common schools.

Mr. BUTLER. Mr. President, I call for the previous question.

The call having been seconded by the Convention, the main question was ordered to be put.

The PRESIDENT. The first question is upon re-committing the section, with the instructions of the gentleman from Carroll.

On this question the yeas and nays were demanded, ordered, and taken, with the following result—yeas 58, nays 64.

YEAS.—Messrs. Allen, Ballingall, Pascom, Beard, Beeson, Bowers, Bracken, Butler, Coats, Cookerly, Dobson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Garvin, Gootee, Graham of Miami, Hamilton, Helms, Helmer, Hitt, Johnson of D., Johnson of O., Jones, Kelso, Kent, Kendall of Wabash, Logan, Mathis, McClelland, Nave, Prather, Read of Clark, Shoup, Sims, Spann, Stevenson, Tague, Tannehill, Trimby, Wheeler, Wiley, Wolfe, Yocum, and Zenor—58.

NAYS.—Messrs. Alexander, Anthony, Barbour, Beach, Berry, Biddle, Blythe, Bourne, Brookbank, Bryant, Butler, Chenoweth, Clark of Tippecanoe, Clements, Cole, Colfax, Dunn of Jefferson, Dunn of Perry, Foster, Frisbie, Gibson, Gordon, Gregg, Haddon, Hendricks, Hovey, Howe, Kinley, Lockhart, Maguire, May, McFarland, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Smiley, Snook, Steele, Thomas, Thornton, Wallace, Watts, Wiley, Wolfe, Zenor, and Mr. President—64.

So the section was not re-committed.

The PRESIDENT. The question now is, Shall the section pass?

The yeas and nays on this question were taken, under the rule, with the following result—yeas 73, nays 48:

YEAS.—Messrs. Alexander, Anthony, Beach, Berry, Biddle, Blythe, Brookbank, Bryant, Carr, Carter, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Dunn of Jefferson, Dunn of Perry, Elliott,

Foster, Gibson, Gordon, Haddon, Hawkins, Hendricks, Hogan, Hovey, Howe, Huff, Kinley, Lockhart, Maguire, March, Mather, May, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Thomas, Thornton, Wallace, Walpole, and Mr. President—73.

NAYS.—Messrs. Ballingall, Bascom, Beard, Beeson, Bowers, Bracken, Butler, Coats, Cookerly, Dobson, Duzan, Edmonston, Farrow, Fisher, Foley, Frisbie, Garvin, Gootee, Graham of Miami, Hamilton, Helms, Helmer, Hitt, Johnson of D., Johnson of O., Jones, Kelso, Kent, Kendall of Wabash, Logan, Mathis, McClelland, Nave, Prather, Read of Clark, Shoup, Sims, Spann, Stevenson, Tague, Tannehill, Trimby, Wheeler, Wiley, Wolfe, Yocum, and Zenor—48.

So the section passed.

On motion,

The Convention adjourned.

REMARKS OF DR. SHERROD,

In Convention, Jan. 13, on the subject of Banks.

The pending question being on the reference to a select committee, with instructions,

Mr. SHERROD. Mr. President: I do not rise for the purpose of inflicting a lengthy speech upon the House. It is not my intention, sir, to argue the question now under consideration at length, but simply to ask the indulgence of the Convention while I define my position.

I am well satisfied, in my own mind, that no more important question will be presented to the consideration of this Convention, than the one now under consideration. Equally important ones may be presented for the consideration of this House, but none more important—none more vital for the preservation of liberty itself.

And, sir, I speak but the sentiments of my heart when I say that I have never before felt the responsibility that I now feel. One among the youngest members upon this floor, I find myself engaged, not in the passage of laws—not in that action which we can do to-day and undo to-morrow, but, sir, in that important and sacred work of laying the foundation upon which the prosperity and perpetuity of this great and growing commonwealth depends, and under which we, and our children, at least, must live.

And, sir, when I come to consider, for a moment, that one false step in the building up of this great work, may bring upon those who sent us here misfortune, ruin, and desolation; sir, how important the trust—how fearful the re-

sponsibility. What diligent inquiry—what serious consideration—what high and stern principles it demands of those who would discharge it aright. Sectional feeling, or favoritism should have no place here. The low, vulgar, and malignant character of the partizan, and factionist, should be merged into that of the representative and the patriot. Nothing should be done in the vile and violent spirit of mere prejudice—nothing in hot zeal—nothing under the paralyzing influence of conservative fear. What is best for the whole nation—how shall we best promote the interests of the masses—how best attain a perfect equilibrium of liberty and order, should be the questions in the heart of every honorable gentleman upon this floor.

Sir, it has been justly remarked that that Constitution which represents and protects the interests of all classes of the people is the best.

Then, sir, the question naturally arises, will the adoption of a creative clause in the Constitution, establishing either a State Bank, or a general banking law, upon the principles proposed here, accomplish this end. I answer no, sir, no. I have been an attentive listener for the last ten days, to the debate upon this question, and I may justly say that we have had speeches of all dimensions, blended with what I consider very strange and novel doctrine. Now, sir, I do not pretend to say what has been the effect of these speeches upon the minds of honorable gentlemen who have been attentive listeners; I can only speak for myself, and I must say, sir, that if I were to believe all the strange and extreme dogmas that have been urged here, I should begin to despair of the result of the deliberations of this Convention—I should begin to despair of the Constitution and the republic—I should begin to think with the wag in the old story book, that "God Almighty's great creation of men down here upon this globe was going to prove a magnificent failure." [Laughter.]

I am opposed sir, to adopting any creative clause in the Constitution. I am willing, however, to sanction, by my vote, a well regulated, restrictive clause, leaving the creative power in the hands of the people. Here, sir, is a proposition that meets my approbation, which I will read: "The Legislature shall not have the power to create, authorize, or incorporate, by any general, or special law, any bank, or banking power, or privilege, or any institution, or corporation, having any banking power, or privilege, whatever, unless previously submitted to, and approved by a direct vote of the electors of the State." Thus far I go, and no farther. I believe it to be the safe and true ground, and I am confident that it will meet with the approbation of the great mass of the people. It would give them the privilege of deciding for themselves, for or against banking. So far as my individual feelings and opinions are concerned, I stand here, sir, the uncompromising

enemy to all banks. I care not by what name you call them, whether it be State Banks, or free banks. I regard the whole system of banking as a *monopoly*, by which the few amass prodigious fortunes at the expense and toil of the laboring millions. I believe, sir, that a popular hurricane, that would sweep from the face of the earth the well dressed paupers, who live in luxury and idleness, without ever having earned a dollar in their lives—a political earth quake that would engulf the whole of our paper money shaving shops, would be the richest blessing that could be bestowed upon this highly favored land. It would unhelotize honest industry, it would raise equal liberty out of the dust and degradation into which she has been trampled by the iron heel of privileged fraud. And, sir, I have the whole history of the country to bear me out in this declaration. History is philosophy, teaching, by example, and I ask, sir, what is the lesson that we learn from the past history of the banking system? Alas! a sad and impressive lesson, and one that we should learn and profit by. Go back, sir, if you please, and trace up the history of banking—its effects and tendencies upon the property of the country. Let us ask ourselves what portion of the community it is that have been benefitted by the operation of the banking system? Has it been the toiling millions, who are the prop and stay of this government? No, sir, they have been the sufferers, on all occasions; whether amid the excitement of bank speculation, when the country is flushed with a paper circulation, or at a time when specie payment is suspended. And let me ask, sir, who it was that suffered from the operations of that bantling of the banks—that legitimate child of the extra session of Congress, 1841—that odious bankrupt law, that went down to an early grave, unpitied, unwept, unsung, unless, indeed, its long train of beneficiaries chaunted its funeral dirge. Sir, it was the laboring classes—the farmer and mechanic, that were robbed of their hard earnings, those who make their living by the sweat of their brow. But, says one, we must have banks in order to make money plenty. Sir, when do they make money plenty? In seasons of scarcity, or when money is abundant? To whom do they make money plenty—to the community at large, or to those, alone, who obtain the exclusive privilege of manufacturing it. Sir, who ever heard of banks making money plenty during a panic—a pressure when assistance is most needed?

These institutions are said to be incorporated and established for the "public good." Let there be a scarcity, and where is the philanthropy, the sympathy, of these patriotic institutions then? They are so far above the people, that they hear not the cries of distress—they stand aloof—they can only hear the pressing calls of the directors, and their pets and favorites. The whole capital, then, becomes monopolized by

some six or eight of their favorites, and no one else can obtain a dollar. Enormous accommodations are made to their favorites, with which to speculate upon the distress of others—a few gorge to the full, while the many starve. Favors should go to the many; not to the favored few. I cannot conceive, sir, at this enlightened day, how any one, professing democracy—equal rights—can be anything else than a deadly opponent to those machines of secret fraud, cunningly devised to cheat the people out of the guarantee of equal rights, and the most deadly foes to republican purity that our country has yet had to contend with.

In the early days of our government, the truest and purest men of the republic—the last of those who periled their lives and property for the triumph we now enjoy—warned the people against incorporated monopolies, and especially against a paper money monopoly. I believe it was William Pitt, the great statesman of England, that so truthfully said: "Let the American people go into the banking system, and their boasted liberties will be a delusion."

Sir, one of the many frightful consequences that result from the banks, is their natural and irresistible tendency to produce a wild, untamable spirit of over-trading and speculation, which ends in wide-spread bankruptcy and desolation. The full flood of disaster, which, in years that have passed, rolled its resistless waters over the land, carrying wreck and desolation on its turbid bosom, extending its deadly effects through all the ramifications of society, bringing justice into disrepute, unheeding public morality, weakening confidence, and forcing credit to beg at the door of unfeeling avarice, spreading bankruptcy throughout all the borders of the land, dishonoring our national banner abroad, with the reproachful epithet of "bankrupt flag," was let in and set in motion by the bankers and stockjobbers that infest the land.

Sir, shall we never learn wisdom? Reasonable people would have naturally supposed that this terrific tornado, which swept over our country like the besom of a destroying angel, would have taught us a salutary lesson, and one that centuries could hardly have effaced from our recollection. It ought to have introduced the people of this country to a better knowledge of the dangers of our present banking and paper system, than they have heretofore possessed, and should have led them, long before this, to have effected a radical improvement in the whole system, which should have strengthened the power to do good, and limited the influence to do evil. More than this—it should have afforded an instructive lesson to the banks themselves, and to the government also, leading to an entire separation—a complete divorce between the banks and the government. But above all, and far more than all, this impressive warning should have taught us a lesson for all future

time; one whose bitter instruction should have been heeded and profited by, until the latest period of our national history.

Such, alas! I fear sir, is not to be a recorded fact. I have the most painful apprehensions, from all I can hear and see, and from the sentiments uttered by certain gentlemen upon this floor, in favor of monopoly, and especially paper monopoly, that we have already forgotten the wisdom taught us by our past experience. And, sir, when we turn our eyes to the Legislature, we find exclusive privileges granted to corporations and companies throughout the State. The fever of excitement has already begun to spread with appalling violence. The people have invested millions of dollars in railways, and are yet plunging still deeper and deeper into the whirlpool of speculation. The whole face of the country will soon be intersected with these improvements, as they are termed. And, sir, what will be the consequence? It does not require a prophetic eye to tell. Monopoly—far-reaching, grasping, soulless monopoly, will overshadow the whole land, with all its mammoth disproportions, and its power will be the people's law. Other speculations are springing up in their proportionate strength, and again we shall have our State prosperity smitten, as with a palsy—shattered as with a lightning streak.

Mr. President, this is rather a digression from the main question. I trust, however, that the Convention will excuse me, as I regard it as a legitimate child of the banking system. Gentlemen who are desirous of forcing their bank projects through the Convention, tell us that it is nonsense to talk about ridding the country of those swindling shops, and in proof of their position they point us to those States which have swept the last vestige of banking from their soil, and tell us that they are going to adopt a banking system. In this, gentlemen are mistaken. I have recently read the Governor's message of Iowa, and in speaking of the prosperity and rapid growth of that young State, he says it is attributable to the fact that they have a sound constitutional currency, consisting of gold and silver. Hence there can be no bank fluctuations or explosions, to mar or retard the upward and onward march of a prosperous and happy people.

Sir, it is a historical fact, that there are more bankruptcies in the United States in one year, with our present banking system, than in Holland, with her specie currency, in a whole century. Does not this one circumstance speak volumes against the pernicious influence upon commercial prosperity and private happiness of these chartered gaming houses, by which idlers take the earnings of labor from the pockets of the poor?

Gentlemen have also quoted General Jackson, in order to sustain their position in favor of these swindling shops. Now, sir, such an argument as this, has about as much reason connect-

ed with it, as the infidel, when he attempts to prove, from holy writ, that there is no God. Sir, that great patriot had the interests of the toiling millions always nearest his heart. This was exemplified in his every public act, and more particularly at the very close of his mortal existence. Almost his last words were uttered in thankfulness, that he could resign his spirit to the God who gave it, with the cheering reflection that "the country was fast settling down upon a firmer democratic basis. The rights of the laboring classes were respected and protected; for, he adds, it is from them the country derives its prosperity and greatness, and to them we must ever look to defend our soil, when invaded. They have never refused; no, sir, and they never will. Give them an honest government, freedom from monopolies and privileged classes, and hard money, not paper currency, for their hard labor, and all will be well." Sir, this is the true Jacksonian doctrine, and there is more democracy, patriotism, and truth, embodied in the language I have just quoted, than in all the speeches that have been made upon this question. Sir, it needs no comment. It embraces a volume of truth that cannot be successfully contradicted. Now, sir, let us bring this question home, and take a common sense view of it.

Suppose, in this land of equal rights and equal laws, as it is called, a farmer or a mechanic should petition the Legislature of your State for a charter which would enable him to receive interest upon all the debts he owed, (and this the banks do now,) which should enable him to make one hour's labor sell for more than a whole year's toil does at present. Sir, what would be said of him by the law-givers of the land? They would tell him he was a swindler; they would throw his petition under the table, and kick him down stairs.

Why, sir, is this not a land of equal rights and privileges? What privilege has he asked for that the banks do not enjoy? Is not a useful branch of productive industry as worthy of being supported by special legislation and exclusive privileges as manufacturing promises to pay out of paper rags, which have little or no intrinsic value, and which a breath of public suspicion may at any time destroy. Sir, I do not expect a perfect equality of wealth. That would be impossible. But I do ask an equality of protection of property acquired by honest labor and industry. I ask that dishonest laws shall no longer give idlers the privilege of amassing prodigious fortunes, without ever having earned a dollar in their lives, thereby filching from labor the just reward of its toil. I do not expect that all men will be of the same height; but I ask, and shall contend, that all feet may stand upon the same political level. All I ask, sir, is a fair field, and no favors.

I shall strenuously oppose every bank proposition that may be submitted here, unless it is

one that clearly and distinctly secures the bill-holder. If I am forced to choose between the free bank system and a State Bank, I shall vote for the latter, believing it to be the least of the two evils. But, sir, its restrictions must be quite different from that of our present State Bank. I believe it to be a corrupt affair, and rotten to the very core; and, sir, in my humble opinion, the people of the State will yet be taxed to pay its responsibilities.

One other remark, Mr. President, and I have done. I trust, sir, that the motion of the gentleman from Vanderburg (Mr. Lockhart) to recommit, will not prevail. If I thought, for a moment, that it would expedite the business of the House, I should not object. But, sir, I am well satisfied, in my own mind, that it will have an opposite effect. Suppose we refer this question, and it is reported back to the Convention, I ask gentlemen if they suppose, for a moment, that this Convention will agree upon any proposition without discussion? Sir, we have had this question debated for the last ten days; and, in my opinion, gentlemen have generally blown off their gas; and I think we should act upon it now. [Cries of "Consent."] I hope the proposition to recommit will be voted down.

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WEDNESDAY, JAN. 29, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. FARROW.

The journal of yesterday was read and approved.

#### WOMAN'S RIGHTS.

Mr. KINLEY presented a petition signed by ladies, Quakeresses, and others, setting forth that, inasmuch as women are deprived of political rights, they ought at least to be permitted to hold and have the exclusive control of property.

Mr. LOCKHART, from the select committee to whom had been referred the seventeenth section of article ten, being the section in relation to the boundary of the State, reported, as directed by the Convention, another section in lieu thereof.

The section was read a first time, and passed to a second reading.

#### ORDERS OF THE DAY.

The PRESIDENT announced the first thing in order to be the section in relation to the rights of married women to hold real and personal property, to their separate use, and in relation to making an equitable provision for widows, &c., on its final passage.

The section having been read a third time, Mr. LOCKHART moved that it be re-committed, with instructions to strike out the section and insert the following:

"The property of women, owned by them at the time of marriage, and all property legally

the property, for the purpose of paying debts contracted by him. That is the whole extent of the law. Now what is the difference between that law and the present proposition? There is a very important distinction between them. So far as that law goes I have no objection to it. So far I am willing to vote for it. And this I understand to be the ground which the proposition of the gentleman from Vanderburgh (Mr. Lockhart) now covers. It is simply a proposition, as I understand it, to protect the property of the wife against the creditors and legal representatives of the husband after his death. Thus far I have no objection to go. But when you say that you will protect the wife's property against the husband in his lifetime, it is a very different proposition. It is one that interferes with one of the most delicate and tender relations of life. It is one that is calculated to disturb the harmony which should exist in the married relation. It is one whose consequences will be mostly realized by future generations. We of the present generation will not feel its consequences.

You cannot force our people to comply with a provision like this, because whether it be the law or not, they will follow along in the old beaten track in which they have grown up and been educated; but when the present husbands and wives have passed from the present scene of action and other husbands and wives succeed to their places in society, this will come to be their rule of action. And what is it? It is the rule of the civil law; of that law which is in force in France, and which has produced in that country such a state of society as no one, I trust, would wish to see introduced into the State of Indiana. I have looked at the matter coolly and deliberately, and without prejudice. I once voted for a similar section, but I am satisfied now that we ought not to adopt it. I hope it may be re-committed, with the instructions proposed by the gentleman from Vanderburgh.

The gentleman from Posey in speaking of this matter, says the section proposed by the gentleman from Vanderburgh is in substance the proposition that was offered by the gentleman from Tippecanoe (Mr. Pettit) some time since, and voted down; and he calls upon the members of the Convention not to stultify themselves by adopting a provision that they then refused to adopt. Let me ask how it is with regard to the proposition offered by the gentleman from Posey himself? Has not the very same principle been voted down in the proposition that was offered by the gentleman from Vanderburgh (Mr. Blythe)? If we pass any provision on the subject, I think the one offered by the gentleman from Vanderburgh (Mr. Lockhart) is as good as any that we can pass. If it be advisable for our people to adopt any such provision, why not leave it to the discretion of the Legislature? Can we not trust the people?

Can we doubt that they will send representatives who will enact such laws as are needed? Gentlemen must be aware that although we should not adopt such a principle in the Constitution, the Legislature will not thereby be prohibited from adopting the very same rule; and it will have precisely the same effect if adopted by the Legislature as if adopted by this Convention. And if it is a principle that is in favor with the masses, can we doubt that they will carry it out and that it will be done speedily? Then if by experience it be found to work badly, it will be in the power of the Legislature to modify or repeal it. But if you place it in the Constitution, how will it be? Though nine-tenths of the people should be dissatisfied, it cannot be changed without great expense. If it be found to be productive of serious inconvenience, yet it will be beyond the reach of the people's representatives; and although it is an argument which I am not in the habit of using and one which perhaps is not entitled to very great weight in this body, yet allow me to say that this section, in my humble opinion, if you insert it, will insure more votes against the adoption of the Constitution than any other provision that the Constitution will contain. I have stood here and voted uniformly against what has been called "negro exclusion," yet to my mind, though I have ever opposed a principle of that kind, this is not less objectionable.

Mr. GIBSON. That is a very proper classification.

Mr. OWEN. I hope the gentleman from Vanderburgh will withdraw his motion.

Mr. FARROW. I believe this is the third time that this subject has been brought before this Convention, and we have made two different dispositions of it. But what course the Convention will take with it now, I am unable to determine. If, however, we act upon this matter now, as we have done with others of at least equal importance, we shall decide to let it remain where the decision of the Convention last placed it. This section, securing certain rights to married women, was first introduced as the favorite measure of the Delegate from Posey, (Mr. Owen,) and after having consumed a large portion of the time and debate of the Convention, was voted down by a majority of this body. It then fell into the hands of its friend from Vanderburgh, (Mr. Blythe,) and was passed by a small majority; it was subsequently placed before the Convention by a reconsideration of the vote by which it was passed, and received again the patient consideration of this body, and was voted down by a respectable majority. During the whole time that this subject was undergoing the various changes through which it has passed, hundreds, and I may say thousands, of the ladies of Indiana, have petitioned this body on other subjects, and not a syllable is to be found in any article or section



acquired by them after marriage, shall never be charged with the payment of the debts of the husband. And a liberal provision shall be made for widows and orphans."

Mr. OWEN. There is one portion of this amendment which I believe ought to be incorporated in the section which has been reported by the committee. The section as reported reads, "a liberal provision for widows," and there may not improperly be added, a provision in relation to orphans. But as to the rest of it, it is quite clear that this amendment is similar to the one which was proposed some time since by the gentleman from Tippecanoe, and voted down by the Convention, by a large majority. It is a section for the benefit of men, not of women—of husbands, not of wives. It says in substance, that the husband may squander the property of his wife, but if his creditors call on him for the payment of a just debt, they shall not be allowed to touch the same property.

Now, sir, if we desire to do anything in regard to this matter, for the benefit of married women, I call on the Convention not to stultify itself by adopting a section that will have a contrary effect—not to turn round and make the section exclusively for the benefit of married men. With regard to the proposition, I have settled down on something like a compromise. It will be remembered that the section reported by me, as the chairman of the committee, was a very different section from this. That was a section giving to women the sole use and disposal of their separate property. That is very different from the proposition of the gentleman from Vanderburgh. This section, if we are to pass anything for the benefit of married women, is as much a compromise as any that can be conceived. If we pass any provision for their benefit, it must be to secure their property to themselves, and not to their husbands. I simply call the attention of the Convention to the fact, that the proposition of the gentleman from Vanderburgh is not for the benefit of married women, but for the benefit of the husband.

Mr. MATHER. Before the vote is taken upon this subject, I wish to say a few words. Although much time has been occupied in the discussion of this subject, I have not, as yet, said a word in relation to it. I voted for the section which was adopted some time ago. I refer to the amendment that was proposed by the gentleman from Vanderburgh, (Mr. Blythe,) and it will be recollected by the Convention, that the gentlemen on this floor who advocated the passage of that section, insisted to the Convention, that the section only embraced a principle which had been the law of the State, by statutory enactment, since the year 1847. Under that impression, believing that to be the effect of the section, I for one (and I know it was the case with several friends here about me) voted for that section. After the section had passed, upon looking at it in print, I came to the

conclusion that it introduced an entirely different principle, and I therefore voted for the re-consideration, and when the section was again on its passage, I voted against it.

The section that is now introduced is, in my opinion, the same in substance, as the one which the Convention, on that occasion, rejected. I believe it is, in fact, more objectionable than the proposition offered by the gentleman from Vanderburgh, at that time. It is insisted now, by gentlemen who ought to know the distinction, that this is the same in principle with the law now on the statute book. This I deny, and upon this issue I am willing to meet any man upon this floor, because I undertake to say that it is as different as daylight is from darkness. Now I wish to read from the law of 1847, that every man in the Convention may understand it. I do not wish the Convention to act, without understanding the nature of the question. I voted in that way once, and I am satisfied now, that I voted wrong; and if there are others who have been deceived as I was, I wish to take this opportunity to disabuse their minds upon this subject.

Now, what is the law of 1847? It reads as follows:

"SEC. 1. *Be it enacted, &c.,* That no real estate whereof any married woman was or may be seized, or otherwise entitled to at the time of her marriage, or which she has or may fairly acquire during her coverture, or any interest therein, shall be liable for the debts of her husband; but the same and all interest therein, and all rents and profits arising therefrom, shall be deemed and taken to be her separate property, free and clear from any and all claim or claims of the creditors or legal representatives of the husband, as fully as if she had never been married: *Provided,* That this law shall not be so construed as to apply to debts contracted by such married woman before such marriage, but in all such cases her said property shall be first liable therefor.

"SEC. 2. This act shall take effect and be in force from and after its passage."

Now notice the wording of the act. It is true that this language does occur: "shall be deemed and taken to be her separate property." That would seem to imply that it was intended to cover the same ground that this section does. But how shall it be deemed and taken to be her separate property? "It shall be deemed and taken to be her separate property, free and clear of all claims of the creditors or legal representatives of the husband." The protection is against them. But as against the husband I apprehend it never was the design of the Legislature to guard the property. I apprehend that no Court in the State would construe the law as having the effect to protect the property against the husband. I understand it to mean that his creditors or administrators shall not have the rents and profits of

that we have passed that has been predicated on those petitions; yet, sir, upon the presentation of a single petition of not exceeding one hundred ladies from one of the towns of this State, this whole matter has been thrust upon us again, as though its friends were determined never to yield until they succeed in fixing this uncalled for provision in the Constitution. Mr. President, I cannot be mistaken in saying this provision is uncalled for by a large majority of the ladies of this State; for had they have felt half the interest in it that their friends here supposed, they certainly would have availed themselves of the privilege of making their wants known to this Convention; but with the solitary exception of the case above named, there has not been one application made to have woman's rights secured by Constitutional provision. Neither am I mistaken in saying that the agitation of this subject is principally confined to the towns and villages of the State, for it is from them alone that all the complaints come that woman's rights are not sufficiently secured. You may travel, sir, over the length and breadth of the State, and ask our country wives what are their wishes on this subject, and they will answer you in the language of the wives of Jacob, "all that thou hast gotten of our father, that is ours and our children's;" with this they are content, and willingly submit themselves to act out and perform all the domestic duties which pertain to their sphere in life. Under our present arrangement, sir, we have lived happy with our wives, and they have not complained that their rights have not been sufficiently protected; and while they are contented and happy, I would do nothing to disturb or change that arrangement, which they so generally approve. Before taking my seat, I move the indefinite postponement of the section and pending instructions.

Mr. LOCKHART. I do not propose to make a speech upon this question; I only desire to say that I cannot support the section as it is; if it is re-committed with the instructions which I have proposed, I can support it. The gentleman from Posey, (Mr. Owen,) in his zeal to carry this measure, in some shape or form, now proposes to strike out my section, as well as his own, and insert the statute as it now is and has been for several years past. What the legal effect of the statute which he proposes to insert in the Constitution is, I am not prepared to say. I believe that it has not yet received a judicial construction; it would therefore be improper for me to express a decided opinion upon it. The section which I propose to strike out, when stripped of all unnecessary verbiage, reads as follows: "The real and personal property of married women SHALL BE AND REMAIN SECURED TO THEM respectively."

It seems to me, sir, that this section is far more objectionable than the one that was voted down some time since in the Convention, by a

majority of nineteen votes. In that section, its deformity was measurably covered up by pretty sounding words. Not so with this. Adopt it, and, in my opinion, we will effect a total severance of the interests of husband and wife, so far as property is concerned. I hope that the amendment to the instructions will not be adopted; if we are to have any section upon the subject, let it be one that will produce no such disastrous results.

Mr. KELSO. I have never, as yet, given any opinion beyond my vote in regard to this matter; and I have come to the conclusion that we are making more fuss about it here, than there is made anywhere else. I am not at all sure that we ought to adopt any provision in reference to this subject; but if we do, I go for securing the property of the wife, not only against the creditors of the husband, but against the husband himself. For, if it be necessary to provide a security at all, it is as absolutely necessary to guard the wife against the improvident action of the husband himself, as to guard her property against his creditors. It may be improper, indeed, to say that he shall be allowed, on the faith of the property of the wife, to obtain credit, and that that property shall not be made liable for the payment of the debt so incurred, while the wife and family are enjoying the proceeds of the property. If it be right to do anything at all in relation to this subject, the proposition last offered by the gentleman from Posey, is the correct one.

Now the question is, is it necessary to do anything at all? [Cries of "no," "no."] The law which has been referred to, has been in force for several years, and I have never known a question to be presented in court in regard to that law. I am not aware that advantage has been taken of it in a single instance in Indiana. Now there is one thing certain: that is, that the question of dollars and cents has much less to do with the domestic happiness of the people of Indiana, than we seem here to imagine. We had this matter presented to us in a very favorable light the other day, when we heard the story of the jolly shoemaker related, who, with his last in one hand and hammer in the other, was as happy as the day was long, until the lord and lady of the manor happened to be thrown from their carriage on a stormy night, near the door of his humble dwelling, were taken in and hospitably treated by the humble shoemaker and his family. They, feeling a proper gratitude for the services rendered them, made the husband a present of £20. He, thereupon feeling himself so elated, that he treated his wife with harshness, and thereupon they quarrelled, and the result was, that, in less than a week he thrashed his wife soundly, with a shoemaker's strap. [A laugh.] I fear that if we pass such a law as this, the condition of married people in Indiana will be similar to that of the shoemaker and his wife; and that the shoemaker's



strap will have to be used. ["Consent," and immoderate laughter.] If I were going to give a vote in favor of any proposition of this kind, I should vote for the last proposition offered by the gentleman from Posey; yet I have my doubts whether it would not breed disturbance; whether turmoil and strife would not grow out of it, instead of its being productive of any ultimate good.

Mr. OWEN. I would inquire of the gentleman from Switzerland whether his remarks apply to the existing law!

Mr. KELSO. They apply to both; because, in my opinion, they are as nearly alike as possible. They are as nearly equal as a sixpence is to a glass of grog.

Mr. DUNN of Jefferson moved that the section and pending instructions be laid upon the table.

The yeas and nays were demanded and ordered, and being taken resulted as follows—yeas 73, nays 59:

Mr. CHAPMAN'S name being called, he said, I vote "No." I am not afraid of my wife.

The yeas and nays were as follows:

YEAS.—Messrs. Ballingall, Barbour, Beach, Beard, Biddle, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Haddon, Hardin, Helm, Helmer, Hogin, Huff, Jones, Kelso, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, Morgan, Morrison of Washington, Niles, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Thornton, Trimble, Walpole, Watts, Wolfe, Wunderlich, Yocum, and Zenor—73.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Blythe, Borden, Bourne, Bryant, Chapman, Chenowith, Cole, Cookerly, Crumbacker, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Gibson, Graham of Miami, Graham of Warrick, Hall, Hamilton, Harbolt, Hawkins, Hendricks, Hitt, Holman, Hovey, Johnson of Orange, Kent, Kilgore, Kinley, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Nave, Newman, Owen, Pepper of Ohio, Prather, Read of Monroe, Sherrod, Shoup, Smiley, Spann, Steele, Tannehill, Thomas, Wiley, and Mr. President—59.

So the section and the instructions were laid upon the table.

The section which provides that the Legislature may invest and re-invest school funds, was read a second time.

Mr. CHAPMAN moved to amend by adding a section that the General Assembly shall have

the power, whenever the public interest may require it, to consolidate the different school funds, and such funds as may hereafter be set apart for that purpose, and apply the proceeds to the purchase of our State bonds; which shall be placed to the credit of the common school fund, and draw an interest of six per cent.

Mr. HARBOLT moved to lay the section on the table.

Mr. CHAPMAN demanded the yeas and nays, and they were ordered, and, being taken, were—yeas 49, nays 75—as follows:

YEAS.—Messrs. Alexander, Anthony, Ballingall, Bascom, Beard, Beeson, Bowers, Bracken, Clements, Cole, Crawford, Davis of Parke, Dobson, Edmonston, Farrow, Frisbie, Garvin, Gootee, Graham of Warrick, Harbolt, Hardin, Hendricks, Holman, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kendall of Wabash, Kilgore, Lockhart, Logan, Mathis, Miller of Fulton, Miller of Gibson, Morgan, Mowrer, Nave, Nofsinger, Pepper of Crawford, Robinson, Smith of Ripley, Steele, Stevenson, Tague, Thomas, Watts, and Zenor—49.

NAYS.—Messrs. Barbour, Beach, Berry, Borden, Bourne, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Cookerly, Davis of Madison, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Foley, Foster, Gibson, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Kent, Kinley, Maguire, March, Mather, McClelland, McFarland, Miller of Clinton, Milligan, Milroy, Mooney, Morrison of Marion, Morrison of Washington, Newman, Niles, Pepper of Ohio, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Thornton, Trimble, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—75.

So the section was not laid on the table.

Mr. WATTS moved to amend by striking out the words "State Bonds," and inserting the words "State Bank of Indiana."

Mr. DOBSON. It does occur to me that members of the Convention do not fully understand the purport and meaning of this section. If they do, it is surprising that they should have voted one way yesterday and another way to-day.

I ask if it is right to make this a common fund, and divide it all over the State! I think if members had understood the purport of this thing they would not have voted as they have.

Mr. CHAPMAN. If the gentleman will allow me, I will say that this section only proposes to amalgamate these funds so far as to give discretion to the Legislature to act in reference to them all, in order that they may act in a judicious manner.

**Mr. DOBSON.** The judicious action of the Legislature in regard to them is a term that is about as distinct and well defined as a "judicious tariff." I am opposed to the section.

**Mr. RARIDEN.** I did not understand the question when I voted. I therefore move a re-consideration of the vote by which the section was laid upon the table.

**Mr. KELSO.** I would like to make the inquiry, and I hope the gentleman from Monroe will answer it: Has not the Legislature the power now to do what this section contemplates?

**A VOICE.** Certainly they have.

**Mr. KESSO.** If they have, why not leave it to them?

The question was taken on the motion to re-consider, and it was decided in the affirmative.

The question being on laying the section on the table.

**Mr. DOBSON** demanded the yeas and nays, and they were ordered, and being taken, were—yeas 76, nays 44—as follows:

**YEAS.**—Messrs. Alexander, Anthony, Ballingall, Bascom, Beard, Beeson, Biddle, Blythe, Bourne, Bowers, Bracken, Bright, Brookbank, Carter, Clements, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Edmonston, Elliott, Farrow, Frisbie, Garvin, Gootee, Gordon, Gregg, Haddon, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson of Dearborn, Jones, Kelso, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, March, Mathis, Miller of Fulton, Miller of Gibson, Milligan, Moore, Morgan, Mowrer, Nave, Notsinger, Pepper of Crawford, Rariden, Ritchey, Robinson, Smiley, Smith of Ripley, Steele, Stevenson, Tague, Thomas, Walpole, Watts, Wunderlich, and Zenor—76.

**NAYS.**—Messrs. Beach, Bryant, Carr, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Cole, Davis of Madison, Dunn of Perry, Duzan, Fisher, Foley, Gibson, Graham of Miami, Hall, Maguire, Mather, McClelland, McFarland, Miller of Clinton, Milroy, Mooney, Morrison of Marion, Morrison of Washington, Newman, Niles, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Scott, Thornton, Trimble, Wiley, Wolfe, Yocum, and Mr. President—44.

So the section was laid upon the table.

**Mr. HAMILTON** offered an additional section providing that the trustees of each township, or the proper officers have power to distribute the school fund among the schools according to the number of schools in each county.

**Mr. BRYANT.** I hope the section will not be adopted. I hope it is not the intention of the Convention to go into the framing of school

laws. All that we have to do is to shape out the principle. I move that the section be laid upon the table.

The motion was agreed to.

So the section was laid on the table.

**Mr. BRYANT** offered an additional section, to the effect that the General Assembly shall apply such portion of the common school fund for the purchase of libraries as may be deemed expedient.

**Mr. GIBSON** moved that the section be laid upon the table.

The motion was agreed to.

So the section was laid on the table.

**Mr. DUNN** of Madison offered an additional section, that all lands or town lots which have been delinquent for State and county taxes, and have been forfeited to the State, and in failure of the owner to redeem the same, shall be sold, and the proceeds, after the payment of the taxes and the interest that has accrued thereon, shall be paid into the common school fund.

**Mr. BASCOM** moved that the section be laid upon the table.

The motion was agreed to.

So the section was laid on the table.

The section which provides that all county and township officers shall be liable to be removed from office for misfeasance. &c., was read a second time.

The question being upon ordering the section to be engrossed for a third reading,

**Mr. GIBSON** moved to strike out the words "indictment and."

The motion was agreed to.

**Mr. SMITH** of Scott. If the Secretary will turn to the fifth page of the amended Constitution, he will find a section upon this subject which is almost identically the same with the one now proposed. I therefore move that this section be laid upon the table.

The motion was agreed to, and the section was accordingly laid on the table.

The section which provides that all State officers shall be liable to be removed from office by impeachment by the House or Representatives, to be tried by the Senate for any crime or misdemeanor, was taken up upon its second reading.

The question being, Shall the section be engrossed?

It was so ordered by consent.

The section which provides that any judge being convicted of any felony or corruption in office, may be removed from office by the judgment of the Supreme Court, on information in the name of the State, was taken up on its second reading.

The question being upon the engrossment of the section.

**Mr. BORDEN.** If I understand the section it provides that the Judges of the Supreme Court shall try any county officer who shall



be accused of mal-feasance while in office. It appears to me they ought to be tried by the Senate.

The PRESIDENT. The Chair would remark that it only applies to judges.

Mr. BORDEN. Well, sir, it occurs to me that, where judicial officers are accused of mal-feasance in office, the Senate is the proper tribunal to try them.

Mr. GIBSON. It seems to me the only question that will come before the Supreme Court under this section will be, whether the man was convicted or not. The Judges of the Supreme Court do not try him; but, if convicted of the offense charged, he is to be removed by them. They are the mere executive officers of the law.

A VOICE. "That is right."

The section was ordered to be engrossed for a third reading.

The section which provides that any State officer may be removed from office by a joint resolution of the General Assembly, for incapacity or general negligence of the duties of office, two-thirds of the members of each branch voting therefor, having been read a second time, was ordered to be engrossed for a third reading.

The section which provides that the General Assembly shall pass laws regulating proceedings for the removal of officers from office, pursuant to the foregoing provisions, was read a second time.

The section was ordered to be engrossed for a third reading.

The section which provides that it shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb, and of the blind, and for the treatment of the insane, was read a second time.

The question being upon ordering the section to be engrossed for a third reading,

Mr. CHAPMAN offered the following as a substitute:

"It shall be the duty of the General Assembly to provide one or more farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles that such persons may therein find employment and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence."

I desire, said Mr. C., to give one or two reasons why I offer this as a substitute,

Mr. GIBSON. The gentleman's substitute will come in more properly in place of the third section.

Mr. CHAPMAN. No, sir, I desire to have it here; and if the Convention will listen but a moment, I will give my reasons.

The section, as reported by the committee, requires that the Legislature shall make appropriations for the support of the deaf and dumb,

the blind, and the insane. I have no special objections to such a requirement, but I think we can very safely, in this instance, trust to the discretion of the Legislature, under the general provision which I propose. That provision is in the precise words of the present Constitution of the State, under which all these institutions have been erected, and thus far, liberally endowed. I think true policy dictates that we should still leave the matter to the discretion and under the full control of the General Assembly.

I am aware that I offer my amendment in the face and eyes of the great popularity which these institutions now enjoy, and therefore have but little hope that it will prevail. My duty to my own mind is nevertheless clear. I cannot consent that, under any and all circumstances which can possibly occur, we should make a specific constitutional requirement for the support of institutions of such a character. It would be better in all respects to leave them entirely subject to legislative provision.

But I offer my proposition for another reason, perhaps more important, and that is to do justice to the original author of it, as it stands in the old Constitution. That man was, I believe, Mr. BAOLET, a delegate from the county of Knox, to the Convention of 1816. He was a member of the committee who reported the section, and, so far as I have been able to ascertain from the records, no man was more likely to have been the author of a provision so generous and praiseworthy. I am strengthened in this belief by the fact that he was a Frenchman; for I do not believe that so much generosity often characterizes the harder natures of the Anglo-Saxon race.

Gentlemen here have frequently expressed great reverence for the old Constitution which we are about to supersede by a new, and, I have no doubt, a better one. But if there be one provision of the old instrument which I do esteem and venerate, it is the one which I propose to retain. It is a more liberal and humane provision than is contained in any of the Constitutions of the Union. It should be retained as a memento of its noble author. But if it be not, I shall have partially accomplished my object, in thus awarding just praise to his benevolent feelings.

Whilst this provision gives the Legislature ample power to promote the objects in view, it does not so imperatively prescribe and circumscribe its action as the section proposed by the committee will do. I therefore hope that my proposition will be adopted.

Mr. DOBSON. It does appear to me that we shall get rather too much in our new Constitution, if we go on in this way. We have got buildings provided for these unfortunate persons, and now we must go to buying farms for them. I think we have gone quite far enough in this matter already.

The question was taken on the amendment proposed by the gentleman from Marion, and it was decided in the negative.

The section was then ordered to be engrossed for a third reading.

The section which authorizes the Legislature to provide homes of refuge for the correction and reformation of juvenile offenders, was taken up on its second reading.

Mr. MARCH moved to amend by adding the following:

"The penal code of this State shall be founded on principles of reformation, and not of vindictive justice."

Mr. GIBSON. Both the original section and the amendment are very right and proper, but if we put everything that is right and proper into the Constitution, I presume we shall have to divide it into several volumes. It would become more voluminous than the reports of our debates.

Mr. BRYANT. I was about to offer an amendment to this section, and I now propose to strike from the section the words, "have the power to," so as to make it obligatory upon the General Assembly to provide houses of refuge for juvenile offenders, instead of referring the subject to the discretion of that body, as proposed by the reported section.

Since this Convention assembled, we have had a state of facts presented to us, such as I had previously no conception of. In reply to a call made by the gentleman from Vanderburg, (Mr. Lockhart,) early in the session, the warden of the State prison made a detailed communication to this body, exhibiting the names, ages, &c., of the convicts sent to the State prison from September, 1822, to November, 1850. I have made out a list from this report of the warden, and I find the whole number of convicts committed within that time to be 1131, of which 157 (more than one-eighth of the whole number) were minors within the age of twenty-one years, and some of these as young as eleven years of age. The gentleman from Vanderburg deserves the thanks not merely of this Convention, but of the whole community, for dragging to light this outrage upon civilization and humanity. I am persuaded that if these facts had been spread before the public, such a deep disgrace to the character of Indiana would long since have been swept away by the fierce indignation of the people. There is one case where, as late as 1840, two brothers, one *fourteen* and the other *eleven* years of age, were sent to the State prison. Sir, what is the object of all punishment? It is two-fold: the prevention of crime and the reformation of the offender. How do you propose to diminish crime, or to reform offenders, by this system of sending the children of the State, perhaps the victims of dissolute parents and neglected education, to this school of vice and infamy, where they cannot fail by means of the associations into which

you thrust them, to be irretrievably ruined? With such facts before us, it is the imperative duty of the Convention to arrest this evil, to prevent this iniquitous system from being any longer tolerated, and to compel the General Assembly to provide institutions where these juvenile offenders can be restrained, and at the same time reformed. There is in this Convention, I am sure, but one feeling in regard to this matter, and that is, that this outrage upon all propriety and humanity shall no longer be.

Mr. LOCKHART. I hope the amendment of the gentleman from Warren (Mr. Bryant) will be adopted. I have had a similar amendment lying on my table for several days. It seems to me that there is no question that can be presented for the consideration of this Convention, that is of more importance than this. The correction and reformation of juvenile offenders is a subject upon which I have thought and reflected much. Having occupied for several years past a high judicial position, I have often been pained to see the youth, the mere boy, branded as a felon, under our laws, and sent for a series of years to that worst of all prisons in the United States—the Jeffersonville State prison.

It will be recollected that I offered a resolution calling on the warden of the State prison for the valuable information which was some weeks ago laid upon our tables. As soon as it was procured, I moved the appointment of a select committee to whom the subject should be referred. The committee was appointed. At a subsequent day a resolution was introduced by a member of the committee on benevolent institutions, instructing that committee to enquire into the expediency of reporting a section providing houses of refuge for the punishment and reformation of juvenile offenders. This committee, sir, in hot haste, and before I had convened the select committee, reported the section now under consideration. It is, however, due to the gentleman from Warren that I should here state, that he has since informed me that he was not aware that the subject had been referred to a select committee. After that report was made, I did not think it necessary to duplicate sections upon our journal, and therefore abandoned the idea of convening the select committee, being willing to take the section reported as the basis of the action of the Convention, having no doubt but that the Convention would, without doubt, adopt the amendment now pending.

I hope, sir, that without a dissenting voice, the pending amendment of the gentleman from Warren will be adopted, and that the gentleman from Delaware (Mr. March) will withdraw his amendment and offer it as a new section; if so, I have no doubt but that it will pass.

Mr. MARCH. I am willing to withdraw my amendment and offer it as a distinct section.

The amendment was accordingly withdrawn.



Mr. BRYANT moved to strike out the words "have the power to."

The amendment was adopted.

The question being on the engrossment of the section, the section was ordered to be engrossed for a third reading.

Mr. MARCH offered the following additional section :

"The penal code of this State shall be founded upon principles of reformation and not of vindictive justice."

The question being, "Shall the section be adopted," it was decided in the affirmative.

The section was then ordered to be engrossed for a third reading.

The section which provides that county boards shall have the power to provide farms to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and sympathy of society, was read a second time and ordered to be engrossed for a third reading.

The section which provides that "no man shall be held to answer for the debt, default, or miscarriage of any other person upon any contract entered into from and after the year 1860, except in cases where executors, administrators, guardians, trustees, and public officers are required to give bond and security, and where security is given to persons acting in a fiduciary capacity," was taken up on its second reading.

The section having been read a second time, Mr. FOLEY moved that it be laid upon the table.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 61, nays 44.

So the section was laid on the table.

Mr. KENT moved to take from the table the section which had been just laid upon the table.

Upon this motion, the yeas and nays were demanded, and being ordered were taken—yeas 54, nays 70:

YEAS.—Messrs. Alexander, Ballingall, Beeson, Borden, Bowers, Bracken, Carr, Chapman, Clark of Tippecanoe, Cookerly, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Gordon, Graham of Miami, Hadson, Hall, Hamilton, Hawkins, Hitt, Holman, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kilgore, Kinley, Logan, March, Mathis, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Owen, Prather, Read of Clerk, Read of Monroe, Sherrod, Shoup, Tannenill, Walpole, Watts, Wiley, Yocum, and Mr. President—64.

NAYS.—Messrs. Barbour, Bascom, Beach, Beard, Biddle, Bright, Brookbank, Bryant, Butler, Chenoweth, Clark of Hamilton, Clements, Coats, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gregg, Harbott, Helm, Helmer,

Hendricks, Hogin, Hovey, Howe, Huff, Jones, Lockhart, Maguire, Mather, May, Mooney, Morgan, Morrison of Marlon, Morrison of Washington, Mowrer, Nave, Newman, Nofsinger, Pepper of Crawford, Pettit, Robinson, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Thomas, Thornton, Trimble, Wallace, Wolfe, Wunderlich, and Zenor—70.

So the motion did not prevail.

#### GEOLOGICAL SURVEY.

The section which declares that it shall be the duty of the General Assembly, to provide by law, within five years after the adoption of the Constitution, for a thorough geological survey of the State, was taken up on its second reading.

On motion by Mr. COOKERLY,

The section was laid on the table.

#### TRIBUNALS OF CONCILIATION.

The section which provides that "tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such tribunals may be conferred upon any of the other courts of this State; but such tribunals and other courts, when sitting as such tribunals, shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in the presence of such tribunal or court, in such cases as shall be prescribed by law," was read a second time.

Mr. GORDON moved that the section be laid upon the table.

SEVERAL VOICES. No, no!

Mr. McCLELLAND demanded the yeas and nays, and they were ordered.

Mr. BORDEN. I trust the gentleman will withdraw his motion to lay on the table, merely to give the friends of the proposition an opportunity to explain its object.

Mr. COOKERLY. It will not be laid on the table.

The motion to lay on the table was withdrawn.

Mr. KELSO. I have a proposition to make, and it is one that will not preclude debate. I move the indefinite postponement of the section, and I will give briefly the reasons why I make the motion. We are told by gentlemen here, that this provision will look well on paper—that it will sound well, and that it will win its way with the people. That is all true enough, but let us consider what it is we are doing. We must not imagine that the people at home are so dull and stupid that they cannot see through this flimsy cob-web.

If there were a single vestige of power to be given to the Legislature of Indiana, I would be ready to vote for it. I have no objection whatever to this "court of conciliation," to which people may by common consent submit their differences, but by which they may or may not

be bound. But, I ask any man now to tell me whether the Legislature has not the power, ample and complete? I challenge any man to produce a single clause in the new Constitution that will prevent the Legislature from creating as many courts of conciliation, and of such character as they think proper. Now I ask you, where is the utility, the good sense, or the propriety, of incorporating in the new Constitution section after section, and incurring extra expense, for the purpose of conferring extra powers and privileges upon the people? The gentleman has had the honor of making the proposition, and I care not how high it may place him in the niche of public fame; but I ask him where is the necessity for encumbering the Constitution with a provision conferring additional power on the people? The section declares that they may create tribunals of conciliation, or call them by what name you please, upon which shall be conferred judicial powers, and jurisdiction in the transaction of business, by which the people who may become suitors in that court shall be bound. Why should we grant express power to the Legislature for this purpose? I can see no reason for it, because they have the power already. It is for this reason that I have moved the indefinite postponement of this section.

Mr. MARCH. I hardly deem it necessary to make use of any argument in favor of this section now before the Convention, in order to insure its adoption. It is a proposition in behalf of the settlement of legal controversies. We have already, on a former day, had a strong vote, which showed unquestionably that we have no veneration for the ancient usages of the law, however sanctioned by time or backed by high and distinguished names, unless their results meet with our approval.

We have adopted a section which goes to the foundation, and reforms the administration of the law as it now exists in our courts of justice, by the simplification of the practice and pleadings. Now, sir, this section proposes to take another step in the progress of reform. It proposes to sanction, by constitutional provision, a plan of settling law suits in peace and harmony, without the spirit of strife and contention. ["That's the doctrine."]

Sir, our present system of litigation is one of warfare transferred from the sword and the musket to the word of mouth; and the lawyers are the soldiers—the Swiss guards. ["Consent."] Is there any necessity for this, or is there any propriety in carrying it on, in the way and the extent we are now doing, without attempting any change, except simplifying the tactics. I believe not. All that is necessary is to open up some court where the parties can appear and can ascertain their rights, and the law governing them, without being compelled to employ and fee an attorney in their behalf, to contend for them in a battle of words.

A large number of law suits that are now carried on, and that are constantly springing up, arise from a mere misunderstanding; and such misunderstanding may arise among men who are perfectly honest.

Now, sir, under the present arrangement of things, where are they to go to ascertain the law and settle up their difficulties? One goes to one attorney's office, and the other to another; and whatever may have been their feelings towards each other when they went, after holding two or three hours council, each is confident that he is going to gain his cause, sure; and the next time they meet, they eye one another as pitted antagonists.

I care not how honest and able a lawyer may be, he examines the case from one point of view, and that is as a feed attorney upon one side, endeavoring all the time "to make the worse appear the better reason." Now, sir, why is it that in this age of the world, we cannot provide some means by which an honest man may ascertain what the law is, and what his rights are, without going into court for trial at all, or rather, without employing a class of men whose business it is to set up and procrastinate litigation? That is the object of the section. It is to have a tribunal and officers—competent officers, those who understand the law—before whom the parties may go, if they will, and state their grievances, and be informed what the law is, and what they ought to do in the case. And I believe, sir, that when such a court is sanctioned by the Constitution of the State, and established by the Legislature, it will become popular, and the people of the country, nine-tenths of them at all events, will go to it for information instead of going to the offices of attorneys.

Take another class of cases, cases which originate in the mere heat, excitement, and passion of the moment, where a man goes at once to the office of an attorney, and commences a law suit, and it is carried on to the end, in all the virulence of warfare, and with the same spirit and feelings in which it is commenced. Courts and attorneys do not assuage, but fan the strife.

Now if there was a court open, with a competent officer in attendance, where individuals, under such circumstances, might ascertain what the law is, there might be a chance of having these cases settled in peace and harmony, and without expense.

Sir, there is nothing that contributes so much to disturb a neighborhood, as one of these hard contested law suits. It is almost equal to border feuds in olden times, for the worst passions of the human breast, are brought into the most active exercise.

The gentleman from Switzerland says he has no objection to courts of conciliation, and that he has no objection to the conciliation of law suits; but he says—and his objection resolves itself all into this: that the section ought not



to be placed in the Constitution—that there is no end to introducing provisions into the Constitution. He wishes this description of business to be committed to the inferior courts, and to the justices of the peace. Sir, I am for giving to this court of conciliation character and standing by making a constitutional provision in reference to it. If you say that it shall be composed of men of ability, of character, and standing, it may produce much good. The gentleman is willing to dignify the ordinary court, by a constitutional provision, and incur almost any amount of expense in building court houses, paying judges, sheriffs, constables, and lawyers, for the purpose of having a semi-annual tournament at the bar, with the rights and interests of parties all at stake; but almost any little affair is good enough for the small business of settling controversies. We must make the business of settling difficulties respectable, and then it will be adopted.

If there be a difficulty between two men now, the natural consequence is, they must go to law, because it is customary. They are laboring under the impression that they would not be considered men of spirit, if they did not go to law, and fight it out in the court house; and in order to fight it out, they must, so far as their pockets are concerned, bleed most freely.

The gentleman is one of those who most strongly opposed the section the other day, on legal reform. It is perfectly consistent for him to oppose this also. But I tell gentlemen who are in favor of legal reform, that this is one of the most important steps in it. The section that we passed, was for the purpose of simplifying and cheapening litigation. This is intended for the higher purpose of preventing litigation.

Mr. KELSO (interposing). I ask the gentleman what I have done to oppose legal reform?

Mr. MARCH. I understand from the whole tenor of the gentleman's remarks, that he is in opposition to it.

Mr. KELSO. Not at all. The gentleman is mistaken.

Mr. MARCH. Well, then, the gentleman has a very peculiar way of showing himself in favor of it.

Now, sir, this section is not imperative. Personally, I would prefer that it should be imperative, but am willing, so far as that is concerned, to let it be settled by the opinions of a majority of the Convention. I would prefer to have it imperative, but this is the form in which it has been incorporated into the Constitutions of those States which have adopted it. New York has adopted it in this form, and Wisconsin has adopted it in this form; and the reason why they have done so, is, that it is more likely to be approved of by the people, in this form than in any other, and is an experiment, and it is desirable that the Legislature shall have power to

change it, if it should not be found to succeed. I therefore hope that this section will not be postponed, and that all those gentlemen who are in favor of legal reform, who are in favor of introducing a new, cheaper, or simpler method of settling legal controversies, will support this section. It can do no possible harm.

While we have devoted eight or nine sections to warfare—to physical warfare—while we have devoted nine or ten sections to courts of justice, where the war of words is waged, let us at least devote one short section to the purpose of making peace.

Gentlemen say it will encumber the Constitution, and be a great expense to print it. They must be hard pushed, when they are obliged to resort to such arguments. What an awful amount of expense, to print this one short section! It is a great pity that we did not think of this expense of printing, some time ago; we might have saved something, if we had. It is straining at a gnat and swallowing a whole drove of camels, to make that an objection. Sir, it will not encumber the Constitution; on the contrary, I maintain that it will be an honor and an ornament to it, and will stand as a lasting testimony to the good sense and discretion of those who placed it there.

I hope the section will not be postponed, but that it will be finally adopted. By adopting it, we shall hold out some inducement to obey the injunction of the great Teacher: "Agree with thine adversary quickly, whilst thou art in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou art cast into prison." We may also, in an humble way, merit a part of that sublimest of all benedictions, "Blessed are the peace makers."

Mr. THORNTON said:—

Mr. President, I do not pretend to be able to urge anything in favor of tribunals of the character under consideration from any experimental knowledge possessed by me, as they have not been in use in this State. I feel disposed to oppose the motion to indefinitely postpone the article, especially for the reasons urged by the mover. I do not understand the language of the article as he does. He argues and labors to establish the conclusion that after a case would be submitted to such tribunal by parties and a decision had, they would not be bound to abide by it if they chose to refuse. I understand the voluntary submission spoken of in the section, to have reference to the action of the parties in the first instance when agreeing to submit any matter to such Court, and not particularly to any action after decision. It is fairly inferible that if parties voluntarily agree to submit any matter in dispute to such tribunal and to abide the judgment which may be rendered, it would be binding on them. The section, however, provides that the course of proceeding is to be prescribed by law, and cer-

tainly the General Assembly may make the necessary provisions for rendering the course of proceeding binding on the parties. It would be idle and more than useless to suppose it would do otherwise. I understand the words "or assent thereto in the presence of such tribunal or Court," not to embrace a case where the disputants had in the first instance "voluntarily submitted any matters in difference and agreed to abide the judgment," &c., but to have reference to a case simply submitted, without any previous agreement to abide the judgment, and after judgment or award given to assent to it in the presence of the Court. It might also embrace a case where the parties had agreed upon the judgment to be rendered, and upon being rendered then to assent thereto in the presence of the Court. This is the only rational construction which can be given. To sustain any other, or least such as contended for by the gentleman moving the postponement, would render the whole plan of such a peace-making tribunal abortive. The details of proceeding must of course be settled by the Legislature, and I have no doubt would be settled properly and so as to carry out the salutary object to be accomplished by the creation of such Courts.

I cannot but think such a tribunal as this would afford great facilities for adjusting matters of difference arising between friends, relations, and members of the same society. A principle somewhat similar obtains in that numerous and respectable body of Christians, the Methodists. I had occasion not long since to be present when a matter involving a large amount in value was in dispute between a brother-in-law and sister-in-law, having been called on as a witness between the parties. I then witnessed the salutary working of the rule of discipline adopted by the church. The matter was satisfactorily adjusted, without expense to the parties. If this had not been done a vexatious and most unpleasant law-suit must have taken place, which would have involved a heavy amount of costs, and created heart-burnings and an irritated state of feeling which might never have been healed or reconciled, and would no doubt have resulted injuriously to both of the parties.

Another consideration commends this kind of tribunal to my humble judgment. It is one of the boasted favorite maxims of the law, that there should be an end of litigation. The creation of a Court of this description, would conduce to that desirable end by affording facilities for adjusting matters of difference between parties, who might be compelled to resort to the ordinary course of litigation to enforce what they might deem their just rights.

I have been indebted to an esteemed friend and fellow-member (Mr. Chapman) for an article on this subject, which he has just handed me, which purports to be an extract from one of the New York journals, to which I would respectfully call the attention of the Conven-

tion. It appears that this description of Court has been in use for a long time in some of the European governments, and especially that of Denmark; and the article has reference to the course of proceeding established by the Danish government in her West India Islands, particularly St. Croix.

[The reading of the extract being loudly called for, Mr. Thornton read it as follows:]

For the Albany Weekly Journal.

#### COURTS OF CONCILIATION.

Some years ago my esteemed friend Humphry Howland of this town, sojourned during the winter in St. Croix, (Santa Cruz,) one of the Danish West India Islands. Observing that mediators were generally employed in the adjustment of differences—so very dissimilar to the practice of this country—he took much pains to inquire into the whole matter; and was assured by Judge Anderson of that place, that *nine-tenths of all disputes were settled by the Reconciling Commission.*

After Humphry Howland's return home, he received from Judge Anderson a full and complete copy of the ordinance issued by Christian VII, King of Denmark, dated December 7, 1798, translated from the Danish original; and that roll is now lying before me. It is too voluminous for publication in a newspaper, but I give an abstract of some of its sections and provisions.

The preamble is worthy of the serious consideration of our legislators; and when they adopt sentiments as paternal as those of that monarch, and show it by their acts, every good citizen, anxious for the welfare of his country, will respect and honor them. I give it verbatim:—

"Whereas, it is incumbent on us to prevent, as far as possible, unnecessary and expensive law-suits between our beloved and faithful subjects, by the interposition of mediators to effect an amicable adjustment between the contending parties; and having experienced that the Reconciling Commission established in our West India Islands in consequence of the ordinance of the 31st March, 1795, hath not had the desired effect, we have determined to establish a Reconciling Commission in the West Indies on the same footing that it now stands in our kingdoms in Europe, by our late ordinance for that purpose, the good effects of which hath answered our paternal intention; wherefore we decree as follows:—"

SEC. 1. In every jurisdiction there shall be a Reconciling Commission for the amicable adjustment of disputes.

SEC. 2. The ruling power of St. Croix and of St. Thomas shall propose four or six of the most respectable, intelligent, and honest men of the district, from whom the burghers and inhabitants shall by vote choose two as Reconciling Commissioners, who are bound to accept



the office and conduct it for three years, unless they have a law-suit or well-founded reason to excuse them. Both shall not be discharged at the same time. Lawyers are not to be chosen as Reconciling Commissioners.

SEC. 5. The members on taking their seats in the commission, swear "to exert all the means in their power to promote the amicable adjustment between the parties, in every case that shall be brought before the said commission, and endeavor zealously and honestly to effect it to the best of their judgment."

SEC. 6. It is enjoined on the members of the government to use their influence in favor of the institution, and to take a seat there when official duty will permit, "in order to promote harmony between the parties at variance."

SEC. 7. "All civil causes in general, whether concerning property, rights, debts, or anything else, shall be subject to the Reconciling Commission, except (1.) suits respecting bills of exchange, (2.) demands in dealings, bankrupt estates, or estates under the administration of trustees, because there are no law expenses in such cases in the first instance."

SEC. 18. The Reconciling Commission shall assemble once a week.

SEC. 20. Those who have anything to lay before the commission, shall previously notify it, either verbally or by writing.

SEC. 24. Each party when summoned, shall personally appear before the commissioners, unless he can render justifiable excuse; and in that case, the absentee may send a good man in his place, empowered to treat for and reconcile the cause; "but it is expressly forbidden either to take with you, or to send in your stead, a lawyer to act in the Reconciling Commission."

SEC. 25. Whoever shall be summoned to hear proposals for reconciliation, and shall refuse to attend, or to give good and sufficient reasons for not attending, shall be condemned to pay his adversary the expenses of the suit, should the cause be decided by a process of law.

SEC. 27. If an arrangement is not made, nothing in writing from the commission to be granted, except an attest when the complaint is returned to the plaintiff, that it could not effect an amicable reconciliation.

SEC. 31. All causes brought before the Reconciling Commission to be closed and settled within eight days, and not remain longer without the consent of both parties.

SEC. 35. No cause (with a few specified exceptions) shall be received or entered in any court of justice, unless the plaintiff proves by a certificate from the Reconciling Commission that an arrangement with his opponent had been attempted, but not obtained.

SEC. 39. A commissioner who has labored with unremitted zeal and activity for eight years, "We will distinguish as a worthy man and member of society, conferring on him a

suitable rank, or other mark of our approbation."

SEC. 40. The Reconciling Commissioners and the Recorder shall receive a reward for their trouble when they effect an amicable adjustment; otherwise nothing.

I have thus given a synopsis of the more important sections of this remarkable ordinance, and observe that its extraordinary success appears to be mainly owing to two things: 1. The whole influence of the government is brought to bear against litigation. 2. The commission sits in private, and without reference to the nice distinctions of the law, earnestly endeavors to reconcile the parties.

It has been said in all soberness that the expenses of litigation in this State, exceed the value of the property in dispute; but be this as it may, the expenses are only a part of the evils that law-suits produce. Can citizens leave their business and be recompensed by the scanty fees allowed to a juror or a witness? Damages not found in bills of cost are of great amount; and mental discomforts are not to be estimated by dollars and cents.

DAVID THOMAS.

*Near Aurora, Cayuga county,  
2d mo. 28, 1850.*

Mr. President, I therefore hope that the article will not be indefinitely postponed, but that it will be sustained by the Convention and become a part of our amended Constitution. It seems to me it is a wholesome, beneficent measure, calculated to produce peace and harmony in society; and as such, will entitle its advocates to that benediction which is ever awarded to the peace-makers.

MR. GIBSON. I am in favor of the establishment of this court; but the provision here proposed to be adopted, amounts to just nothing at all. I have an amendment to propose when it shall be in order. I shall offer it in good faith, and if it be adopted, I shall then vote for the section. It is, to strike out the word "may," and insert the word "shall." If there is any good to be derived from the establishment of such a court, let us have it established. To leave it discretionary with the Legislature, is tantamount to making no provision on the subject at all.

MR. KELSO. I wish to say a few words in reply to the gentleman from Delaware, and at the close of my remarks I will leave gentlemen to put the section in such shape as they may think proper.

Now, I ask whether, if you establish this court, the judge is to sit there and the court to be open at all times, whenever litigants choose to make application to it? It appears to me that the court must be constantly in session; and is he going to sit there and render service to the community and receive no compensation for it? If he is to be paid, who is to pay him? If the State is to

pay him, must there, or can there be, with any propriety, more than one court to each county? If the judge of this court is to devote the whole of his time to the interests of the community, I ask you if he can afford to do it for less compensation than the circuit judge receives. And, sir, having ninety-one counties in the State, you must, therefore, necessarily have ninety-one judges, at a salary of a thousand each. That will make ninety-one thousand dollars to be paid by the State, to the judges of your courts of conciliation. Is that right? If it is not to be the arrangement, then the litigants must pay. The judges must be paid; they cannot transact the business for nothing; and I ask you if you are to pay a man for deciding the legal rights of parties, must you not employ a man who understands the legal rights of parties? Most undoubtedly. You will have to employ a competent lawyer. If, then, he be placed there to take his fees from the pockets of the litigants, will he bleed them any less freely than my worthy friends, the lawyers, do at present? The judge must be expected to make his living; he will be pretty much in the same condition as a probate judge; and we are told, in respect to the probate judges, that they never yet failed to consume the greater part of the estate coming under their jurisdiction.

Well, then, where is the great good that is to result from it? The evil consequences that may follow, are apparent. There must be at least one judge for each county. You cannot expect people to travel from one county to another for the purpose of procuring either the adjustment of a difficulty that may arise between neighbors, or information upon the law regarding the case. You must secure men who are qualified, men of talent and integrity—men who are willing to devote themselves to the business, and you must pay them accordingly. Then you would have a court that has all the advantages that a court can furnish, with a single exception. It provides that men can thus avail themselves of this court of conciliation as they please, and if they do, there is nothing to prevent them employing counsel; they may employ lawyers, as in the circuit or supreme courts. That is one advantage I admit. There are no legal technicalities in the way; this court is to decide according to what they consider the principles of common justice.

One word in regard to what was said by my religious friend from Floyd, about suits arising between members of the church. The bitterest law suit that I ever saw in my life, arose between members of the Methodist church, and it well nigh destroyed two class leaders. It arose from the circumstance of one borrowing a horse from the other, and riding the animal so hard that he died, and, refusing to pay for him. He was brought up before the church and tried, and afterwards the case was carried into court, and the parties spent, in litigation, six times the

price of the horse. Feelings of hostility between the parties were there engendered, that continue to this day. Of all schisms that are incurable, those which grow up in the church and among relatives, are the worst. Suppose you have a court of conciliation established, and have it provided that each party is to pay a portion of the fees of the judge; one man goes in and he pokes down ten dollars to the judge, the other gives him twenty dollars, and then justice inclines to the other scale. Now, sir, I said I would withdraw the motion to postpone indefinitely, and let the friends of the measure make it as perfect as they can; and after that, I will exercise my own judgment in regard to it.

The motion to postpone indefinitely was withdrawn.

The question being upon ordering the section to be engrossed for a third reading,

Mr. MORRISON of Marion. I am decidedly opposed to any amendment being made to this section. I look upon this court of conciliation through very different spectacles from those through which legal gentlemen view it. I do not consider that we are by this provision directing the appointment of a judge; we are merely providing that in each county, as the Legislature may direct, a permanent board of arbitrators shall be constituted; and we do not restrict them to those rules of action that have heretofore obtained with boards of arbitration. We give them general powers as conciliators, to decide questions without the forms of law. We do not even embarrass them with the sanction of a judicial decision; we allow them the greatest latitude; and it will be an easy matter for the Legislature to decide what fees shall be taken.

The gentleman from Switzerland is very much alarmed at the corrupt influences which he thinks may be brought to bear upon these arbitrators; but, sir, this may all be obviated by leaving it within the power of the Legislature to establish such guards as may be necessary. The gentleman from Switzerland says we may choose our own arbitrators for the settlement of our difficulties. But the advantage is this: here is a permanent board appointed in each county, and they are compelled to take cognizance of cases where the parties desire it. Under the old practice, the party going before the arbitrator was obliged to make out a written statement of the points of his case, and if the arbitrator decided upon any other point, the whole proceeding was null and void. The establishment of such a tribunal as this will have the effect of preventing litigation, to a great extent; that is its intention. Gentlemen say that this may be done by the Legislature without a constitutional provision. Sir, this section directs the Legislature to consult the wishes of the people in this respect; and if it be found that the people are in favor of tribunals of this description, then they can be es-



tablished under such salutary restrictions as will dispel the "chimeras dire" that haunt the imagination of the gentleman from Switzerland.

Mr. BRACKEN demanded the previous question.

On motion of Mr. CLARK of Tippecanoe, The Convention adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the section in relation to courts of conciliation.

Mr. BRACKEN withdrew the demand for the previous question.

The question being on the amendment of the gentleman from Clark, to strike out the word "may" and insert the word "shall."

Mr. MARCH. I desire to make a few remarks in reply to some of the objections that have been made to this section this morning, by the gentleman from Switzerland (Mr. Kelso), and by the gentleman from Clark (Mr. Gibson). I regret, sir, to find the gentleman from Clark, in opposition to this section. I had supposed that he was certainly a friend of law reform. He ably advocated and voted for the section which has been adopted in relation to that subject. I say that I for one regret that the gentleman is not with us on this question. The amendment that he proposes, is to strike out the word "may" and insert the word "shall." I believe the section had better stand as it is. It is a new measure, and it is important that all measures which propose a material change, as this does, should move slowly. All reforms, or propositions to change long existing forms, customs, or usages, should be carefully considered and not hastily adopted. By leaving the section as it stands, the matter will be entirely within the control of the Legislature. I hope it will be adopted as it stands.

The gentleman from Switzerland asks who is to pay this judge. As the section now stands, it is left to the Legislature. The Legislature will have power either to make a district court, or they can make it the duty of the other courts of the State to act as conciliation courts. If I had to draw up a law in regard to it, I would confer the power on the other courts.

There is no necessity for establishing any new court for this purpose. The duty of conciliation judges should be conferred upon justices of the peace, upon the probate judges, or upon the circuit judges, and the fees for this description of business may be regulated by law or it may be made part of the duty of the circuit judge under his present salary. Thus you need not increase the expenses of the State one dollar; but even if you do, I maintain that ten dollars spent in settling law suits, is money better applied than one dollar spent in carrying on a law suit.

It was said by the gentleman from Switzerland, that it will have a tendency to increase lit-

igation, to encourage frauds. Sir, I ask any member of this Convention, if there be any more danger of bribing a judge when sitting as conciliator than when sitting in a court of law? Not one particle. There is no greater inducement to attempt to bribe or to yield to bribery, in the one case than in the other; and if anything, the chances are in favor of the conciliation judge, for his purpose is to bring about an amicable adjustment of a difficulty, and not simply preside in a legal contest.

Again it is said that we have all that we desire under the present Statute, in the shape of arbitrators. Now, this arbitration is a perfect burlesque in the way in which it is now managed. In the first place it requires as much skill on the part of the attorney to prepare the case to go before the arbitrators, as to go into court; and after all, the parties have to go into court before judgment can be entered. The object of this conciliation court, is to have a tribunal not for contesting cases, but for settling them.

Now, sir, since the adjournment this forenoon, one of the delegates from Marion county (Mr. Chapman,) who favors this section and who always has the documents to sustain any position he takes, has handed me very high authority in favor of this court. I will read it, with the permission of the Convention, and when I have done so, I presume it will not be disputed by any one. It is in a communication from Col. Benton to the people of California, in relation to the government. In the course of his communication, the Colonel says:

"You need a governor and judges, and some peace and militia officers: that is about all. The Roman civil law, which is the basis of your law, is just and wise, and only needs to be administered by upright judges, (alcades) whom you should elect. Avoid new codes of law until introduced by permanent authority. You need but little, at present, in addition to what you have, and that your convention can give you, to-wit: elections, trial by jury, and courts of "Reconciliation." This latter is for the termination of disputes without law, by the mediation of the judge; it is easily engrafted on the Roman civil law, which you have, and which favors arbitration and amicable settlements. It is founded upon the command in Scripture, "agree with thine adversary quickly while thou art in the way with him," &c. It exists in some of the northern European nations, Norway especially, where two-thirds of all the disputes are settled in courts of "Reconciliation." \* \* \*

"Avoid, if possible, law suits above everything else. They are a moth which eats up the crop, and often the land itself. Beside, no judgment in a land case would be valid, being a proceeding *in rem*, unless agreed to by both parties—decided by arbitration, or in a court of "Reconciliation."

Appended to the communication, I find the following note :

APPENDIX A—LAWSUITS.

The "Court of Reconciliation," as established in Norway, is thus described by a late American traveler :

"In every School district, the free-holders elect a Justice of the Court of Reconciliation. Every lawsuit must first be brought before this Justice, and by the parties in person, as no lawyer or attorney is allowed to practice in this Court. The parties appear in person and state their mutual complaints and grievances at length, and the Justice carefully notes down all the facts and statements of the plaintiff and defendant, and, after due consideration, endeavors to arrange the matter, and proposes for this purpose, what he considers perfectly just and fair in the premises. If his judgment is accepted, it is immediately entered in the Court above, which is a Court of Record; and if it is appealed from, the case goes up to the District Court upon the evidence already taken in writing, by the Justice of the Court of Reconciliation. No other evidence is admitted. If the terms proposed by the Justice are pronounced to be just and reasonable, the party appealing has to pay the costs and charges of appeal. More than two-thirds of the suits commenced are settled in the Court of Reconciliation, and of the remaining third not settled, not more than one-tenth are ever carried up."

Now, I ask gentlemen what better evidence they want in regard to the operation of this court of conciliation. I ask what higher authority do you want? I will place the authority of Mr. Benton against that of the gentleman from Switzerland, and the gentleman from Clark; and I presume they will not consider that I do them any injustice when I do so.

Mr. NAVE. I am in favor of the establishment of such a court as this, but I am opposed to the section as it has been reported to the Convention, for two reasons. One is that it leaves it discretionary with the Legislature whether they will organize such a court or not; and my second objection is, that it is made optional with the parties whether they will abide by the decision of the court. And next, if we adopt such a provision, we should adopt it in accordance with the sentiment, "agree with thine adversary quickly whilst thou art in the way with him;" and the decision should be final. There should be no appealing to the Supreme Court. If the parties once agree to submit their differences to the court of conciliation, the decision of that court should be a *quies* so far as regards all matters. But if you adopt the section which has been introduced by the gentleman, I undertake to say that it will not be promotive of the interests of the people, but that it will increase litigation—that when a suit has passed through that

court, and one of the parties should be dissatisfied with the decision, an effort will afterwards be made to show that there has been fraud on the part of the conciliators, and in this way the case will never be got rid of until it goes before the Supreme Court. Look at the reports of your Supreme Court; nine-tenths of all the cases that are carried into that court, are such as have been before arbitrators. And if we are here for the purpose of fixing a court of conciliation for the convenience of parties who have matters in difference, why not make the judgment of that court conclusive? Then I propose to amend the amendment of the gentleman from Clark, by substituting the following :

"Tribunals of conciliation shall be established with such powers and duties as may be prescribed by law; and when parties voluntarily submit their matters in difference to such tribunals, the judgment or award of such conciliators shall be final between the parties."

If it be put in such a shape as this, I will vote for it; otherwise I cannot.

Mr. GIBSON inquired whether the amendment of the gentleman from Hendricks was in order.

The PRESIDENT remarked that the amendment was not now in order, as it did not propose to amend the pending amendment. The amendment of the gentleman from Clark was to strike out the word "may," and insert the word "shall."

Mr. FOLEY demanded the previous question.

The demand for the previous question having been seconded, the main question was ordered to be put.

The question being upon the amendment of the gentleman from Clark,

The yeas and nays were demanded and ordered, and, being taken, resulted—yeas 17, nays 97—as follows:

YEAS.—Messrs. Beach, Bright, Chenowith, Dick, Elliott, Frisbie Garvin, Gibson, Gordon, Hitt, Kelso, Miller of Fulton, Morgan, Nave, Pepper of Crawford, Read of Clark, and Robinson—17.

NAYS.—Messrs. Alexander, Ballingall, Beard, Beeson, Biddle, Borden, Bourne, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Gootee, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hogin, Holman, Hovey, Huff, Johnson of Dearborn, Jones, Kent, Kendall of Wabash, Kinley, Logan, Maguire, March, Mather, Mathis, McClelland, McFarland, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mor-



rison of Washington, Mowrer, Murray, Newman, Nofsinger, Owen, Prather, Rariden, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Thomas, Thornton, Trimble, Walpole, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—95.

So the amendment was not adopted.

The question being upon ordering the section to be engrossed for a third reading,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 72, nays 52—as follows:

YEAS.—Messrs. Ballingall, Bascom, Beach, Beeson, Berry, Borden, Bourne, Bowers, Bracken, Bryant, Butler, Chapman, Clark of Hamilton, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Foley, Foster, Garvin, Gootee, Graham of Miami, Gregg, Hall, Hamilton, Hawkins, Hitt, Hogin, Huff, Johnson of D., Jones, Kent, Kendall of Wabash, Kinley, Maguire, March, Mather, Mathis, May, McClelland, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Owen, Pepper of Crawford, Prather, Schoonover, Shoup, Smiley, Smith of Ripley, Steele, Tague, Tannehill, Thornton, Trimble, Walpole, Wiley, Wolfe, and Yocum—72.

NAYS.—Messrs. Alexander, Barbour, Beard, Biddle, Bright, Brookbank, Carr, Carter, Chenoweth, Clark of Tippecanoe, Clements, Coats, Cole, Crawford, Edmonston, Farrow, Fisher, Frisbie, Gibson, Gordon, Haddon, Harbolt, Helm, Helmer, Hendricks, Holman, Hovey, Johnson of O., Kelso, Lockhart, Logan, Miller of Gibson, Morgan, Morrison of Washington, Nave, Newman, Nofsinger, Rariden, Read of Clark, Ritchey, Robinson, Shannon, Sherrod, Sims, Snook, Smith of Scott, Spann, Stevenson, Thomas, Watts, Zenor, and Mr. President—52.

So the section was engrossed for a third reading.

Mr. SMILEY offered an additional section to the effect that every person shall have the right to prosecute or defend his suit by counsel.

The question was taken upon the adoption of the section,

And it was decided in the negative.

Mr. NAVE proposed an additional section, that the commissioners on law reform, to be appointed by the Legislature, should not continue in service more than one year, and shall not receive more than three dollars per day.

I have listened, said Mr. N., to the arguments of gentlemen on this floor, and I am satisfied—very well satisfied—that such commissioners will be authorized to be appointed; and it is important, I think, that we should limit their period of service, and pay. [Cries of “Con-

sent!”] It is for this reason I have offered this section. [Much clamor prevailing in the Hall.] I hope the Convention will hear me for a moment, because I am never in the habit of detaining them very long.

It is argued by gentlemen, and I understand it to be the principle maintained by those who advocate this measure, that we are to go back to the age of the world in which men were accustomed to go into court and make their declaration of grievance *ore tenus*, when all the proceedings were *ore tenus*. [Cries of “Translate! translate! Give us the English!”] When the proceedings before the courts were by word of mouth. Now if this system is to be adopted by us, it is important that these men who are to be appointed commissioners should be so instructed. And it occurs to me that, if our policy be to simplify the law, and lessen the expenses attending its administration, we should begin by restricting the pay, and the time of the continuance in office of these commissioners who are to prepare a code for us.

Now, I wish to say another thing. It appears to me that it is very important, if the law be, as it is stated on this floor to be, that A, having a note under seal, and a note not under seal, and a book account against B, cannot bring one suit for the recovery of all these claims, but must bring three separate suits, I insist that I have not read the law to any good purpose. And if A, in bringing suit against B in a court of equity, fail to set forth that he has no remedy at law, and if this be a sufficient ground of demurrer to his bill, then I confess I have read the law to very little purpose.

It is important, doubtless, that we should have revisors to revise the laws of the State. And, whilst I do not oppose the proposition for the appointment of such revisors, I wish to limit the expense attending the proposed revision. It is for this reason I have offered the proposition which has been read. I offer it in good faith, not for “Buncombe,” but for the country at large. I wish the country not to be imposed upon by these men first doing the work and then making out their bills. I wish to have it understood what compensation they are to receive before they commence their work.

Mr. HAMILTON moved that the section be laid upon the table.

The question being upon the motion of the gentleman from Allen,

The yeas and nays were ordered, and, being taken, were—yeas 77, nays 48—as follows:

YEAS.—Messrs. Alexander, Bascom, Beeson, Berry, Biddle, Borden, Bourne, Bowers, Bright, Bryant, Butler, Carr, Chapman, Chenoweth, Clark of Hamilton, Clements, Coats, Cole, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Hawkins, Helmer,

Hitt, Howe, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, Miller of Gibson, Milligan, Milroy, Mooney, Morrison of Marion, Morrison of Washington, Mowrer, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Read of Monroe, Ritchey, Schoonover, Shoup, Sims, Smith of Scott, Stevenson, Tannehill, Thornton, Wiley, Yocum, Mr. President—77.

**YAYS.**—Messrs. Barbour, Beach, Beard, Bracken, Brookbank, Carter, Clark of Tippecanoe, Colfax, Crawford, Davis of Parke, Dunn of Jefferson, Duzan, Elliott, Fisher, Garvin, Harbolt, Helm, Hendricks, Hogin, Holman, Hovey, Huff, Johnson of Dearborn, Kelso, Mather, Miller of Fulton, Moore, Morgan, Murray, Nave, Prather, Rariden, Read of Clark, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Spann, Steele, Tague, Thomas, Trimble, Walpole, Watts, Wolfe, and Zenor—48.

So the section was laid upon the table.

#### FUTURE AMENDMENTS TO THE CONSTITUTION.

The Convention then took up for consideration the article reported by the committee on "future amendments to the Constitution," on its second reading. The first section is as follows:

"Whenever two-thirds of all the members elected to each branch of the General Assembly shall think it necessary to call a Convention to alter or amend this Constitution, they shall recommend to the electors at the next election of members of the General Assembly, to vote for or against a Convention; and if it shall appear that a majority of all the electors of the State voting for Representatives have voted for a Convention, the General Assembly shall, at their next session, call a Convention for the purpose of revising, altering, or amending this Constitution."

The section having been read,

**Mr. BASCOM** moved to amend in this manner: to strike out the section and insert a substitute to the following effect: That every sixteen years after the adoption of this Constitution, at the general election holden for the election of State officers, a poll shall be opened, at which the qualified electors of the State shall express by vote whether they are in favor of calling a Convention or not; and if a majority are in favor, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide by law for the election of the members of such Convention, to prescribe the number of said members, and the time and place of the meeting of the Convention.

**Mr. MIDROY** moved that the proposed substitute be laid upon the table.

The motion was agreed to,

And the substitute was accordingly laid upon the table.

**Mr. CARR** of Jackson moved that the section be laid upon the table.

The yeas and nays were demanded and ordered, and, being taken, resulted—yeas 66, nays 55—as follows:

**YEAS.**—Messrs. Ballingall, Barbour, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bourne, Bryant, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Colfax, Cookerly, Crumbacker, Davis of Madison, Duzan, Frisbie, Garvin, Gootee, Gordon, Haddon, Hamilton, Helmer, Howe, Johnson of Orange, Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Logan, Mather, Mathis, Miller of Fulton, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Shannon, Smiley, Snook, Spann, Steele, Tague, Thomas, Thornton, Wallace Walpole, Wiley, Yocum, and Mr. President—66.

**YAYS.**—Messrs. Alexander, Beard, Bowers, Bracken, Bright, Butler, Chenowith, Coats, Cole, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Gibson, Graham of Miami, Hall, Harbolt, Hawkins, Helm, Hendricks, Hitt, Hovey, Huff, Johnson of Dearborn, Lockhart, Maguire, March, May, McClelland, Miller of Gibson, Milroy, Owen, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shoup, Sims, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Trimble, Watts, Wolfe, Wunderlich, and Zenor—55.

So the section was laid upon the table.

**Mr. RARIDEN** proposed an additional section, providing that, after 1855, it might be determined by a vote of the people whether the sessions of the Legislature should be changed from biennial to annual.

The question being upon the adoption of the additional section,

On motion by **Mr. READ** of Clark, it was laid upon the table.

The second section of the article was then read. It is as follows:

"**SEC. 2.** Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by two-thirds of all the members elected in each of the two Houses, such proposed amendment or amendments shall be referred to the next session of the General Assembly, and shall be published at least three months previous to the time of holding the next election for members of the House of Representatives; and if, at the next regular session of the General Assembly after said election, a majority of all the members elected in each branch of the General Assembly shall agree to said amendment or amendments, then it shall be their duty to submit the same to the people at the next general election for their



adoption or rejection, in such manner as may be prescribed by law; and if a majority of all the electors voting at said election for members of the House of Representatives shall vote for such amendment or amendments, the same shall become a part of the Constitution. If two or more amendments be submitted, at the same time, they shall be submitted in such manner that the people shall vote for or against each of such amendments separately; and while an amendment or amendments, which has been agreed upon by one General Assembly, is awaiting the action of a succeeding Assembly, or undergoing the final consideration of the people, no additional amendment or amendments shall be proposed."

The question being Shall the section be engrossed for a third reading?

Mr. STEVENSON moved to amend by striking out "two thirds," and inserting "a majority. He would merely observe that all the Constitutions that had been lately adopted by the different States, contained the majority principle. He thought it was the correct principle in all cases. In relation to future amendments to the Constitution, it would be recollected that it requires three years for these amendments to go through the requisite forms, and be perfected, before they become a part of the fundamental law of the land.

Mr. OWEN. I have prepared an amendment I propose to move as a substitute for the section which embodies exactly the same principle as that proposed by the gentleman from Putnam, and it has this additional advantage, that it is not two-thirds as long as the original section.

SEVERAL VOICES. "Read it," "read it."

Mr. OWEN. With the permission of the Convention I will read it. It is as follows:

"Any amendment, or amendments, to this Constitution may be passed in the Senate, or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment, or amendments, shall be entered on their Journal, with the ayes and noes thereon, and referred to the Legislature, to be chosen at the next general election, and if in the Legislature so next chosen, such proposed amendment, or amendments, shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such amendment, or amendments, to the qualified voters of the State, and if a majority of said electors shall ratify the same, such amendment, or amendments shall become a part of this Constitution."

Several matters of detail which are embraced in the original section, and which seem to me to be unnecessary, are omitted in the amendment I propose.

The PRESIDENT. The question will be first on the amendment of the gentleman from Putnam.

Mr. STEVENSON. I accept the proposition of the gentleman from Posey in lieu of the amendment I have offered.

Mr. RITCHEY. As Chairman of the Committee from which the section now before the Convention was reported, it may be proper that I should say a word in support of the proposition that is proposed to be stricken out. It is true, sir, that a majority of the Conventions which have been lately held, have provided that a majority of the members of the Legislature shall be all that is necessary, in order to propose amendments to the Constitution. But, they have not all adopted that principle. The Constitution of Illinois contains a provision similar to that which it is now proposed to strike out.

It provides that before any amendment shall be made in the Constitution of the State, the popular feeling shall be so much in favor of making the amendment that it will produce in the Legislature a vote of two thirds in favor of submitting the proposition to the people. I believe, however, Illinois is the only State, the Constitution of which contains this provision.

The committee thought it might be found rather too easy to obtain a majority of the members of the Legislature in favor of amending the Constitution. We were, therefore, desirous of placing this guard against the too frequent repetition of propositions to amend by requiring two-thirds of the members of the Legislature to vote for such proposition before it was submitted to the popular vote.

After it had been submitted, however, and submitted affirmatively, then it was thought that only a majority of the members of the Legislature should be required to carry it into effect. The provision is only intended as a necessary check upon the too frequent introduction of propositions to change the provisions of the Constitution. If there is anything that should be held sacred, and scrupulously guarded against hasty and inconsiderate changes, it is the fundamental law of the State.

The section which the Convention had laid upon the table is one that is to be found in the Constitution of almost every State in this Union. The committee examined the Constitutions of all the States, and it was found that there was not more than one or two which did not provide for the calling of Conventions as proposed in the first section of this article, and which has just been laid on the table. Every one of them except two or three have made provision for amending their Constitutions by calling Conventions. But this Convention has seen fit to lay the section on the table, and I shall not complain of their having done so, but I would prefer, myself, that the people should have the power to call another Convention to

amend the Constitution—though, perhaps, we have put them out of notion of it—perhaps, after the example we have given them, another will not be called, during the present generation, at all events. While I am in favor of that, I am also in favor of submitting isolated propositions to them, so that the Constitution may be amended in such particulars as they desire without subjecting the people to the inconvenience and expense of calling a State Convention.

In reply to the gentleman from Posey, I will say that I think that he is mistaken when he said his section was so much shorter than the one proposed to be stricken out. It is precisely of the same length, with the exception of the one or two provisions which he considers unnecessary, but which I hold to be necessary.

The gentleman wishes to avoid submitting to the people more than one proposition at a time. Suppose the Legislature should determine to submit general amendments; the question is, shall they be submitted to a collective vote, or shall they be submitted separately? The committee by whom the section was reported, thought it better that the vote should be taken on each separately, and I am still of that opinion, whether the Convention think so or not. And, sir, the section proposed to be stricken out contains another provision, which, in the opinion of the committee—and it is my own opinion, too—is of some importance. It is, that, while any particular amendment or amendments were undergoing consideration, either in the Legislature or before the people, no new amendment shall be proposed. By this means the people will not have bundles of amendments thrust upon them at once. Some pass through one stage of progress, and others through another—some before the Legislature for their action, and some before the people for their ratification or rejection. It appears to me that it is better there should be separate consideration given to each amendment that is proposed to be made in the Constitution.

Mr. NEWMAN. The question of future amendments to the Constitution, is one that the people will look upon with some degree of interest. It is one that we should not allow the public mind to be agitated by every year. It should occur only at stated periods. I am for leaving it to the Legislature to recommend certain changes, and to submit those changes to the electors at stated periods, but not every year. I would not have the country agitated with propositions to amend the organic law year after year. For the purpose of testing the sense of the House, I move to amend the amendment by striking it out, and inserting the following:

“The General Assembly may, at its first session after six years from the adoption of this Constitution, and every ten years thereafter, by a vote of three-fifths of each branch thereof, re-

commend to the electors of the State any alteration or amendment to this Constitution, and provide for submitting any such alteration or amendment to the vote of such electors; and if a majority of such electors vote in favor of such alteration or amendment, the same shall be adopted and form a part of the Constitution.”

The reason why I have fixed the period for commencing to propose such amendments at six years after the adoption of the Constitution, is this: that we may, by possibility, omit to fix something in the Constitution, and in that case ten years should not be allowed to elapse before the omission be supplied. Indeed, I am not sure that it would not be better to say four years instead of six, so that we may have an opportunity of testing the Constitution, and ascertaining whether there be any defects occasioned by omission or mistake, and that we may remedy them without waiting for the lapse of ten years. But, after that, it does seem to me that every ten years will be often enough to agitate the public mind on the subject of amendments to the fundamental law of the land. This will be sufficiently often in order to keep progress with the pace and improvement of the age in the science of government. It will enable the Legislature to call the attention of the people at certain periods to the amendment of the Constitution. Those amendments will be discussed by the Legislature, and then submitted to the people for their adoption or rejection. There will be then, a healthy and matured public opinion on the subject; and when such amendments, thus matured, are adopted, the affairs of the country will progress in a suitable manner; and the country will not be agitated or disturbed in each successive year, with questions about the amendment of the Constitution. It seems to me, therefore, that the better course is to fix stated periods, and have them at least sufficiently wide apart to let such amendments as may be desired, be well matured before they are adopted.

Mr. OWEN. I think, sir, that it is desirable that there should not be too great instability in regard to our Constitution. That is quite true. But now let us see how the gentleman from Wayne proposes to remedy this. He prescribes a certain period of time when—and when alone—amendments shall be submitted. Now, sir, if we have the right to fix those periods at ten years, we have an equal right to fix them at twenty or sixty years apart. We may say that, for sixty years no amendment shall be submitted, no matter what inconveniences may be experienced in regard to some slight blunder that we may have committed here. No matter what may be the result of such blunders, we must wait all that time before it can be altered. Sir, I do not believe that any practical difficulty will result if the matter be left open; if we impose no restrictions in regard to future amendments. I do not think it is too great a check to require that amendments shall be submitted at two Leg-



islatures. I think such a course would operate more favorably than to have certain stated periods for proposing amendments.

Mr. KELSO. If I am to choose between the two propositions, I prefer to vote for that which has been introduced by the gentleman from Posey, because he manifests a better understanding of the necessities of the people than the gentleman from Wayne (Mr. Newman). And, sir, I will undertake to predict that for the first six years, every year the Legislature will be overwhelmed with applications to amend this Constitution which we have had so much pains in framing, if the people ever should adopt it, a thing about which I am not at all certain. And, I wish to say now to those who desire that it should be adopted, that they ought to vote for the proposition of the gentleman from Posey, for I believe, and from all the evidences around me, I am strengthened in the belief, that if there be not some easy path pointed out by which the people may have the means afforded of having amendments made to the Constitution, they will, in justice to themselves, and in the exercise of their good sense, and as a rebuke to this Convention, vote the Constitution down. Now, I say, leave the road open; make it clear and plain; make it as smooth and as easy as possible for the people to amend the Constitution, and make it as they wanted us to make it when they sent us here. They may then adopt it. Gentlemen have done too much [Confusion and laughter]. Gentlemen may laugh and chuckle over it, but when they come to tender their services to come back and amend the Constitution again, they will find themselves slightly mistaken. [Cries of "Consent, consent."]

Now, I say, I think the proposition of the gentleman from Posey is the better one of the two, although if the proposition of the chairman of the committee had been carried out, with the amendment he desired to make to it, it would perhaps have been preferable, which, together with the section now offered, would have made the provision complete, and we should have had the action of two successive Legislatures, as well as of the people, in relation to any amendment hereafter to be made in the Constitution.

The question being on the amendment to the amendment—

Mr. NEWMAN. If no other gentleman desires to speak, I have a few words to say in reference to the amendment which I have offered. It proposes that after six years there may be a vote of each branch of the Legislature, recommending an amendment to the Constitution, if the Constitution be adopted; and that every ten years thereafter a like course may be pursued. The object of fixing particular periods for this purpose is this: if you allow the question of amending the Constitution to be agitated every year before the Legislature, you might as well authorize them to call a Convention for

the purpose of making amendments, for it would occasion less inconvenience and expense to hold Conventions frequently, than it would to permit the continual agitation of the question before the Legislature.

It will be as certain as the return of the seasons, that propositions for amending the Constitution will consume the time of the Legislature, session after session. The time of the Legislature will be spent, and the public money will be spent in this way, without attaining any good. But if you have stated periods fixed, then you will only have the consumption of time and the attendant agitation at those stated periods. And, after that period has passed by, the public mind will settle down into its accustomed tranquility, and so remain until the arrival of the next stated period for making further amendments. In the mean time, the Legislature will attend to its appropriate duties, without being engaged day after day in agitating the question of amending the Constitution, as they would be if you leave the matter open for them to act upon year after year. It may be that ten years is too long an interval. I think not. The matter, however, is subject to amendment. If ten years be considered too long a period, the words can be stricken out and six years inserted in lieu thereof. We may also adopt a provision that at stated periods the people may call a Convention to revise the whole instrument.

Mr. STEELE. I have a few words to say on this subject, for I view it as being one of the most important subjects which it is the duty of this Convention to consider. The manner in which we have heretofore amended our Constitution, and the proper mode of amending it hereafter, are questions that have been a good deal discussed in my county. My opponent in the canvass took the ground that the gentleman from Wayne has taken in regard to agitating the public mind. I then said, and say now, that I have no inclination whatever to restrict the power of the people to amend the Constitution whenever they may see proper to do so; that is, whenever it may be the clearly expressed will of the majority. I have no fears about the agitation of the public mind. I think it accords with the doctrines of our free government to say that the public mind should always be watchful of the public interest. If the public mind be not competent to take care of the public interest, so far as the supreme law of the land is concerned, this Constitution is not competent. [Cries of "Consent! Consent!"] This being my opinion, I go directly for the proposition of the gentleman from Posey.

All the difference between the views of that gentleman and my own in regard to this matter, is simply this: It will be recollected that I introduced a resolution in the early part of the session, declaring it was proper that it should be in the power of the Legislature, when pe-

tioned by a majority of the voters of the State, to propose such amendments to the Constitution as in their wisdom they might deem necessary, and submit them to the people for ratification. We have gone to a considerable length in placing restrictions upon the Legislature, and the people themselves; and if you put in this additional restriction, it will be a determining point with me in governing my vote upon the final adoption of the Constitution. If we should find that there is an imperfection still, after all our efforts to make it perfect, I desire that it shall be within the reach of the people to remedy that imperfection, either by striking out something contained in the Constitution or by inserting something new. Why is it that we should attach so much weight to the idea of the inviolability of our fundamental law? If it contain errors shall we not correct them? If it sanction abuses are we to be prevented from correcting those abuses, through our veneration for established usages? Such a doctrine is not consistent with our theory of government. We live in an age of progress. Have gentlemen so great a reverence for antiquity that every change is to be prohibited? The very purpose for which we were sent here was to make improvements in our system of government, to avail ourselves of all the lights which the experience of other States and of our own furnishes us, in order to make our organic law as perfect as it is possible to make it, and as consistent with the theory and practice of free government as it is in our power to do. But when we have done all this, shall we say that we have arrived at the farthest point in the progress of improvement—that no farther advance can be made—that we have attained perfection—that there will hereafter be no necessity for alteration—that we are to remain stationary and seek no further advance in the science of government? It appears to me that gentlemen are assuming for their work a degree of merit to which it is not, perhaps, fully entitled.

I say, sir, I shall go for the amendment of the gentleman from Posey. It is better adapted to the spirit of our institutions, and far more in consonance with the feelings of the American people than any other.

Mr. PETTIT. I shall not detain the Convention but for a moment. I doubt the propriety of putting any provision of this kind into the Constitution. I hold it is the right of the people, at any time, to assemble in Convention and to make for themselves or alter their fundamental or paramount law. It is idle for us to say that the Constitution shall not be amended, except at certain periods. You may as well say it shall not be amended for fifty years, as to say it shall not be amended for five years. We do not know what exigencies may arise which will require a change in the fundamental law. It is idle for us to attempt to deprive the people of the power to make such changes. We

cannot do it; it is not in the nature of things. We may say we will have this rule for our guide, and so long as we choose to abide by it it will be our rule of action, but no longer. So soon as we abrogate or abandon it, just so soon it ceases to be our guide.

But although I oppose putting anything into the Constitution on this subject, and although my views in regard to it may be considered revolutionary, in order that all things may be done "decently and in order," as St. Paul says to Timothy, [laughter, and boisterous applause,] and to comply with public opinion—with the public expectation on this subject—I will propose—if the present proposition be voted down—the following:

"The Legislature may, at its regular session, call a Convention to amend or alter the Constitution."

Now that is all I think we ought to put into the Constitution. I am not one of those who believe that every man in this Convention is to go home disgraced and repudiated—there will, in my opinion, be some exceptions to the rule, at any rate—I believe that the masses of the people will see that we have labored assiduously day after day to put wholesome provisions in the Constitution, to save the State from rash and imprudent legislation, and to secure order and establish the authority of the State. Those who have thus labored, I doubt not, will meet the commendation they deserve; they will have lost nothing by their labor. Nor am I of opinion, sir, that the Convention has become so odious that the people will refuse to call another, or that they will be willing to suffer oppression, or wrong, rather than incur the expense of calling another Convention. Sir, if I believed that such was the feeling of the people of Indiana, I should hold that they were unworthy of an efficient Constitution. What will this Constitution cost the voters of the State? The cost will not exceed fifty cents to each voter—it will not exceed ten cents for every citizen. What is that in comparison with the advantage of the security to persons and property, to be derived from this instrument? Ten cents, sir, in a long round of years! What burthen is it that the people should pay ten cents apiece in order that their liberties and their property may be secured by constitutional laws? They who are reluctant to pay this price for such benefits, ought not to have the advantages of having laws administered, and order preserved, but they ought to return to savage life. If you enjoy the benefits of civilization, you must make a corresponding sacrifice of time and money. Sir, I have no doubt that the Constitution we shall present to the people will be the best Constitution that has been framed by any State in the Union—I believe it will be so regarded by them—and he who thinks to make for himself popularity by opposing it, is digging his own political grave. Yes,



sir, it will sink him so low that the hand of resurrection shall never be able to reach him. [Applause.]

Mr. RARIDEN. In regard to amending the fundamental law of the State, I suggest to gentlemen whether it will not better accord with convenience and economy to make provision in the Constitution for amending it if amendment be necessary; in fact, to provide a convenient mode for the expression of public sentiment in regard to the improvements hereafter to be made in the organic law.

I do not think the Constitution we are forming will be entirely free from objections; but it appears to me, it would perhaps occasion inconvenience, that there should be a provision authorizing the people to call a Convention at short intervals. I suggest that when the work of this body comes to be acted upon, and if it should be found to be defective, whether it is not the part of wisdom to provide a mode by which it may be amended, without the expense of calling a Convention. The proposition of any of the gentlemen will answer the purpose as well as the original section. For my part, I should prefer to see the instrument tested from the time of its going into operation until about the year 1855. When we have had five years' experience of its practical working, I would allow amendments to be proposed and every five years thereafter. This would avoid the inconvenience of agitating the subject every year, and it would be the means of making the instrument as perfect as it is possible to make it.

Mr. BRACKEN demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being first taken upon the amendment of the gentleman from Wayne,

It was decided in the negative.

So the amendment of the gentleman from Wayne was not adopted.

The question then being upon the adoption of the amendment of the gentleman from Putnam, as amended by the proposition of the gentleman from Posey, (Mr. Owen,) and which had been accepted by him,

The yeas and nays were demanded and ordered, and being taken, there were—yeas 78, nays 48—as follows:

YEAS.—Messrs. Alexander, Ballingall, Barbour, Bascom, Beach, Beard, Biddle, Blythe, Bourne, Bowers, Bryant, Butler, Carr, Carter, Chenoweth, Clark of Hamilton, Clements, Coats, Cole, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Dunn of Perry, Duzan, Elliott, Farrow, Fisher, Frisbie, Gootee, Gordon, Graham of Miami, Graham of Warlick, Hall, Hamilton, Harbolt, Hogin, Holman, Hovey, Huff, Jones, Kelso, Kent, Kinley, Lockhart, Maguire, Mather, McClelland, McFarland,

Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Rariden, Schoonover, Shannon, Sims, Snook, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Wallace, Walpole, Wolfe, Yocum, Zenor, and Mr. President—78.

NAYS.—Messrs. Beeson, Barry, Borden, Bracken, Brookbank, Chapman, Clark of Tippecanoe, Colfax, Crawford, Dick, Dobson, Dunn of Jefferson, Edmonston, Foley, Garvin, Haddon, Hawkins, Helmer, Hendricks, Hitt, Howe, Johnson of Dearborn, Johnson of Orange, Kendall of Wabash, Logan, March, May, Miller of Gibson, Morgan, Morrison of Washington, Newman, Niles, Nofsinger, Pettit, Read of Clark, Read of Monroe, Ritchey, Robinson, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Spann, Trimby, Watts, Wiley, and Wunderlich—48.

So the amendment of the gentleman from Putnam was adopted.

The question recurred upon the adoption of the section, as amended.

The section, as amended, was then adopted.

Mr. KELSO proposed an additional section, to the effect that this article shall be submitted to a separate vote of the people.

I have (said Mr. K.) offered this section in good faith; and I suppose as soon as some other gentlemen get the floor, a motion will be made to lay it on the table, and that it will be laid there. [Cries of "Consent, consent."] But, before it is laid there, I beg the indulgence of the Convention, while I make a few remarks. It has been intimated, by one of the Gods of Indiana, that those who oppose the adoption of this Constitution, are digging their own graves. Sir, some of us may live to see him politically buried yet; it is not at all impossible.

Mr. PETTIT. Yes, sir, it is utterly impossible. [Laughter.]

Mr. KELSO. Now the new Constitution may or may not be adopted by the people; that is a question which we should not be too certain about, in our prophecies. I for one think it ought not to be adopted, and I have so much confidence in the good sense of the people of Indiana, that I think they will not adopt it. But if the Convention will adopt the section I have proposed, and make it a part of the Constitution, so that this article may be submitted to the people as a separate proposition, if they adopt that article, and choose to reject the balance of the Constitution, then the matter will be open for the action of the Legislature, and they may make such amendments as the people desired when they sent us here. They may change the time of meeting of the Legislature from annual to biennial—they may divert the seminary fund, and give it to common schools, and they may make other important amendments; among others, you will find the number of Senators and Representatives reduced.

If they choose, on the contrary, to adopt the Constitution, no harm is done by my proposition. It merely affords an opportunity for the people to pass upon this matter, and do themselves justice—to remove this heap of restrictions that we are trying to impose upon them, and give them an opportunity to amend the Constitution as they wanted to have it amended, but not as we have done it.

Mr. BRACKEN moved that the section be laid upon the table.

Mr. KELSO demanded the yeas and nays.

Pending the question,

On motion,

The Convention adjourned.

### Mr. BORDEN'S REMARKS

#### *On Banking and Currency.*

[The following remarks were delivered on various occasions, and are now published in a collective form.]

Mr. BORDEN. Mr. President, I have no apology to make when I ask the attention of the Convention, while I offer some remarks upon this important subject, differing as I do so materially with one of my colleagues in the views which he has expressed on this floor. I may with justice say, that the question of banking and currency demands at our hands the most mature and deliberate consideration. There is no question more intimately connected with the business and interests of the community than this. Indeed some are, and perhaps very properly, disposed to consider this the great question of the session. I find from those who have come up here from various parts of the State, that our constituents are looking with very deep interest to our proceedings on this subject. It seems that they are expecting from us some action that will for many years settle the policy of Indiana upon the subject of banking and currency. I think, then, that it is our duty, in the treatment of this question, to discard every interested consideration, and to sacrifice our personal preferences and individual views upon the altar of the public good, and endeavor to adopt such a system as will best promote the welfare of the great people who have sent us up here to frame the organic law of the State.

Sir, the question has been asked me frequently, since I have been here, "whether or not I was friendly to banks?" and I have as uniformly replied that I was not only not opposed, but rather favorably inclined to a well regulated and properly restricted system of banking. I am disposed to view banks (when properly regulated) as among the many excellent institutions which so peculiarly characterize modern society and the present order of things, and contrast so favorably with the institutions of an earlier era. For one, I should

as soon think of dispensing with our splendid steam boats on the Ohio and Mississippi rivers, and resorting to the old "broad-horn" flat boats, for the purpose of navigating those waters, as to dispense with banks, and resort to the state of things that existed in Europe before their introduction there.

I presume this Convention will readily excuse me if I trespass upon their patience in giving even a cursory account of the rise and progress of banks, from the first establishment of these institutions in Italy, by the Jews and Lombard merchants, down to the introduction of the new banking system lately adopted in New York, and which many are disposed to consider so perfect that beyond it nothing is to be hoped for or desired. But, suffice it to say, that banking in some shape or form now exists in every civilized country in the world, and will probably, in my opinion, from the very organization of society, continue to exist in our own country also.

Banks, if I understand the matter aright, are of three kinds: banks of deposit, banks of discount, and banks of circulation or issue. Now, sir, the bank of deposit simply is such a bank as the savings' banks which have existed for many years in Europe, particularly in Scotland, and have for some years been established in many cities in the East. I am happy to say that these institutions are constantly on the increase, and I hope to see the time when they will be extensively established in our own State. The object of this kind of banks is simply to receive and invest the savings of the day laborer. Indeed I recollect very well, at the time the arrangement was made with our bondholders, that one of the strongest appeals to our magnanimity and integrity came from one of these institutions in New York, stating that they had received and invested the sum of \$175,000 of the savings of the day laborers, and asking us to make provision for the payment of it.

The next kind of banks, sir, are banks of discount. These institutions are usually established by capitalists, men who have acquired property and are disposed to retire from active business, yet who will take stock in banks of this kind as a means of making money, entrusting the management of the concern to younger and more active business men. Banks of this kind usually buy and sell bills of exchange, and discount the paper of business men at short dates. It is necessary to say, however, that banks of deposit and of discount are most usually in this country united in the same institution; they are in fact with us so many trust companies—that is, trust companies for the men of wealth who have invested their capital in these establishments. These banks receive money on deposit, allowing interest on the deposit at a less rate than that for which they discount the paper of merchants, traders, manufacturers, and others.



When I say, sir, that I would desire to see banks established among us, I of course mean banks similar to the "Savings' Banks." I desire to see their introduction into Indiana, because I think they would cultivate among the people, as they have in Scotland and elsewhere, more general habits of economy and frugality. They would tend to bring all the ready money of the country into active use, and thus stimulate industry and add to the real wealth of the State, instead of this capital being permitted to lie dormant and unproductive in the tills and chests of the people.

Nothing, sir, has tended in Scotland to make every dollar of money so active as this system of allowing a small compensation for the money deposited with the banks; and I believe that the introduction of the general banking system into our State will be productive of the same results here as it has been elsewhere.

And, sir, why a general law should not be passed, by which persons might associate as bankers, receive money on deposit, buy and sell bills of exchange, and discount bills and notes, I cannot perceive, unless it be to secure a more perfect monopoly to the State Bank. In my humble opinion, the act passed in January, 1841, conferring the exclusive privilege of banking in this State upon the State Bank, should be repealed. All admit that credit is necessary to commerce; hence, the discounting of the paper of business men, and especially of small traders, is a matter of the greatest importance. Besides, when the business is open alike to all, it creates a healthy competition that must necessarily result to the benefit of the public. But chartered banks, especially State Banks, are too unwieldy, and their rules are too fixed and unalterable, to afford the necessary accommodation to business men of small means. This kind of banks will not alter their rates of interest, nor will they usually change the length of time at which they discount paper to suit the convenience of small traders. But under a general system, individual banks and bankers are, in consequence of the great competition they have to meet, induced to lengthen or shorten their accommodations in order to suit the convenience of their customers, the state of the money market, and the wants of the business men with whom they deal. No one, I suppose, sir, will deny the necessity of the establishment of banks of this kind, as they will not only change the rate of interest to suit the situation of the money market, but will also discount a small note or bill as readily—and perhaps give it the preference—as a large one. One of the great evils resulting from the mode of doing business in the branches of our State Bank, is, that men of small means cannot easily borrow of them; the branches are not disposed generally to engage in business transactions, unless they be to a considerable amount. I am favorably in-

clined to a general banking system in preference to a State Bank system, because it will not only be productive of more good, but will accommodate a greater number of the community; and it is, therefore, more consistent with my notions of liberty and equality than the present system.

I come now, sir, to speak of another kind of banks, and that is, of banks of circulation—in other words, banks in whom the government confides that great power and delicate trust, of making a currency; in fact, it means not to coin gold and silver to circulate and form a standard of value, but simply to manufacture money out of rags, and to increase or decrease the quantity at their sovereign will and pleasure. It is to this description of banks that I always have been, am now, and no doubt ever will be uncompromisingly opposed. Gentlemen may smile when I speak of banks of circulation as separate from banks of deposit and discount. But allow me to say to them that such banks do exist. I think, sir, it was in 1844, that the currency or issue department of the Bank of England was entirely separated from the discount branch of the establishment. In point of fact there are two banks now established in that country under the name of the Bank of England. The business of manufacturing paper money is united to the mint, and is now entirely under the control of the officers of the government; while the deposit and discount business is vested in the Governor and Directors of the Bank of England. But in this country, we have been so long in the habit of uniting the whole business in the one institution, that most persons seem to think they are one and inseparable, and that one cannot exist without the other. It is full time, however, that the public mind should be taught to consider them as separate and distinct forms of business. But I have not time to dwell on this part of the subject.

I say, sir, I am opposed to banks that are authorized to manufacture and put in circulation paper as money; of my reasons, but one or two have I time now to mention. The first objection I have to the system is for the reason that in my opinion it is an open violation of the Constitution of the United States. I have read the history of my country to no purpose, if it be not found that it was the intention of the framers of the Constitution of the United States to fix upon a permanent standard of value, which should be of gold and silver, and forever to forbid the circulation of paper money in the country.

When we recollect the distresses which the use of paper money inflicted upon the country, not only prior to and during the revolutionary war, but up to the formation of the Federal Constitution, should we be surprised at the dislike which those great patriots exhibited to the paper money system? One of the ablest men

in the Convention which formed the Constitution of the United States—I allude to the late Chief Justice Ellsworth—when speaking on this subject, used this emphatic language: “Now is the favorable moment to shut and bar the door against paper money.” These great and good men had witnessed the evil influence of paper money, not only upon the business transactions of the community, but what was of much more importance in their view, they saw its dire effect upon the morals of the country. Hence, they expressly provided in the Constitution of the United States, that Congress should never make anything but gold and silver a legal tender, and prohibited the States not only from coining money, but expressly forbade them to issue a paper circulation. To the general government, there is exclusively committed the delicate trust of coining money, and of regulating the value of foreign coins. While the Federal Constitution was under consideration in the several States, they all admitted that this provision was a sovereign cure for the acknowledged evils of paper money. The Father of his Country, in a letter to a friend says: “I do not scruple to declare, that if I had a voice in your council, it would have been given decidedly against a paper circulation, on the general principle of its utility as a representative, and the necessity of it as a medium. To assign the reasons for this, would be as unnecessary as tedious. The ground has been so often trod, that hardly a place remains untouched. In a word, the necessity arising from the want of specie, is represented as greater than it really is. I contend that it is by the substance, and not with the shadow of a thing, that we are to be benefited.”

The celebrated Fisher Ames, who first distinguished himself in the Convention which assembled in Massachusetts in 1788, to ratify or reject the Constitution of the United States, said: “In spite of national beggary, paper money has still its advocates, and probably its martyrs. Never did experience more clearly demonstrate the iniquity of any system, than it has done of this.” He then goes on to say, that in defiance of demonstrations, parties still continue to manufacture paper money.

I could quote volumes of such extracts, to show that the framers of the Constitution resisted the introduction of the paper money system into this country, and it was not until they found that the States were disregarding, as they did, the Constitution of the Union, and were doing indirectly what they were expressly forbidden to do, by incorporating banks, with the power to put in circulation paper to represent money, that they reluctantly consented to establish a national bank, with the vain hope that it would regulate the local banks. The national bank, however, contrary to their anticipations, instead of acting as a restraint, only ad-

ded fuel to the fire, and tended very much to the multiplication of local banks, and led to those monetary troubles which so much disturbed business transactions, at the close of the last century.

I cannot but think, sir, that our forefathers were disposed to consider banking (I mean, of course, banking properly so called) as a branch of trade which they designed should be left to the States, and with which the general government should have nothing to do. I have no doubt that they designed to leave it open to all, under such restrictions and regulations as the States, in their wisdom, might impose. But it is very evident they considered the subject of currency as an entirely different matter, and intended to commit that subject exclusively to the general government. I am satisfied they never intended that the States themselves, or corporations created by them, or individuals under the laws of the States, should either directly or indirectly interfere with this great question—currency.

Then, sir, constitutional scruples, if no other reasons operated, would deter me from investing the Legislature with the power of authorizing any person or association of persons to put paper in circulation as money. I am willing, however, to give the Legislature power to pass a general law on the subject of banking, provided they shall first submit it to the people for their ratification or rejection. I am induced to do this because the courts have virtually recognized the power in a State to authorize the issue of paper money; and although their reasoning has not satisfied my mind, still if such a bill were sanctioned by a direct vote of the people, I am willing to submit. But, sir, I cannot give a vote here that will directly authorize the Legislature, without the consent of the people, to create a banking system.

But, sir, I am also opposed to the issue of paper money to take the place of specie, for another reason, and that is, that while this power is vested in any man, or set of men, it must and will, from the very nature of things, be abused; and tremendous revulsions in trade and in the financial condition of the country will be the consequence. Sir, we may throw about the exercise of this power what guards and checks and restraints, we please, still the system itself is at fault: and, in my opinion, no legislative enactments will ever be able to restrain it from abuse. Sir, the effort has been made to do it but has failed. Remodel it as often as you please, while the evil principle that confers on individuals, or associations, the right to manufacture and put into circulation, paper for money, remains in the system the same fatal consequences will always follow its introduction into any country. But, sir, let me again repeat that it is against the system of paper circulating for money, and not against a well



regulated system of banking that all my objections lie.

It is proper, on the present occasion, that we should recall to our recollection the results of the paper system in our country, for I have not time to notice, even incidentally, its effects in the mother country.

In the year 1817, according to the report of Mr. Crawford, then Secretary of the Treasury, the amount of paper currency in the country was about \$110,000,000. In 1822 it was reduced down to \$44,000,000, being a reduction of more than one half! I, of course, pass over, without notice, for want of time, several other revulsions of less notoriety, previous and subsequent to that period, and mention this instance in consequence of the well authenticated facts connected with the expansion and contraction of our currency at that time. To portray the evils caused by these monetary revulsions, occurring, too, as they did when the old bank of the United States was in the successful tide of its prosperity, I shall not undertake. It has been done so ably by the greatest of our living statesmen and writers, that I will ask the indulgence of the Convention to be allowed to read a short extract from his speech on that subject. It may be found in Niles' Register, vol. 26, page 378.

"In casting our eyes around us, the most prominent circumstance which fixes our attention, and challenges our regret, is the general distress which pervades the whole country. It is forced upon us by numerous facts, of the most incontestible character. It is indicated by the diminished exports of native produce—by the depressed condition of our foreign navigation—by our diminished commerce—by successive unthreshed crops of grain, perishing in our barns and yards for the want of a market—by the alarming diminution of the circulating medium—by the enormous bankruptcies, not limited to the trading classes, but extending to all orders of society—by the universal complaint of the want of employment and of the consequent reduction of the wages of labor—by the ravenous pursuit after public situations, not for the sake of their honors, and the performance of their public duties, but as a means of private subsistence by the reluctant resort to the perilous use of paper money—by the intervention of legislation in the delicate relations of debtor and creditor, and, above all, by the low and depressed state of almost every description of property in the country, which has, on an average, sunk not less than fifty per cent. within a few years.

The truth is, that no class of society suffers more in the present stagnation of business than the agricultural class. That is the necessary effect of the depression of agriculture, the principal business of the community. The wages of able bodied men vary from five to eight dollars a month; and such has been the want of

employment in some parts of the Union, that instances have not been unfrequent of men working for a mere subsistence. If the wages of labor here and in England are compared, they will be found not to be essentially different."

If, sir, there be one axiom in political economy more firmly settled than another, it is that the value of money, whether it consist of specie or paper, is depreciated in exact proportion to the increase of its quantity in any given state of the demand for it. If, for example, the banks in 1837 doubled the quantity of the circulating medium by their successive issues, they thus produced a general degradation in the whole mass of the currency, including gold and silver, proportioned to the redundancy of the issue, independent of the relative depreciation of bank paper at different places, as compared with specie. The argument of the gentleman from Cass (Mr. Biddle) was conclusive, to my mind, that the whole property of the country is affected precisely as the whole quantity of bank notes is increased or decreased. Keeping this idea in view, let us look at the history of banking in our country at another period. I have said that the paper currency of the United States was reduced from \$110,000,000, in 1817, down to about \$44,000,000, in 1822. Well, sir, the paper currency gradually rose again, until in 1837, it had expanded to the enormous amount of more than \$150,000,000, being an increase from 1822, of about a hundred and six to a hundred and ten millions! Now, sir, allowing for the probable increase of the business of the country from 1822 until 1837, all, I think, will admit that the increase of currency was far beyond what the legitimate demands of commerce required in the intervening period. What was the result of this enormous addition to the circulating medium of the country? It was an unnatural rise in the price of property, a spirit of speculation and trading little better than gambling, which has had few parallels in the world's history, and which finally resulted in repudiation by some of the States, and the passage of a general bankrupt law. And yet, sir, this paper circulation which I have stated rose to \$150,000,000 in fifteen years, was suddenly reduced down in about seven years, to little over fifty-eight or sixty millions, being a reduction of near a hundred millions. These events, sir, are yet fresh in our recollection; and it is, perhaps, unnecessary that I should further advert to them. But I think that the whole of the circumstances connected with the history of that period have fully justified another of our most distinguished public men in saying, "of all the contrivances for cheating the laboring class of mankind, no one has been more effectual than that which deludes them with paper money. This is the most effectual of inventions to fertilize the rich man's field by the sweat of the poor man's brow. Ordinarily, tyranny, persecution, and excessive

taxation bear lightly on the happiness of the community, compared with fraudulent currencies, and the robberies committed by paper issues. Our own history has recorded for our instruction, enough, and more than enough, of the demoralizing tendencies, the injustice, and the intolerable oppression on the virtuous and well disposed, of a degraded paper currency authorized by law, or any way countenanced by government."

Before I leave this subject, I desire, sir, to direct the attention of the Convention to another fact. I hold in my hand "Hunt's Merchant's Magazine," for the month of December, 1850, a work universally respected for its accuracy in statistical information. The writer says that the returns show the following figures as the amount of notes in circulation and specie held by all the banks in Great Britain, France, and the United States, reduced to dollars. I shall not trouble the Convention with the statistics of the French and British Banks, but merely advert to what is said about banks in the United States. He says, in substance, that in all of the banks in this country, there are in round numbers, forty-eight millions of specie; and that their paper in circulation amounts to one hundred and thirty-five millions of dollars. Thus, sir, we can see that there has been a rise in the currency, in, comparatively speaking, a few years, of over seventy millions of dollars; and, in my opinion, sir, the currency will go on increasing for some years to come; but no doubt we will have another revulsion, such as we have twice experienced within the last thirty years. I cannot but think that, in forming any system of banking and currency for the people of this State, we ought to constantly bear these facts in mind.

In the course of the arguments which have taken place upon this subject, it was asked, "inasmuch as all, or nearly all, seem to admit that paper money of some kind will continue to be the chief circulating medium for many years, in this and other States of the Union, why should we not continue the State Bank, or one similar to it; and why should we lay it aside and adopt a general banking system that would be open to all?" Every one must answer this question for himself. So far as I am concerned, I have only to say that, if the power to coin, or rather make money, (for, practically, it is really nothing else,) is to be taken from the General Government—where, I contend, it was wisely placed by our forefathers—and conferred upon individuals, whether united in a corporation or not, then, in the language of an amendment we have already adopted, let it be open alike to all the people of Indiana on the same conditions. For, if banking, as is now contended, including the power to create a currency, be only a branch of trade, then, sir, it surely should cease to be a MONOPOLY. Sir, the banking system in most of the States of

this Union—and in none so much as in our own—is a most odious monopoly—a system more in accordance, in my humble opinion, with the spirit and institutions of a monarchy, where monopolies are not only tolerated, but encouraged, than adapted to the requirements of a free people. How can we, after having inserted in our Constitution a provision prohibiting monopolies, and saying that no greater privileges shall be granted to one than shall be granted to another under similar circumstances, then turn immediately around, and in the same breath create a banking system, and invest it, not only with the exclusive power to create a paper currency, and thus increase or decrease the standard of value at their pleasure, but also confer upon them the exclusive monopoly of banking in this State? Can we, with any degree of consistency, extend such great and important privileges to one class of our citizens, and refuse them to others possessing equal claims?

Suppose, Mr. President, for the sake of argument, we admit that the American banking system must be continued, and paper money forever occupy the place of specie, must we necessarily continue the close corporation banking system of this State? The present State Bank is a system that admits of no competition or equality of privileges. I know it has been contended in this debate that, as but few have money to go into banking, under any system that might be adopted, therefore, it must practically result in a monopoly under whatever system we may establish. Let us examine this argument for a moment. It is not every man in Indiana who is able to own a carriage and a pair of carriage horses; riding in a carriage, then, is, according to this argument, a monopoly! If the Legislature should invest some five hundred persons with the exclusive right of riding in their carriages, then there might be some truth in the comparison. But the argument is such a one as does not need a reply. Every one must see that it is not correct in either theory or fact.

I do not, however, wish to be misunderstood. I do not pretend to say that, if you adopt the free banking system, such as has existed in New York, it will prove all that has been contended for it by its friends on this floor. My opinion, however, is, that, compared with our present State Bank, it is much to be preferred. But adopt what system you may, it is a mere choice between evils. I am too well aware, sir, that it is a characteristic feature of banks, under any and all systems, to be partial and exclusive in their operations, dispensing favors, or imposing hardships, as may best promote their interests; and hence, for one, I am not disposed to contend very strenuously for either system. Abuses will be the natural fruit which must spring from the discretionary power that will be invested in the managers, under any kind of regulations that you can adopt. The exercise



of this power, and the partiality and favoritism which grows up around all these institutions, would cause it to be felt in every business community in which they are located. If, under even a free banking system, this evil will be felt, how much more does it operate when the business is a perfect monopoly, as it is in the State Bank? The fact is, sir, that the whole banking power is used in most of the branches in our State, for the benefit of the few to the exclusion of the many. No one will deny, I presume, that the tendency of the present system has been to increase the wealth of the favored few who have access to the bank and the means of influencing the directors and officers of the branches. Banks will have their favorites; those who control them are but men, with human sympathies, frailties and partialities. They will first assist their particular friends to the extent of their wants; and they will do this from personal and not from public considerations. And let me observe that it is in this way the monopoly feature of the present system is always odiously manifesting itself, and particularly in time of the greatest need. A public institution, created almost exclusively with the money of the State, should disregard all selfish objects and considerations. It is a fact too well known to be denied, that most of the branches of our State Bank, at the points at which they have been located, have their favorite customers, who are accommodated at all times.

Let me ask whether or not affording every accommodation to a few speculators and refusing it to the regular business merchant or mechanic, does not amount to a corporate monopoly? But even in case they did treat all alike in regard to accommodation, I should still oppose the State Bank system, because, as I have already stated, it is a monopoly. Not only this institution, but all other corporations lie open to the great objection, that the powers granted to them are taken from the mass of the residuary powers properly belonging to *all*, and are conferred upon a *few*. The principle of equal rights lies at the foundation of our institutions, and is, in truth, the corner stone of our entire system of government, both State and national.

What is the object of a bank charter? If I understand it correctly, it is to enable men to lend their credit at interest—or in other words to draw interest on what they owe. This is in effect the operation of the system. And, when any government not only grants such extraordinary powers as these, but also invests the persons upon whom these powers are bestowed, with other important privileges which are not enjoyed by the great body of the people, it is a violation of the principles of our government, because it restrains others from pursuing a certain branch of business which it

is their natural right to do, and which, in my mind, there can be no excuse for violating. I have never been able to bring myself to believe that any system was correct which shuts out all competition, and creates a sort of nobility among us. No, sir; let banking be left on the same footing as all other mercantile pursuits, let it be left open to a healthy competition. Sir, one of the most profound of thinkers has no less philosophically than beautifully said that, "associated wealth is the dynasty of modern States." When the Legislature incorporates a few individuals as a company with the exclusive right to do the banking business of a million of people, they in fact, create, to the extent it goes, an aristocracy equal to any order of European nobility, and thus in spirit, if not in letter, violate the Constitution of the United States. The tendency of capital to concentrate into a few hands, thereby placing under its control all the elements from which wealth can be produced, is now stronger than ever. The wonderful, the magical progress of the arts and sciences enables the laboring classes to produce more wealth by their daily toil, but this wealth is, by means of a vicious currency, very easily transferred to the non-producers and capitalists of the country, and in their hands it becomes a new instrument to put down the feeble competition which labor endeavors to make against capital. Sir, the statesmen of this age must find some remedy to limit the power of capital over labor, or else the liberties of this people will perish as those of others who have gone before them. Some are disposed to think that the homestead exemption and the land limitation are the proper remedy. But, one thing in my mind is too clear to admit of argument, and it is that a chartered bank monopoly will tend much to heighten the evil which now exists to some extent, and which will be felt still more as our State advances in wealth. And this is another reason why I oppose the present State Bank or any other State Bank. I am satisfied that a paper circulation under any system tends to create great inequality in society and especially where it assumes the character of a chartered monopoly.

Sir, I cannot but think that the time has come when the progress of an enlightened public opinion invites, nay, I may say demands of us a relaxation from the restraints now imposed upon the business of banking in this State. I again repeat that if paper is to be put in circulation as money at all, let the business be left on the same footing with all others in the State—open to all who desire to engage in it—always providing, under proper regulations and restrictions. And, sir, let banking institutions, if we have any, be impartial and general in their operation. Under the present State Bank system, branches of that bank have been placed at points at which they have never been

needed, and have been denied at points where they certainly should have been located.

One advantage at all events would be gained over the State Bank system by a general banking system, and it is this: Under the latter system banks could be obtained where a legitimate business existed to require their establishment; for no person having sufficient means to establish a bank, would feel disposed to locate himself at a point where business was dull and inactive, in the mere hope of creating a business by forcing the loan of his money? No, sir; he would be much more likely to obey the requirements of a business already created and demanding the advantages of banking facilities. The tendency of the system, by offering fair and equal terms to borrowers, would no doubt be to reduce the rate of interest, by reason of the competition it would produce among the banks. Under a general banking system equal and impartial justice would, through apprehension of rivalry, be secured to the customers of the banks. If one bank should under this system, make their bank a means of accommodation to a few only, the door of competition being thrown wide open, the evils would speedily correct themselves by the establishment of another bank. But, sir, if this Convention should decide that the present State Bank system shall continue, this evil cannot be corrected.

I have already alluded to the advantages which I think will result from the introduction of this system, by reason of its being likely to establish the custom of allowing interest on deposits, more or less depending on the length of time of the deposit, and thus will prevent the money from lying idle. From the particular description of security that this kind of bank would be required to give, I think we would be authorized in supposing that, in times of pressure and panic, the deposits would not be withdrawn, but would be suffered to remain, and thus enable the bank to continue their accommodation to business men with safety to themselves, and advantage to the public.

Sir, the system of banking now existing in the State of New York, and which it is proposed to introduce here, is mainly planned after the system of joint stock banking by private associations, which has been practiced in Scotland, and which has been in successful operation in that country for a century past, regulated alone on a scale of free competition of demand and supply, without a single failure during the whole of that period. Mr. Watt, of Edinburgh, long connected with the banks of that country, and one of the ablest of those who have written on the science of banking and currency, says: "The system of banking by two or three hundred individuals, on the ordinary principle of a mercantile partnership, whereby each partner becomes liable to the whole extent of his fortune for the debts of the

association, had its origin in Scotland, where it has flourished for upwards of a century, and given to that kingdom a circulating medium more valuable than the currency of any kingdom in Europe." Again, he observes, "and when this system was established in Scotland the beneficial effects of so splendid a discovery could not be conjectured." The personal responsibility which this system imposed on each of the partners, it is said, formerly deterred some of the richest individuals from connecting their fortunes with joint stock banking in that country, but after trial, it was found to be so safe and stable, that in modern times the most opulent, and largest land owners are desirous of participating in these associations, and frequently connect themselves with them. The vigilant circumspection which necessarily results from unlimited personal responsibility is a perfect substitute for a legal restraint, as to the amount of their issues. And, besides this, over issues are constantly checked by the active competition of unconnected and independent associations which are continually collecting and throwing back each other's issues for redemption. The same author observes: "The system of mutual *espionage* and rivalry which exists among banks of this kind is another source of security to the public.

"That this system is enforced," says he, "upon every joint stock bank by their sister banks, who exchange notes and checks with them, must be admitted."

It is in this way, sir, that a safe and sound circulating medium—so far as it is possible to exist where paper constitute a portion of it—is usefully and conveniently supplied to the people of that country, regulated alone like all other merchandize by competition, and by demand and supply, and entirely exempt from those baneful vicissitudes which bank monopolies so frequently generate. The spirit of free competition is so active in those associations that they must necessarily accommodate themselves to the wants of the community, and thus there are no complaints of their being monopolies. I would be glad, sir, to dwell on the history of those institutions, and of their wonderful success in developing the resources of that country, but time will not permit me to do.

Some of the gentlemen who have advocated the cause of the State Bank, contended that banking based upon United States stocks, or stocks of our own State, and requiring them to be deposited with an officer of State, are not a perfect security for the redemption of the circulation. To this position, I most cordially yield my assent. But allow me to ask, is it not a better security than there is under the old system? That is the question we have to decide. It was thought, when the old system of paying in the stock of banks by giving stock notes was abandoned, and the stockholders required to pay in the specie, that a great improvement was



made. But, sir, the change was not so important as some seemed to suppose, for a specie capital actually paid in, is no more security, and as far as I can see, makes the people not a whit safer, than if the banks had been allowed to go into operation with stock notes substituted for specie, as the basis. Why? For the reason, that although a specie capital may be actually paid in, still, the property of the bank is subject to whatever disposition the officers of the bank may choose to make of it, and that without any violation of the charter. A great deal has been said here about a specie basis, as contradistinguished from a basis of State or United States bonds, to be deposited with the Auditor of State. Now I would ask, is any one so ignorant as to suppose that the money paid in, to form a basis for a paper circulation, is actually kept there, for the redemption of the issues? When the bank goes into operation, it may and usually does discount for its respective stockholders, their private notes, and thus the stockholders may withdraw their specie, as soon as the bank is fairly under weigh. Such, in fact, is the operation of the system generally. We know that our State Bank, as well as other banks, keep on hand a very small proportion of specie, compared with their whole circulation. The specie now in this institution, according to the report lying on our tables amounts to only \$1,197,880 58, whilst its circulation is \$3,548,267 50.

Sir, under a general banking law, the banks would be compelled of necessity to keep up the same amount of specie in their vaults, to redeem their circulation, as the State Bank is now compelled to do, and in addition to that they would have United States or State stocks deposited with a public officer, equal to their circulation, to redeem their issues. Thus I look upon the stocks deposited with the State as an additional security, over and above what is now required by the charter of the present State Bank.

However, sir, it is but justice to myself, and due to candor and truth, to say, that although the plan of depositing stocks of the United States or of our own State, as security for the redemption of bank issues, is a decided improvement upon the old system of what was termed a specie basis alone, yet I am far from considering stocks a *perfect* security. Looking as I do upon the whole banking system of the country as founded on a fallacy, and that it is destined, sooner or later, to a tremendous explosion, I will not, by anything I may say or do here, hold out to the people the idea that stocks can contribute a perfect security in any banking system.

When I say that the American system of banking is the worst in the world, I am sustained in the assertion by the celebrated McCulloch, one of the greatest financiers of the age. I hold in my hand, sir, his great work, the

"Commercial Dictionary." He says, at page 778, second volume, "The system of banking in America has recently attracted a great deal of attention in this country (England); and it certainly deserves to be carefully studied and meditated, were it only for the incontestible evidence which it affords, that how flourishing soever in other respects, a country cursed with a vicious banking system may be now and then involved in the greatest difficulties, and reduced almost to a state of bankruptcy." He then speaks of the tremendous revulsions that have been experienced in the monetary affairs of this country, and goes on to remark: "This nameless and apparently inexplicable state of things, is entirely a consequence of the American banking system, which seems to combine within itself everything that can make it an engine of unmixed evil. Had a committee of intelligent men been selected to devise means by which the public might be tempted to engage in all manner of absurd projects, and to be most easily duped and swindled, we do not know that they could have hit upon one half so likely to effect their object, as the existing American banking system. It has no redeeming quality about it, but is, from beginning to end, a compound of the basest quackery and imposture."

Again: on page 780 of the same volume he says:

"But the States have the power to compel all banks which issue notes as money, to give security for their issues. This, though it would not prevent destructive oscillations in the amount and value of the currency, would at all events prevent those ever recurring stoppages and bankruptcies and issues of paper money which render the American banking system one of the severest scourges to which any people was ever subjected. Common sense and experience alike demonstrate the inefficacy of all the regulations enacted by American legislatures to prevent the abuses of banking. It is in vain for them to lay it down that the issue shall never exceed a certain proportion of the capital of the bank, and so forth."

He then goes on to remark that "these regulations do very well as long as the banks are disposed to observe them;" and concludes by saying, "there is no way to avoid the evil but by the State taking security from the issuers." I fully concur, sir, in the views of this author, that there are inherent defects in the whole system, which never can be cured.

I was going to observe that I could very readily conceive of such a state of things as would prevent the United States and State stocks from making a perfect security for the redemption of bills issued upon them. Suppose, for instance, all the States in the Union should gradually fall into this system of banking, and that the whole indebtedness of the States, now amounting to considerably over \$200,000,000, which,

when added to that of the general government, will make about \$300,000,000, should be invested in banking operations, it would of course cause a tremendous expansion of the currency of our country, and the spirit of speculation would probably become as rife as it was in 1837, and the consequences would be about the same as then. We would have a bloated system of credit, and there would follow an universal crash and the suspension of specie payments. Who, then, sir, could for one moment believe that if two or three hundred millions of United States and State stocks should be thrown into the market for the purpose of redeeming the circulation of these banks, purchasers could be obtained for any great part of them? Where could the specie be found to purchase such an amount of stocks? And, sir, would not the inevitable result be a reduction of the bonds to such a price that but little could be obtained for them? Would they not become a mere drug in the market, and consequently furnish but little means to redeem the circulation of the banks? All I contend for is, that whatever they would be worth, be it more or less, they would be so much more additional security for the redemption of the paper than exists at present under your State Bank system. For this reason, as far as the security of the billholder is concerned, I much prefer it as a system of banking, but not for the reason that I believe it is in any sense a perfect security to those who hold the issues of the bank.

There are some other reasons which I should be glad to present to justify the opinions I have expressed, that even with the addition of depositing stocks as a security for the redemption of paper issues, the security would not be as complete and perfect as could be desired; but I have only a short time left to allude to another matter, when I must necessarily close my observations upon the subject of banking. As I have advanced the opinion, sir, that there are great evils existing in the present system of American banking and paper money, I should feel that I had neglected the performance of my duty, if I did not, on the present occasion, throw out some suggestion as to the best means of remedying these evils. One of the greatest evils of our paper money system is that the minor channels of circulation instead of being supplied by specie, are occupied by small notes. As I have already said, one of the admitted evils of our paper currency is its tendency to expansion and contraction, and this is caused, in the opinion of some of our ablest financiers, mainly by our small note circulation. I know it has been contended that if you suppress the circulation of notes of a small denomination, you have not sufficient gold and silver to supply the place of the paper thus withdrawn from circulation. But, sir, it occurs to me that the time has come when men should lay aside such idle fears. For my part I do not believe that an amount

of circulation consisting mainly of paper, or partly of paper and partly of the precious metals, can be kept permanently in circulation in a country, beyond the amount of specie which would circulate in said country, if there were no paper currency. It is true that for a short time the excess of paper may enhance prices and give an appearance of a high state of prosperity to the country. But, when the prices of all commodities are raised in such a country, higher than their relative prices, as compared in the other markets of the world, exportation will necessarily cease, heavy importation will commence, and specie will have of necessity, to go abroad to restore the balance of trade. The withdrawal of specie from the vaults of the banks, (and owing to our small note circulation, a great amount of specie is to be found in the vaults of the banks,) induces these institutions to curtail their discounts and issues, and then comes a panic—a falling in the prices of commodities even to below their intrinsic value, as compared with other countries, and then comes one of the tremendous revulsions which have, from time to time, involved so many of our citizens in bankruptcy and ruin.

Engaged as we are in an attempt to establish a banking system for our State, it is well worthy of inquiry, how are these evils to be cured? And, if we cannot entirely remove them, let us at least, make an effort to mitigate them and thus set an example to our sister States of the Union. I believe much can be done towards accomplishing this object, by introducing more specie into circulation; and this can be very easily affected by empowering the Legislature to suppress from time to time, the circulation of small notes. It must be obvious that if more of our currency were specie, the exportation of a small amount of it would not so materially affect the circulating medium of the country as it now does. In France the banks issue no notes of a less denomination than five hundred francs—about ninety three dollars of our money—and their circulation consists of about two-thirds or three-fourths of specie. In England no note of a less denomination than five pounds sterling—about twenty-three dollars of our money—is allowed to circulate, and their circulating medium consists of about one-half of paper and one-half of specie. And this, in the opinion of Gallatin, (whose great experience and learning as a financier and political economist, none will dispute,) is the proper proportion that paper and specie should bear to each other, in any country where it is desired to avoid and prevent those great fluctuations which are incident to the monetary affairs of a country in which the proportion of paper greatly exceeds that of specie. And while the name of that gentleman is in my mind, and least I should forget it, I hope the Convention will excuse me if I read a short extract from an essay of his, written some twenty years since. He remarks: "We cannot con-



deal from ourselves that the specie paying banks are not only exposed to extraordinary drains from abroad, but are also controlled by moral causes, the effects of which cannot be always calculated, nor without great skill and discretion be always prevented. These never affect a metallic currency which has an intrinsic value, varying less than any other commodity and not at all depending as paper, upon confidence, fear, conjectures, or any of the fluctuations of public opinion. It is equally evident that extraordinary drains of specie, occasionally inconvenient when the currency is purely or principally metallic, may be fatal to one which consists of bank notes convertible at will into specie. Supposing the currency of the country to consist of a hundred millions, a drain of twenty millions from abroad, would produce great inconvenience, but not beyond that of contracting the metallic currency to that extent until commerce had supplied the deficiency. But if consisting of bank notes sustained by twenty millions of specie in the vaults of the banks, and the base being withdrawn, the whole fabric is at once overthrown and specie payments must be suspended."

In conclusion I shall take the liberty of reading one more brief extract from this same writer, which I think very pertinent to the branch of the subject I have been discussing. After stating the great advantages which accrued to the English people by suppressing the circulation of notes of less value than five pounds sterling, and the fact of raising the metallic currency of that country from one-fourth to one-half, and the effect of the measure in securing the country against fluctuations in its currency, he goes on to speak of our own country and the evils resulting from so great an excess of paper over the precious metals, and quoting the example of Pennsylvania, which has lately passed an act with the view of suppressing the circulation of all notes less than five dollars. He says: "But we should go still further than this, and in order to bring gold and silver more generally into circulation, all notes under the denomination of ten dollars ought to be suppressed."

#### REMARKS OF MR. MATHER,

*In Convention, January 22d, on the subject of Law Reform.*

MR. PRESIDENT: The length of time which the discussion of this subject has already occupied admonishes me that I ought not to detain the Convention at any considerable length at this moment. So much of the time of this Convention has been occupied in debate since its commencement, and effected so little good, in my judgment, that I had come to the conclusion not to trouble the Convention with any further remarks of mine. But, having been a member of the committee that reported the sec-

tion now under consideration, and having advocated a reform in the practice of the law before my constituents, I feel that I ought not, in justice to myself, to record my vote on this subject, without offering a few reasons in explanation of the same.

Sir, I am in favor of "law reform;" but I cannot favor the section as reported by the committee on that subject, or any of the amendments proposed thereto.

While I admit the propriety and necessity of doing away with a great many of the forms and absurdities of our common law practice, I cannot consent to create, by this Constitution, three commissioners, who may hold their offices as long as the Constitution shall last, and who may, for the sake of continuing in so well paid an office, undertake to codify and change the whole of our laws.

In my judgment, such an attempt, whenever or wherever undertaken, will prove unsuccessful. The common law of England, which constitutes the great body of our laws, as well as the practice under it, has grown into a system by the experience of ages.

And, for one, I am opposed to entering upon any mere experiments in this branch of our Government, more than in any other. I believe experimenting in government, beyond such changes and alterations as are clearly dictated to us by experience, is dangerous to the best interests of society, and, in the great majority of instances, must prove destructive in their tendencies. That experience has pointed out to us many things in the practice of the law which ought to be modified, I admit; but, sir, while we entirely abolish the fictions in use in the actions of ejectment and trover, and do away, if you please, "with the distinct forms of actions now in use," I hope we shall be very careful in applying the pruning knife, that we do not cut off the real and substantial matters which are required in pleading, in order that parties may know the nature of the charge brought against them. Gentlemen, in their anxiety to provide a simple form of declaration, so that plaintiffs who have a good cause of action shall not be driven out of court because the action, as brought, has a wrong name, or is deficient in some matter of form, which does not affect or injure the other party, must not forget that there are two parties in court, and that there are other objects to be attained beside providing an easy way by which a man can obtain a judgment against his neighbor. I have seen cases where *defendants* had rights as well as the plaintiff. And however much gentlemen may desire to see the practice of the law simplified in such a manner that all our citizens may be able to prosecute and defend suits with success in our courts, I, for one, do not wish to see the law so *simplified* that a plaintiff may be allowed to file his declaration against his neighbor for entering upon his land

and destroying his apple trees, and when he fails on the trial of the cause to prove the matters charged in the declaration, that he shall then, without having in any manner notified the defendant of his design, be allowed to introduce in evidence a promissory note, or prove an account for merchandise, and by that means recover a judgment, when, if the defendant had known that such matters were to be charged against him, he could have shown that the note was a forgery, or that the account had been fully paid. And when the defendant, in an action of assumpsit, shall reply to the declaration of the plaintiff that he has paid the note or account charged against him, it would be an act of injustice to the plaintiff to allow the defendant, under such an issue, to prove that the plaintiff had, two years before, committed an assault and battery upon him to his damage of double the amount claimed by the plaintiff; when, had the issue notified the plaintiff of the fact that such a matter was to be inquired of between them, he could have clearly proved that the assault and battery proved was in self-defense.

To allow such rules of proceeding in courts, would at once turn our courts of justice into engines of oppression in the hands of dishonest men. We might as well say that each party should file a piece of blank paper in court, and prove all he could with regard to every kind and nature of action upon the trial. And yet, sir, if we believe these commissioners would carry out the views of some gentlemen on this floor, who desire to take the lead in this question of law reform, and cry down as "Old Hunkers" every man who does not at once fall in with their notions upon this subject, this would be the kind of "law reform" which we should get.

If there are any gentlemen here who believe that the law can be so simplified that every man in the State, without study and without experience, can go into our courts and successfully compete with the man who has spent years of hard toil over his books when they were asleep, they might as well give up that illusion now as at any other time.

If we expect to maintain our present state of civilization, with all the various commercial and other interests of our State, we must expect to be governed by a system of laws which shall be as diversified and intricate as those interests themselves. And to understand and be able to administer justly such laws as are fit to govern a civilized people, will hereafter require, as it heretofore has required, the long and patient study of the best minds in the State. And, sir, I hope I shall not hear it again said upon this floor that lawyers oppose reform because their bread depends upon maintaining an incongruous system of practice. Such is not the fact.

I wish to support the proposition of my colleague from Lagrange, (Mr. Howe,) and shall therefore vote against the section and pending

amendments. The section which he proposes accomplishes all which this section proposes directly, and makes it compulsory upon the Legislature to do these things, or provide commissioners to do it.

#### SPEECH OF MR. SMITH, OF RIPLEY, *On Homestead Exemption, delivered in Convention.*

The following section being under consideration:

"Sec. —. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount from seizure or sale for the payment of any debt or liability hereafter contracted."

The pending question being a motion to recommit with instructions,

Mr. SMITH moved to amend the instructions by striking out the words "hereafter contracted," and inserting in their stead, "after the passage of such law."

As this seems (said Mr. S.) to be a matter of criticism, perhaps the Convention will indulge me in a few remarks. It will be recollected, that, during the elaborate discussion on what is called the homestead exemption, I have not submitted a single remark. For this forbearance I claim some credit, and hope, therefore, that the Convention will indulge me for a few moments, at this time.

The amendment offered will strike out the words "hereafter contracted," and insert the words, "after the passage of such laws."

In the first place, I desire to submit a few remarks in regard to the proposition to amend which I propose. If the amendment prevail, it will strike out the words "hereafter contracted." Now it occurs to me that there is a difference between debt and liability to become indebted; and I think the difference will occur to gentlemen of the Convention upon a moment's reflection. I suppose the Convention intends to exempt the debtor from debts already contracted—debts in the common acceptance of the term. But, permit me to inquire whether it is entirely proper and expedient to secure every individual against that liability. Let me suppose an instance. If I understand the meaning of the Convention, it is to grant the Legislature the power to pass a homestead exemption law; and gentlemen have spoken of five hundred dollars as the amount proper to be exempted. Now, the case I desire to present to the Convention, is this: A father has a son, as many have, both profligate and unfortunate. Suppose him to be indicted for some trivial offense, and held to bail in the sum of two hundred dollars. His father, who is worth five hundred dollars only, would not be a suitable security; for he is exempted from "debt or liability," to the amount of all he is worth.



He would not be a good security, and the proper officer would not regard him as such. There are, also, numerous other instances in which the operation of such an exemption would amount to a disqualification of the person exempted. Suppose a man, worth just five hundred dollars, has a sister whose husband dies intestate. The law gives her the first right to administer on his estate, and she may desire to avail herself of that right; a surety, however, becomes a condition, precedent to its exercise. Her brother is, perhaps, the only person who is willing to become her surety; but the Constitution has exempted him from all liabilities "hereafter" to be contracted, to the amount of all he is worth. Of course he is not a competent security. Now when does this "hereafter" commence? Most assuredly at the day when this Constitution shall go into effect.

Well, sir, this provision confers the power upon the Legislature to pass all exemption laws—homestead and others. Suppose that body does not think proper to pass any laws at all on the subject, for five, ten, or a greater number of years. During all this time, be it long or short, debts have been accumulating. At length, after a longer or shorter period, the Legislature sees proper to exercise the power conferred by this section. Will not any law, then passed, have a retrospective operation—running back to the time when this provision, containing the word "hereafter," shall have been adopted and gone into effect? Thus, a man, before the passage of the law, may have contracted debts to the amount of five hundred dollars; and yet he can shelter himself under the operation of that law, from any and all contracts, into which, before that time, he may have entered. This result must inevitably follow. The Legislature will be bound either to pass no law of exemption at all, or to pass such law with the understanding that it will act retrospectively as well as prospectively—on past, present, and future liabilities.

In regard to the whole section, I desire to submit a remark. It confers on the debtor the privilege of enjoying the comforts of life to a *reasonable amount*. Let us inquire what these comforts are, and what sort of legislation you may expect to have under a constitutional provision of this kind? What are they? A farm—a house? Or will it not be construed to mean *necessary provision and wearing apparel*? Or could you, under this provision, exempt a farm, a house, and necessary food and clothing, all? If these comforts, then, which you are going to exempt, were left to some men to decide, they might determine that it would be very comfortable to have a little of the "*Oh be joyful*." But the *reasonable amount*, when you come to legislate upon this section, must, in the eyes of the Legislature, be construed to mean *only the necessary amount of food and clothing to render him comfortable*, and that amount must be *reasonable*.

Mr. President, in regard to this exemption of real estate, what have we done? By this section, it is contended, that we have secured the right of our people to a homestead exemption. Let us inquire into that. What is your constitutional provision?

When you grant a power, it is a whole power. You can not grant powers by halves. You have here granted the whole power in regard to exemptions. Well now, as we have seen, it is to be necessary food and clothing—a reasonable amount. You can not, under this section, go beyond that. I am clearly of opinion, that on a reasonable construction, the exemption cannot be carried beyond what is *necessary*. Well, then, if this view of the intent and meaning of this section be correct, when the Legislature comes to act upon it, must it not govern the action and define the scope of all exemption laws passed by that body? The exemption must be *necessary* for the *comfort* of the debtor, and *reasonable* in amount. That is a severe restriction to impose upon the Legislature; but it does occur to me as the real predicament in which this section will place it. I may be wrong, however, (for I am no lawyer,) and merely throw out these hints, leaving gentlemen to make such use of them as they may think proper. Some, perhaps, will regard them as hypercritical; but, I ask, why shall we not specify what we mean by the term *reasonable*? But suppose the Legislature should, at any time, exceed the power, and grant a great deal more than is strictly *reasonable*, and that the debtor should claim exemption under such a law. The Supreme Court, in such case, would most likely be called upon to determine the constitutionality of the law; and how will they construe the section now before us? It occurs to me that they must take the section as it is, and not as it may have been intended.

What kind of law, permit me to inquire, would the Legislature acting under this section, be most likely to pass, in reference to this matter. It would not be likely to exempt the same amount of property for a single man as for a man of family—at least it ought not. But, is it the intention of this Convention, to make it apply only to the head of families, or is it to the individual that you propose to grant the exemption? Of course it is to the heads of families only. But if so you have left out the necessary words of restriction; because, at the present it applies to all debtors, whether they have families or not. This should be guarded. We ought not to exempt the same amount to the single man, or man with only a wife, that we should to a man with a large family. Well, if it is your object to do a beneficent act, and give it an equal operation on all, you ought not to grant as much to a man with a family of six children, as to one with a larger family—say of eight—and if two of these eight children were blind or idiotic, the exemption ought to be

still greater. When you look at the wording of this section, and the kind of legislation to which it points, there is little room to hope for such necessary discrimination.

Gentlemen have declaimed eloquently about the Jewish and Roman laws of debtor and creditor. Indeed, they have said much more of those laws, than of the one we desire to adopt. Those laws may have been good and wise under the circumstances surrounding the people on whom they operated; but the character of our people differs so widely from theirs, our civilization and the great end of our social and civil formations are so entirely unlike theirs, that laws wise and beneficent to them, would be barbarous and cruel for us.

A single word in regard to the source from which this law comes. It is not a translated provision; but a transferred one. It is transferred, word for word, from the Constitution of the State of Wisconsin. Can any gentleman inform me whether there has ever been any legislation under this provision; and if so, what is its character, construction, and operation? On these points I am unadvised; but I doubt whether, if you adopt it, you do not forever foreclose and shut out the idea of a homestead exemption; because you have here granted the whole of the power on that subject, and I affirm that it does not confer on the Legislature any right to pass a law for the exemption of the homestead. What is that boasted power? Why, simply, that you have enabled the Legislature to exempt for the benefit of the debtor, the *necessaries of life—a reasonable amount*. That is all. Any law, therefore, passed after the adoption of this section, must, in this respect, conform to its provisions—its *liberal provisions*, for the debtors benefit. Truly, this is stripping the poor debtor of the protection already possessed under the old Constitution; and, under the pretence of giving him a better protection, giving him nothing but the mere mockery of a protection—the shadow of what he now enjoys.

If this construction of the section be right, (and I believe it will be sustained by the ablest jurists here,) surely there is great propriety in re-committing it, as proposed by the gentleman from Ohio (Mr. Pepper,) and upon a more thorough examination, into what is most likely to be its operation, gentlemen may see the propriety of striking it out altogether, or so amending it as will enable the Legislature to exercise a sound discrimination in the selection of the proper objects of exemption laws, and the time when they shall take effect.

When a man who is worth five hundred dollars, desires to become the surety of his friend, why would you disable him upon a mere technicality? If such a proposition were presented to the comprehension of the people, in its true bearings and effects, their feelings would revolt at it. I say it here, with the least fear of contradiction. They are jealous and proud of their

rights—much more so than they are of their property—and they will thank us but little, if by this Constitution, they are abridged of anything that pertains to freeman. The proud and aspiring young Indianian, would repel with merited contempt, the legislator that would tell him, sir, I have exempted you from debt and liability, to the amount of five hundred dollars; and tell him at the same time, that the exemption degraded him into a class incapable of giving or going security. Besides, sir, nearly all the offices of the country are filled by men of small property; and are you willing that by the operation of this section, they shall be rendered incapable of giving or going security, and thereby of holding office! Certainly not. It would outrage every principle of democracy, and every feeling of the American heart.

Suppose you authorize a homestead exemption to the amount of five hundred dollars. Why, it will absorb almost all the property of the State; and you will do well to remember that your provision is directory; and that the Legislature will be bound to follow its directions, or never act on the power it confers.

Mr. President, I think, in the course of my remarks, I have shown that the section under consideration, will, if it passes, be subject to the following objections:

1. It will open the doors for retrospective legislation, and all its unjust consequences.

2. It will disable a vast number of our best citizens from either giving or going security; and by consequence, prevent them from executing private trusts, or the duties of public officers where surety for the faithful discharge of such trusts and duties, is required by law, to be given.

3. Or it will, (under a rigorous construction,) prevent the Legislature from passing any law for the relief of the debtor, by exempting more than a *reasonable amount* of the necessities of life—of food and clothing—and thereby leave that unfortunate class in a much worse condition than they now are under the old Constitution.

These reasons, Mr. President, are sufficient to induce me to ask for its modification; without which, they will be sufficient to induce me to vote against it on its final passage.

#### REMARKS OF DR. MILLIGAN,

*On the question of the admission of Negroes and Mulattoes.*

Mr. MILLIGAN. Mr. President, I desire to say a few words in reference to the present question. When I came here and beheld the great men of the State of Indiana in Convention assembled, men who might with propriety be compared with the orators of ancient Greece and Rome, I felt well satisfied in my own mind that all things relative to amending the Consti-



tution would be done decently and in order; for I then anticipated that all important propositions which should necessarily come before this body, would be made as plain to the understanding of each member as the noonday sun. I did suppose that the voice of reason, the convincing power of logic, and the thunder and blaze of eloquence that would flow from them, would remove all doubts which might exist in the mind of any member relative to the propriety or impropriety of any proposition demanding our consideration. Under this conviction I felt very comfortable, and intended to give a silent vote on all questions after they had been duly and truly prepared by those persons whose experience and information doubly qualify them to perform that important and momentous task. In truth, I had permitted myself to view this Convention almost as a unit, with such lights blazing in our midst.

But, sir, I have to acknowledge that I was very much mistaken. My anticipations have not been realized, for I find that those great men differ almost on every question. Their views appear to be as different as the views of other men. Their arguments and conclusions are as opposite as the poles.

Why is this? Error must exist somewhere. And it being indelicate to say that it exists in those men, I have thought peradventure that it might exist in the logic.

To follow men under such circumstances, is impossible. We cannot tend to the four cardinal points of the compass at the same time.

Differ with some of them we must, for they are antipodes. And, sir, we all know how unpleasant it is to differ with friends. To me it is grievous; and, therefore, I desire to give my reasons for the vote I am about to give on this subject.

Heretofore I have not consumed much of the time of this Convention, and would not now did I not think it due to myself and the people whom I represent in this Convention, to give my reasons in brief for the course which every consideration of humanity demands that I shall pursue. And, sir, under the circumstances, I feel myself somewhat embarrassed. Not because I have any doubts of the justice or propriety of my course, but because I am under the necessity of differing with some men who are recognized as bright stars in our political galaxy. And for another reason: that is, I am now subjecting myself to the mortification of hereafter beholding, and knowing that others will behold my remarks, in the great book of nonsense and foolishness that we are now making to destroy many of us, without the hope of a resurrection.

Mr. President, I look on this subject in one particular, as many others who have spoken before me; as one of importance in many respects, and therefore as worthy of our candid and serious consideration.

The future dignity of the State of Indiana depends much on the disposition we may make of the present section, and the honesty and humanity of this Convention will be calculated by it. I am much pleased to see this Convention disposed to give each member an opportunity to make such remarks upon it as he may think proper and right.

All agree in reference to its importance, and surely we should act as becomes men acting in a representative capacity in a Constitutional Convention for a just, honest, and patriotic constituency.

All questions relative to negroes have been, now are, and will continue to be exciting matters, until reason and justice prevail over passion and oppression; and men will differ concerning them until all are actuated by the same motives, and propelled to action by the same impulses. This is verified daily; and it is verified in reference to this subject. There are some here who are in favor of extending citizenship to the negro, and who, I suppose, are willing to receive them into our midst upon a political and social equality with the whites; others there are who would prefer to exterminate them rather than receive them into the State as they have been heretofore received under our Constitution and laws; and strange to tell, all talk loud and long about their humanity, as though it should be the only standard used in the settlement of this much vexed question. The gentleman from Wayne, (Mr. Rariden,) in the remarks which he made on this subject some days since, talked much about his humanity, and he informed us that the negroes are a poor, down trodden people. He informed us, too, that Kentucky has, and many other States will, by constitutional provision, make the presence of a free negro within the State a crime, punished by imprisonment and slavery. He insisted that we should act similarly, for that if we left the door open we would be bound to receive them on the score of humanity. He informed us that he would roll every one of them back to their respective States; knowing, at the same time, that they would thereby be (according to his own argument) enslaved or imprisoned; and he further added, as though he was determined to make known to this Convention and to mankind generally, the magnitude of his humanity, "that he speaks in all sincerity and without any hard feelings towards them, would kill them off at once if we cannot get rid of them any other way." This, sir, may be very good policy, and the arguments of that gentleman may be very good logic; but, sir, with your permission, the permission of this Convention, and the permission of the Christian world generally, I unhesitatingly say, d—n such humanity. If such sentiments and conduct constitute him a man of humanity, I would ask what would constitute him a barbarian? I admire the frankness of the man; but while I do that, in the

name of all that is sacred I do object to the use of the word humanity, in connection with sentiments and conduct that would make a decent devil blush. [Much laughter.] The gentleman from Monroe, (Mr. Foster,) in his eloquent address delivered a few days since on this subject, advocated the same doctrine, but said nothing about his humanity. Neither need he if his views of the origin of the whites and blacks are correct. In that eloquent address he informed the Convention that the blacks are the descendants of the Ourang Outang; but most unfortunately for that gentleman in the same connection he said, or hinted very plainly, that the whites are the descendants of the Ape. The former he looks on as brutes, or "varmin," (I use his own words,) and is in favor of treating them as such; whilst, according to his own theory, he is somewhat their inferior. Now, sir, I appeal to all impartial judges, and ask, might not the blacks, under these circumstances, anticipate better and kinder treatment than he awards to them, from their *apish relatives*?

But, sir, let us be serious. Such sentiments and doctrines might tickle the ear of a heathen poet, and excite the approbation of a wild American savage, but surely cannot receive anything but the contempt of an intelligent, free American citizen. I was very much astonished to hear such sentiments from a man of such high attainments, on a subject of such importance; but I would be doing him much injustice to suppose that he would teach doctrines which he does not himself believe. Therefore, for his benefit, I will admit that he has full confidence in the truth of every word and sentiment he uttered. Nevertheless, all respectable authority on zoology, physiology, and divinity agree, in reference to the unity of origin of the white and black man. They are the same in organization and governed by the same laws of organization. They are subject to the same disease—they have the same mental faculties—they possess the same sympathies and instinct. With different species it is not so. Each species has its own peculiarities, corresponding to the sphere it was designed to occupy. But, sir, while I am constrained to admit the unity of the origin of the white and black man, I cannot feel the same respect for the black that I do for the white population. The presence of the blacks and their appearance are unpleasant to me. I do not desire them as associates, but I am constrained to have pity on, and extend charity, to them. I cannot love them with the same love that I most cordially extend to those of my own complexion. This may depend on prejudice or former associations. It is nevertheless true. I desire not the blacks amongst us—I would rejoice to see the two races separate—each in their own country—enjoying all the blessings of civil and religious liberty; and I am fully persuaded that my sentiments and desires

respecting the subjects of the present section, are the sentiments and desires of nine-tenths of the people, whom I have the honor to represent in the Convention. But, while these are the views and desires of my constituents, they neither desire nor expect me to perjure myself to accomplish their triumph. No, sir, my constituents have honest hearts, and are disposed to be reasonable in all things. Hence, although I desire to see the two races separate as much as any member of this body, I, nevertheless, will not violate the solemn oath I have taken in order to effect that desirable object. No, never. But, sir, must we not do so, in voting for the section now under discussion? Others may not, but under my present convictions, I most certainly would.

The Constitution which we are sworn to support, contains a section in these words: "The citizens of each State shall be entitled to all the privileges and immunities of the several States." Do not all admit that entering a State, buying and holding property therein, are some of the privileges intended to be secured by that section, to each citizen of each State? I so understand it. New York and Massachusetts have extended citizenship to their black population respectively; and, sir, are they not citizens of those States; and, as such, are they not entitled to the privileges secured to the citizen by that clause of the Constitution? Surely they are; at least I so understand it. If so, no action of ours can change the privileges secured to them by the Constitution of the United States of America. And, sir, does not the section now under discussion, propose to do so? Is it not the intention of the advocates of this proposition to prevent the black citizen of Massachusetts and New York from enjoying the privileges and immunities secured to each citizen of each State, by the *law of laws* of this confederacy? Surely the black or mulatto citizen of Massachusetts is to be affected, excluded, and punished by this law as well as the worn out black of the south. There is no difference whatever. All persons having negro blood in their veins are made criminals by entering the State. When this *child of humanity* was first presented to us by the committee, I did suppose that the Convention would wash and dress it, [Laughter,] so as to make it look at least respectable. For that purpose, I offered an amendment in the words of the Constitution, (heretofore quoted,) as a garment for it; but it was immediately voted down. Others have also offered garments to hide its filthiness; but they have been laid on the table without any consideration. The subject was finally sent to a committee with the hope that it would clothe it with justice if not with mercy, and it is now returned to the Convention in all its filthiness. It is no better than it was at the time of its reference. We have to take it as it is, or not at all. And, sir, I for one, will not accept the un-



clean thing. I am not an abolitionist. The people whom I represent know that I am not. But while I am not, I cannot vote for a section adverse to justice, mercy, humanity, and the Constitution of the United States of America.

If I understand the advocates of this measure correctly, they do not advocate it on the ground of justice, mercy, or humanity, but they admit that the law is harsh and cruel. They favor its passage, however, hoping that good may be produced from it, and that Kentucky and other slave States will be under the necessity of liberating their slaves if Indiana shuts them up in those States until they become overcharged with them. They are willing to do evil that good may come. Paul, in speaking of such men, saith: "their damnation is just."

If my object was to prevent negroes from entering the State of Indiana, I would still be opposed to this section; because it cannot and will not answer that purpose. If the object of the friends of this proposition be to build a wall of penalties round about the State of Indiana, so high that no person having negro blood in his veins can enter the State, this one will not answer their purpose. For Kentucky, with her present Constitution, is more barbarous than Indiana will be with the present section. Consequently negroes will still come to our State, though they be punished for so doing, in order to avoid the more severe penalties of Kentucky. Negroes are like other men; they will make choice of the lesser evil. It will not answer. To make this wall sufficient, you must stake and ride it with the murderous penalty proposed by the gentleman from Wayne (Mr. Rariden). Death must be the penalty. Nothing less will suffice. Pass the present section, incorporate it in the Constitution, let it be adopted by the people, and become the law of the land; and then, sir, we may behold men, women, and children coming, and entering the State as now. Yes, sir; they may be seen, of all colors, from the white Caucasian, down in regular gradation to the black African, coming and settling in this State as heretofore. And whose duty shall it be to ascertain their blood or parentage? Shall it be the duty of the honorable members from Monroe, Wayne, or all those who advocate the passage of this section? Let it be so. And then, I ask, what shall be the *modus operandi* by which they will distinguish the blacks and those having some of the negro blood in them, from the whites? They surely cannot do it by the complexion in all cases; for if they will but take the trouble to visit the black church in this city, they may see persons there with as white a skin and as good a countenance as either of themselves, who will admit that they have African blood in their veins.

Here is a difficulty of no small magnitude, and there are many others; but these are sufficient for me. I am, therefore, ready to vote

against it now, and forever—at least until a thorough change in the hitherto harmonious order of the moral universe is effected, and cruelty shall be clothed with charms more winning than mercy, and justice shall abandon the human heart to injustice, outrage, and terror. But while mercy smiles on the children of men, I will not consent to an act compared to which the "ordeal" was wise, and the trial by "fattel" merciful and just.

THURSDAY, JAN. 30, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BADGER.

The journal of yesterday was read and approved.

The committees were called for reports.

The committee on revision being called,

Mr. OWEN. It is probably within the recollection of the Convention, that a rule has been passed prescribing the mode according to which the committee on revision shall perform the duties which devolve upon them. Under that rule we are required to have the sections printed as referred to us, and side by side with these to place the sections as they will stand after revision.

I will state to the Convention that a report from the committee on revision will be ready to be laid upon the tables of members this afternoon, and further reports will be made in a few days. And I wish further to state, that inasmuch as there is a chance that in the transferring of the sections that have been passed by the Convention, first from the Secretary to the committee, afterwards from the committee to the printer, and back again to the committee, and then to be laid before the Convention, inasmuch, I say, as amid all these transfers and necessary changes there may be something omitted by mistake, and as some sections of the old Constitution have to be transferred, I shall feel under an obligation if the gentlemen belonging to the committee will take the trouble to point out any omissions that they may discover.

Mr. BORDEN. I desire to submit a motion to re-consider the section that was introduced by the gentleman from St. Joseph, which is usually called the "compromise section." At the time the question was taken on the passage of that section I voted with the majority, with the avowed intention—and I expressed that intention to several gentlemen near me—to move afterwards to re-consider, in order to enable me to submit some reasons in opposition to it. I had desired to give my views on the question of banking generally at that time, but finding the Convention exhausted by debate, it occurred to me that perhaps a little while after they would feel more disposed to tolerate debate on the

subject; but as we are approaching the close of the session and have so many other matters to occupy our attention, it would be presumption in me now to ask the attention of the Convention while I attempted any extended discussion of the subject.

I look upon the entire American banking system, as the worst possible system in the world; and I look upon the system that is proposed by this section, as one of the worst systems that could be established. I think it is one that is fraught with the worst consequences to the people of the State. I fear that after it is put in operation we shall have another expansion of the currency, and the consequent disarrangement of the whole business of the country. And if our trust funds should be placed in the bank, as contemplated by this section, I fear they would be entirely lost.

While I have always expressed my willingness to go for a well regulated system of banking, a system to be conducted under proper restrictions, I look upon the system of banking as it now exists in most of the States of the Union, as containing within itself the elements of its own dissolution; and that much sooner than any of us now anticipate, a suspension of all the banks in the United States may be expected.

The PRESIDENT. What section is it that the gentleman proposes to re-consider?

Mr. BORDEN. It is the section that was introduced by the gentleman from St. Joseph, (Mr. Colfax,) usually called the "compromise section on banking."

Mr. KELSO. Will the gentleman inform us whether that section was passed under the operation of the previous question?

Mr. MAGUIRE suggested that the gentleman have leave to change his vote.

Mr. HAMILTON. I do not think there is any necessity for re-considering the vote.

Mr. BORDEN. But, sir, my position may be mistaken on the question.

Mr. HAMILTON. The gentleman can move for leave to change his vote; that will show precisely where he stands in regard to this question.

Mr. PETTIT. I rise to a question of order. This section was passed under the operation of the previous question.

Mr. HAMILTON. I have no disposition to debate the question.

Mr. CARTER. I would inquire whether a motion to allow the gentleman from Allen to change his vote would not be in order, although the section may have passed under the operation of the previous question? It will not change the result, but merely place the gentleman right upon the record.

Mr. DOBSON. I was not present when this compromise was made. I wish to say that I am with the gentleman from Allen in his opposition to the section, and if an opportunity

were afforded I would vote against it; but I am opposed to the re-consideration, because I am convinced it is useless to contend about it.

The question being on the motion to re-consider,

The yeas and nays were demanded, and ordered; and, being taken, there were yeas 28, nays 96, as follows:

YEAS.—Messrs. Bascom, Borden, Bowers, Carter, Cookerly, Dick, Dobson, Dunn of Perry, Duzan, Haddon, Hendricks, Holman, Howe, Johnson of Dearborn, Jones, Kilgore, McFarland, Milligan, Milroy, Nave, Nofsinger, Ritchey, Smith of Ripley, Tague, Wallace, Walpole, Watts, and Wolfe—28.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Beach, Beard, Biddle, Blythe, Bourne, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Edmonston, Elliott, Farrow, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, Miller of Gibson, Moore, Morgan, Mowrer, Murray, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Thomas, Thornton, Trimby, Wunderlich, Yocum, Zenor, and Mr. President—96.

So the motion to re-consider was decided in the negative.

Mr. BADGER. I have a favor to ask of the Convention. I have been necessarily absent on business, and desire to record my vote upon the motion to lay upon the table the section in relation to women's rights. I want to vote in the affirmative.

Leave was not granted.

#### REMOVAL OF OFFICERS.

The section which provides that all State officers shall be liable to be removed from office by impeachment by the House of Representatives, to be tried by the Senate, for every crime or misdemeanor, was taken up on its third reading.

The question being, Shall the section pass?

Mr. BORDEN moved to re-commit the section, with instructions to amend by adding at the end of the section these words: "All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice, according to the law and the evidence. And no person shall be convicted without the con-



currence of a majority of all the Senators elected."

It will be observed (said Mr. B.) that the old Constitution provided that the Senators should be required to act under oath when trying cases of impeachment, and it appears to me the same provision ought to be incorporated in the new Constitution.

It may be said that the Legislature will regulate this matter. Sir, they may, or they may not. It may possibly suit their convenience not to be under oath when trying an officer. It should be obligatory; and I think the safest course would be, to insert it in the Constitution. Sir, there is a serious objection to the section as reported by the committee. It is this: As the section stood in the old Constitution, it required a majority of all the Senators elected to condemn and remove an officer. Now, sir, I submit whether it is right and proper to say that one of the judges, for instance, of your Supreme Court, who may feel compelled by a sense of duty to decide a law enacted by the Legislature to be unconstitutional, should be liable to be removed by a mere majority of a quorum of the Senate. Suppose your Senate should consist of forty-five members, thirty under the Constitution would be a quorum, and sixteen Senators might remove a judge from office for merely doing his duty. [Cries of "No! No! No!"] How, sir, under such a provision, can your judiciary be considered, in any sense of the word, an independent department of your government? Will it be sufficiently independent to protect the rights of the citizen against the arbitrary acts of the other departments of the government, and preserve each of said departments in its proper sphere? Sir, I fear that in the hurry and confusion of closing up our business we are omitting many very salutary provisions which are in the old Constitution, and which ought to find a place in the new. We should not permit our anxiety to close up our business and leave this place, to hurry us into inconsiderate action.

I observe that members do not feel much disposed to give attention to the subject; but, sir, I could not sit in my seat and permit this section to pass by without calling the notice of the Convention to it.

Mr. KILGORE moved to amend the instructions, so as to strike out the words "or misdemeanor."

Mr. KELSO. That is the more important amendment of the two. I cannot imagine that the committee intended that a State officer should be removed from his office for shooting a squirrel on the Sabbath; yet that is a misdemeanor. [Laughter.]

The question being on the amendment to the instructions,

Mr. RARIDEN. I take it that the word "impeachment" is a technical term, and is perfectly understood throughout the entire civilized

world, and the manner which an impeachment is to be tried before the Senate of the State, is just as well understood by making the case triable before the Senate as if the whole detail of the mode of operation were set forth. It is for that reason, and on that account, that the section has been drawn up in the manner in which it now stands. It is of importance that we should enumerate the offenses for which high officers of the State shall be impeachable. It is drawn up in this form for the reason that before the officer shall be considered unworthy to fill the high place which he has occupied, the matter of which he shall be accused is to be referred to a legal tribunal appointed for that purpose: there can be no danger in it. The impeachment, the charge of official misconduct, must first be made by the representatives of the people. There must be such form and substance as to satisfy them of the propriety of the act of dismissal. They must be such as will justify the highest legal tribunal in the State in acting upon the impeachment. It is not at all necessary that the details of the mode of trial should be recommended, or set forth in the Constitution; the Legislature will act as a court of justice on such occasions. It would occupy too much space in the Constitution if we were to point out the particular manner in which proceedings were to be conducted. They will be in no respect different from those of a court of justice. Indeed it would be a great outrage on our part, if we were to undertake to point out how they were to proceed, or in what manner the trial should be managed. I take it that the article, as reported, is quite as good as any that can be substituted for it.

Mr. DOBSON moved to add to the instructions the following: "When the Governor is tried, one of the judges of the Supreme Court shall preside."

Mr. KELSO. In the old Constitution the words "high crimes or misdemeanors" were used, but in this section we have employed different phraseology. The word "misdemeanor" is a technical word, just as much as the word "impeachment" is. I believe the word misdemeanor ought to be stricken out.

Mr. DOBSON. One word in regard to the amendment I have offered: That is, that in case the Governor should be impeached, one of the judges of the Supreme Court shall preside at the trial. The reason is this: in case the Governor should be removed from office, the Lieutenant Governor would become the Governor; therefore he is directly interested in the removal, and might act partially. I prefer that at least the presiding officer of the court should not be directly interested in the result. I hope the amendment will be adopted.

The question was taken on the amendment to the amendment,

And it was decided in the negative.

So the amendment to the amendment was not adopted.

The question was then taken on the motion of the gentleman from Delaware to strike out the words "or misdemeanor."

The motion was decided in the negative.

So the amendment was rejected.

The question being then upon the re-commitment of the section, with the instructions proposed by the gentleman from Allen, to add these words: "And when the Senate shall sit as a court for the trial of impeachments, the Senators shall be upon oath or affirmation to do justice, according to the law and the evidence; and no person shall be convicted without the concurrence of a majority of the Senators elected;"

The question was decided in the negative.

So the Convention refused to re-commit, with instructions.

The question then being on the passage of the section,

On motion,

The rules which require the yeas and nays to be taken on the passage of a section, was suspended,

And the section was, by consent, passed, and referred to the committee on revision.

#### OFFICIAL INCAPACITY AND NEGLIGENCE.

The section which provides that any State officer may be removed from office by a joint resolution of the General Assembly, for incapacity or general negligence of the duties of office, two-thirds of the members elect of each branch voting therefor, was read a third time.

The rule requiring the yeas and nays was suspended, and the section was passed, and referred to the committee on revision.

The section which declares that the General Assembly shall pass laws regulating proceedings for the removal from office, of State, county, and township officers, pursuant to the foregoing provisions, was read a third time.

On motion,

The rule requiring the yeas and nays was suspended,

And the section was passed, and referred to the committee on revision.

#### PUBLIC INSTITUTIONS.

The article reported from the committee on "public institutions" of the State was taken up on its third reading, and the following sections were read consecutively; and the rule requiring the yeas and nays being suspended, the sections were passed, and referred to the committee on revision:

"SEC. —. It shall be the duty of the General Assembly to provide by law for the support of institutions for the education of the deaf and dumb, of the blind, and for the treatment of the insane.

"SEC. —. The General Assembly shall have

the power to provide houses of refuge for the correction and reformation of juvenile offenders.

"SEC. —. The county boards shall have the power to provide farms to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the sympathies and aid of society."

#### TRIBUNALS OF CONCILIATION.

The following article, reported by the committee on criminal law, was read a third time:

"SEC. 1. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such tribunals may be conferred upon any of the other courts of this State; but such tribunals and other courts when sitting as such tribunals, shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto in the presence of such tribunal or court, in such cases as shall be prescribed by law."

The question being upon the passage of the section,

Mr. NAVE moved to re-commit the section, with instructions to amend by striking out all after the word "courts" and inserting the following: "which judgment shall be final between the parties."

I know (said Mr. N.) that it is almost invain for any man to attempt to make an argument before the Convention at this time; but I insist that if we do organize such a court, we should organize it with a view exclusively to its effects in the future. That is, that if men agree to submit their matters of difference to the arbitration of this tribunal, its decisions shall be final between the parties. If we do not make such provision we shall not, by the creation of this court, confer any advantage upon litigants in future; but on the contrary, we shall open up a door for continual litigation, growing out of cases that are carried before this tribunal. If we would make the erection of this court a blessing to the country, it is necessary that we should make its decision final between the parties, and not allow the cases submitted to it to be open to subsequent litigation.

Mr. KENT demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being taken upon the motion to re-commit, with instructions,

It was decided in the negative.

So the section was not re-committed.

The question then being upon the passage of the section,

The yeas and nays were then taken under the rule, and resulted—yeas 77, nays 43—as follows:

YEAS.—Messrs. Anthony, Badger, Ballingall,



Baseom, Beach, Besson, Berry, Bowers, Bracken, Brookbank, Bryant, Butler, Carr, Chapman, Clark of Hamilton, Coffax, Cookerly, Crumbacker, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Farrow, Foley, Foster, Garvin, Gootee, Gregg, Hall, Hamilton, Hawkins, Hitt, Hogin, Howe, Huff, Johnson of Dearborn, Jones, Kent, Kendall of Wabash, Kilgore, Kinley, Logan, Maguire, March, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Moore, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Schoonover, Sherrod, Shoup, Smiley, Steele, Tague, Tannehill, Thornton, Trimble, Wallace, Walpole, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—77.

**NAYS.**—Messrs. Alexander, Beard, Biddle, Blythe, Bright, Carter, Chenowith, Clark of Tippecanoe, Clements, Coats, Cole, Crawford, Edmonston, Frisbie, Gibson, Gordon, Graham of Miami, Haddon, Harbolt, Helmer, Hendricks, Holman, Hovey, Kelso, Miller of Gibson, Morgan, Morrison of Washington, Nave, Newman, Nofsinger, Pettit, Rariden, Ritchey, Robinson, Shannon, Sims, Snook, Smith of Scott, Spann, Stevenson, Thomas, Watts, and Mr. President—43.

So the section passed, and was referred to the committee on revision.

#### FUTURE AMENDMENTS TO THE CONSTITUTION.

The section in relation to future amendments to the Constitution, as amended on yesterday on the motion of the gentleman from Putnam, (Mr. Stevenson,) was read a third time.

The question being, "Shall the section pass?"

**MR. PETTIT.** Sir, I am clearly of the opinion that we are encumbering our records too much with these propositions for amendment. All experience shows us that the people of the several States of the Union will amend the Constitutions of their States whenever and in whatever mode they see fit. Thirty years ago our fathers formed a Constitution in which they inserted a provision that it might be amended in such a mode, and in no other manner. Yet, here we are proposing to violate that very provision.

I move to re-commit, with instructions to strike out the section and insert the following:

"No amendment shall be made to the Constitution unless the same shall have been called for and approved of by a majority of all the voters of the State."

**MR. HOWE** moved to amend the instructions so that the people may vote for a call of a convention every twelve years, but at no other time.

The gentleman from Tippecanoe (said Mr. Howe) has stated that in the old Constitution there is a prohibitory clause preventing amend-

ment or alteration of the Constitution unless it be made in the manner set forth therein. I think he is a little mistaken, however, as to the text. The Constitution prescribes the manner in which it shall be done, but it does not deny, or prevent by injunction, the making of amendments in any other way. It is for that reason I propose to add the words, that no convention for the purpose of amending the Constitution shall be called at any other time than once in twelve years. I wish to exclude a conclusion by declaring that amendments shall not be made in any other manner than herein prescribed. Now it has become a maxim at this day, and I am sorry to see it, that it is impossible for a people to bind themselves by restrictions. Sir, the doctrine is contrary to the fundamental principles of liberty, and if carried out to its extreme conclusion we should have no settled foundation for liberty, but on the contrary a despotism and nothing more, because a despotism is nothing more than undefined power in the sovereign. I say, then, if there be any maxim which ought to be adhered to, and which I would desire to see engraven on our State seal, and placed in golden letters over our halls of legislation, it is this: "Politically conservative, and socially progressive." This is what I would like to see inscribed—this is the maxim which we should sustain if we would retain our liberties. We shall go down like every other republic unless we put up our hands and stay the progress of such sentiments as are avowed here.

**MR. OWEN.** I agree with the gentleman from La Grange, (Mr. Howe,) that the gentleman from Tippecanoe has taken an incorrect view of this subject. He has declared that we are here in direct violation of a provision of the old Constitution. The gentleman from La Grange has well shown that there was no prohibition in regard to the matter. It was well said, that the question of amendment should be submitted every twelve years; but it was not said that the people might not, or that the Legislature might not pass a law at other periods, calling a Convention to amend the Constitution.

Now the gentleman from La Grange proposes that there shall be in the Constitution an absolute prohibition in regard to this matter. There are some things, sir, that it is in vain to do in legislation. We must never, in legislation, attempt impossibilities. The gentleman is attempting an impossibility now; he is attempting that which he has no right, which this Constitution has no right to do—which no power on earth has any right to do. [Applause.] If we have a right to say that the Legislature shall not, in twelve years, pass a law calling a Convention, we have an equal right to say that they shall not call a Convention in twenty years, or in fifty years. We have an equal right to say that there shall be no Convention held within

our own time, or within that of our children. Shall we, by a section to be inserted in our Constitution, declare that we are infallible, and that what we now enact shall not be changed?

Now I am not, on the other hand, willing to go so far as the gentleman from Tippecanoe. I am not willing to leave this matter without having some reasonable check thrown around it. By adopting the proposition of the gentleman from Tippecanoe, the matter will stand thus: The Legislature may at any time when so directed by the vote of a majority of the electors of the State, pass a law calling a Convention. Now this is running into the opposite extreme. I think we had better take a little more time. I am not prepared to say as to how far the abstract right of the Legislature tends in regard to submitting to the popular vote propositions of amendment; nor am I prepared to say, that as a matter of abstract right, they may not do so whenever they think it proper and expedient. But I say if you insert such a provision as this, placing no greater check than that of requiring two successive Legislatures to act affirmatively upon the question before it shall be submitted to the people, I am convinced that it will be entirely satisfactory. It is very well known that I am not conservative in my opinions. I believe in progress and advancement in the science of government as well as all other sciences, physical and moral. But while I am willing that changes and amendments should from time to time be made, yet I would not have them made without due consideration. I would have at least the meeting of one Legislature intervening between the time of the first proposing of an amendment and the time of its final adoption. I believe if we adopt the section as it stands, we will have a just medium between the proposition of the gentleman from Tippecanoe, which I hold does not interpose a sufficient check, and the proposition of the gentleman from Lagrange, which I think wholly impracticable.

Mr. RARIDEN. It strikes me that there may be just as much impediment in the way of making amendments to the Constitution as in making the Constitution itself. It strikes me that it is possible, however wise or well intended the propositions of gentlemen may be, many palpable errors may find their way into the Constitution. The diversity of views entertained by the delegates here assembled, in regard to the proper method of making future amendments to the Constitution, is, I suppose, a tolerably correct criterion of the sentiments that will prevail throughout the entire State. I am inclined to believe that the experience which the people have had in calling this Convention, will have the effect of inducing them to submit to much inconvenience rather than undertake to make other amendments, where the mode of making amendments is so troublesome.

Now I will suggest that at any time after

the year eighteen hundred and fifty-five, if the Legislature propose a change and the people, at the general election, give their assent to such change, it should be incorporated in the Constitution. I agree with the gentleman that the time for making the changes should be periodical. Let it be once in five years. If changes be required, let the representatives of the people suggest them, point them out, and let the public voice be heard on the subject; thus you will have as great security as is necessary against inconsiderate and hasty changes. Men will be elected in the different counties of the State with a view expressly to such questions of change and amendment. And I repeat, that to my mind it is infinitely preferable to assemble a Convention to amend the Constitution, than to amend it in any other way. We see how hard it is for us here to agree upon any one principle. Five years will be long enough, it appears to me, to live under a Constitution if it be defective. At the end of five years we may become satisfied that we were mistaken in many particulars; if my own mind does not change, I shall think better of myself than than I do now.

Now the provision that I would suggest, would be to let this instrument stand until eighteen hundred and fifty-five; at that time, if the Legislature should see proper to propose a change, let such proposed change be submitted to the people, and let them elect representatives with a view to making the proposed change, if they approve of it. If they sanction the proposition, if they believe it would be an improvement, they will elect men who will carry out the changes which they desire to have made. This, it appears to me, is the most practicable mode of amending the Constitution, and it is the one which I would like to see agreed upon.

Mr. HAMILTON demanded the previous question.

The demand for the previous question being seconded,

The main question was ordered to be now put.

The question being on the amendment to the instructions,

The yeas and nays were demanded, and ordered; and, being taken, there were—yeas 12, nays 109—as follows:

YEAS.—Messrs. Badger, Beard, Clark of Tippecanoe, Davis of Madison, Gregg, Hall, Howe, Miller of Gibson, Morgan, Robinson, Thomas, and Watts—12.

NAYS.—Messrs. Alexander, Bascom, Beach, Beeson, Berry, Biddle, Blythe, Bourne, Bowers, Bracken, Bright, Bryant, Butler, Carr, Carter, Chapman, Chenoweth, Clark of Hamilton, Clements, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Had-



don, Harbolt, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thornton, Trimble, Wallace, Walpole, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—109.

So the amendment was rejected.

The question being upon the proposition of the gentleman from Tippecanoe to re-commit, with instructions,

Mr. PETTIT demanded the yeas and nays, and they were ordered; and, being taken, there were—yeas 27, nays 93—as follows:

YEAS.—Messrs. Beeson, Berry, Biddle, Bracken, Bryant, Carr, Coats, Foley, Foster, Harbolt, Hawkins, Helmer, Kendall of Wabash, Miller of Gibson, Milligan, Morgan, Mowrer, Murray, Nofsinger, Pepper of Ohio, Pettit, Robinson, Shoup, Smith of Scott, Walpole, Watts, and Mr. President—27.

NAYS.—Messrs. Alexander, Badger, Bascom, Blythe, Bourne, Bowers, Bright, Brookbank, Butler, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kent, Kinley, Lockhart, Logan, Maguire, March, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Moore, Morrison of Marion, Morrison of Washington, Nave, Newman, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimble, Wallace, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—93.

So the section was not re-committed.

The question being on the passage of the section,

The yeas and nays were taken, according to the rules, and there were—yeas 77, nays 45—as follows:

YEAS.—Messrs. Alexander, Ballingall, Bascom, Beach, Beard, Biddle, Bourne, Butler, Carr, Carter, Chenowith, Clark of Hamilton, Clements, Cole, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Frisbie, Garvin,

Gordon, Hamilton, Harbolt, Helmer, Hendicks, Hitt, Hogin, Holman, Hovey, Huff, Johnson of Dearborn, Jones, Kelso, Kent, Kinley, Lockhart, Maguire, Mathis, May, McClelland, McFarland, Miller of Clinton, Milligan, Milroy, Mowrer, Murray, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Steele, Stevenson, Tague, Tannehill, Thornton, Trimble, Wallace, Walpole, Wolfe, Yocum, Zenor, and Mr. President—77.

NAYS.—Messrs. Badger, Beeson, Borden, Bowers, Bracken, Bright, Brookbank, Bryant, Chapman, Clark of Tippecanoe, Coats, Colfax, Davis of Madison, Dick, Dunn of Jefferson, Foley, Gootee, Graham of Miami, Gregg, Haddon, Hall, Hawkins, Howe, Johnson of Orange, Kendall of Wabash, Logan, March, Miller of Fulton, Miller of Gibson, Moore, Morgan, Morrison of Marion, Morrison of Washington, Newman, Pettit, Prather, Ritchey, Robinson, Shoup, Smith of Scott, Spann, Thomas, Watts, Wiley, and Wunderlich—45.

So the section passed, and was referred to the committee on revision.

Mr. HAMILTON. It is important that a resolution should be passed to enable the committee on revision to proceed properly with the duty entrusted to them: it is, that they have leave of absence during the sitting of the Convention, and that they be authorized to employ a clerk.

I move, therefore, that the rules be suspended, for the purpose of enabling me to introduce such a resolution.

The rules were suspended, and a resolution to the effect as suggested was adopted.

Mr. HAMILTON moved that the rules be suspended, for the purpose of enabling him to introduce another resolution, to the effect to authorize the chairman of the committee to employ a clerk to enroll the Constitution, &c.

Mr. COOKERLY remarked that there were secretaries enough at present to do that work. He thought there was no necessity for employing another clerk.

The question being put on the motion of the gentleman from Allen,

The rules were not suspended.

#### SCHOOL FUND.

The section which provides that the principal of the common school fund shall be inviolable, and shall never be diverted to any other object than that to which it is now applied, was read a third time.

On motion,

The rules which require the yeas and nays to be taken on the final passage of a section was suspended, and the section was passed, and referred to the committee on revision.

The section which provides for the investment of common school funds not already invested for the use of such schools, was read a third time.

The rule requiring the taking of the yeas and nays on the final passage of a section was suspended, and the section was passed, and referred to the committee on revision.

#### FUTURE AMENDMENTS TO THE CONSTITUTION.

The consideration of the additional section offered by the gentleman from Switzerland, (Mr. Kelso,) which provides that the article in relation to future amendments of the Constitution shall be submitted to a separate vote of the people, was resumed.

The pending question being upon the motion to lay the section upon the table,

The yeas and nays were demanded, and they were ordered; and, being taken, resulted—yeas 100, nays 23—as follows:

YEAS.—Messrs. Alexander, Ballingall, Bascom, Beach, Beeson, Berry, Biddle, Borden, Bourne, Bracken, Bright, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Foley, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Harbolt, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tague, Tannehill, Thomas, Thornton, Trimble, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—100.

NAYS.—Messrs. Badger, Beard, Bowers, Clements, Colfax, Davis of Madison, Dunn of Jefferson, Farrow, Hall, Hamilton, Hawkins, Hogin, Howe, Kelso, Maguire, Milligan, Morgan, Murray, Stevenson, Wallace, Walpole, and Watts—23.

So the additional section was laid upon the table.

MR. WATTS. I move to take up the notice that I gave on a former day, relative to rescinding the rule which requires the yeas and nays to be taken on the passage of a section.

MR. PETTIT (in his seat). I think we are getting along rather too fast now, without rescinding that rule.

SEVERAL VOICES. Let it stand as it is for the present.

MR. WATTS. Well, sir, I submit.

MR. RITCHEY offered an additional section to the fifty-third article, that if two or more amendments to the Constitution be submitted at the same time, they shall be voted upon separately; and while one amendment proposed by

the General Assembly is under consideration, and before its adoption or rejection, no additional amendment shall be proposed.

The question being taken on the adoption of the proposed additional section,

It was decided in the affirmative.

So the section was ordered to be engrossed for a third reading.

MR. HELMER. Is it still in order to offer an additional section?

The PRESIDENT. Certainly.

MR. HELMER. Then I offer the following additional section:

It provides that a vote of the people shall be taken every ten years upon the question to call a Convention to amend the Constitution; and if decided affirmatively, the delegates shall consist of one from each senatorial district.

MR. GORDON moved that the section be laid upon the table.

MR. WALPOLE demanded the yeas and nays, and they were ordered; and, being taken, there were—yeas 82, nays 37—as follows:

YEAS.—Messrs. Alexander, Bascom, Beach, Berry, Blythe, Bourne, Bright, Butler, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dobson, Edmonston, Elliott, Farrow, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hamilton, Harbolt, Helm, Hendricks, Holman, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kinley, Lockhart, Logan, March, Mathis, May, McFarland, Miller of Clinton, Miller of Fulton, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Thornton, Trimble, Wallace, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—82.

NAYS.—Messrs. Badger, Ballingall, Beard, Beeson, Borden, Bracken, Brookbank, Bryant, Carter, Colfax, Crawford, Davis of Parke, Dick, Dunn of Jefferson, Frisbie, Garvin, Hall, Hawkins, Helmer, Hitt, Hogin, Howe, Kendall of Wabash, Maguire, McClelland, Miller of Gibson, Milroy, Morgan, Mowrer, Newman, Ritchey, Robinson, Stevenson, Thomas, Walpole, Watts, and Mr. President—37.

So the section was laid on the table.

MR. MORGAN offered an additional section, providing that whenever an amendment is proposed by the Legislature the whole Constitution shall be published, with the statutes, &c., for the information of the people.

MR. KENT moved that the proposed section be laid upon the table.

The motion was agreed to.

So the section was accordingly laid upon the table.



## NEW COUNTIES.

The section reported from the committee on miscellaneous provisions, which provides "That whenever a portion of the citizens of the counties of Perry and Spencer shall deem it expedient to form a new county of the contiguous territory of said counties, it shall be the duty of those interested in the organization of said new county to lay off, by proper metes and bounds, (of equal portions as near as practicable of the territory of said counties,) said proposed new county; which proposition shall be submitted to the voters of said counties at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election shall be given in favor of the organization of said new county, it shall be the duty of the Legislature to organize a new county out of the territory thus designated," was taken up on its second reading.

The question being on ordering the section to be engrossed for a third reading,

Mr. MILROY moved to strike out "the counties of Perry and Spencer," and insert "any two contiguous counties of the State."

Mr. SHERROD demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on the adoption of the amendment of the gentleman from Carroll,

It was decided in the negative.

So the amendment was not adopted.

The section was then ordered to be engrossed for a third reading.

Mr. KELSO offered an additional section, that the citizens of Dearborn, Ohio, Switzerland, Delaware, Grant, and Blackford counties, may alter their boundaries, on petition to the Legislature.

Mr. WATTS moved to amend the section, so that Ohio and Dearborn may be consolidated in case a majority of the people of those counties vote in favor of it.

Mr. FOLEY moved that the section and amendment be laid upon the table.

Mr. KELSO. I ask the gentleman to withdraw his motion for a moment, that I may have the privilege of saying a word.

Mr. FOLEY. Inasmuch as the gentleman has not had an opportunity to speak during the session, I will withdraw the motion.

Mr. KELSO. The gentleman may be as ironical as he pleases; I claim the privilege of saying a word in relation to this matter. The proposition of the gentleman from Dearborn is, for him, extremely liberal. There is the county of Dearborn, with three thousand voters, against the county of Ohio, which has but nine hundred and forty votes, and he asks that a majority of the people of both counties together, shall control the matter as to the consolidation of the two counties. Now if I were to make a motion

of that description, I should be ashamed to go into the county of Ohio again; and I do not know but he may be ashamed before he is done with it. Now this is a question that is to affect two counties. If a majority of the citizens of those two counties should think proper to make the change, then the Legislature shall have power to do it. Is that asking too much? I mean a majority of each county. If a majority of each county petition the Legislature to have the change made, then the Legislature shall have power to make it; that is all I ask.

Now I can, with safety, refer to members of this Convention who have but a day or two ago returned from a visit to their respective counties, where they have heard conversations in regard to the action of this body, to show that the general complaint is that we have placed too many restrictions upon the people. If it be right that two counties in the south should have the power to change their county lines, I ask if it be not equally just and right that the same power should be extended to other counties, where they are divided by crooked streams? I ask if one is not as reasonable as the other? I ask, if privileges should be granted to Perry and Spencer counties which are denied to other counties similarly situated? I hold that if a majority of the citizens of contiguous counties desire to change their boundaries, that majority should control the matter. And now it is proposed to lay upon the table a proposition as reasonable as that which has been adopted in reference to other counties. If one is proper the other is also. Is there to be no such thing as equal justice? Are we to make fish of one and flesh of another? Is one case to be provided for to the exclusion of all others? If we are to grant the privilege in one case, we should extend it to all others when it is demanded.

Mr. PETTIT (in his seat). The gentleman is right for once.

Mr. WATTS. My friend from Switzerland says that if he had offered such an amendment he would be ashamed to go into Ohio county. Now, sir, if I possessed the extreme modesty that my friend from Switzerland does, it is possible I should have such feelings; but not possessing such extreme modesty, I think I could venture to go through the county of Ohio, notwithstanding that I have offered this amendment.

Mr. President, I have been acquainted with Ohio county and have lived in the territory composing it for about thirty years; a part of my family resides in that county now. It is a county which contains a great many citizens that I entertain a great regard for. At the time of its organization I was here in Indianapolis; I was not a member of the Legislature, however, but I recollect it was represented to the Legislature that there was an excess in the county of Dearborn over the constitutional limit, of about seventeen square miles, and that

it would be highly proper that a new county should be formed out of that excess. As soon as the new county was organized and officered, it was said that it would be a violation of the Constitution to take away part of one county and give it to another. Yet, ever since the county of Ohio has been organized, efforts have been made year after year to clip from Dearborn one slice after another, and add them to Ohio. I am tired of it. I want the matter settled. If this Convention have the power, and should determine to give to Ohio four-fifths of the county of Dearborn, and let the matter forever be set at rest, I should have no objection; but I am tired of having it agitated year after year. I hope the Convention will either suffer those counties to be consolidated, or else compel them to remain as they are. I want to have the matter definitely settled.

Mr. FOLEY renewed his motion to lay the section and amendment on the table.

Mr. KELSO demanded the yeas and nays.

The yeas and nays were ordered, and, being taken, there were—yeas 74, nays 27—as follows:

YEAS.—Messrs. Alexander, Badger, Ballingall, Beeson, Bourne, Bracken, Bryant, Butler, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Davis of Parke, Dick, Dobson, Edmonston, Elliott, Farrow, Foley, Frisbie, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hamilton, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Johnson of Dearborn, Johnson of Orange, Jones, Kendall of Wabash, Logan, Maguire, March, McFarland, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Owen, Prather, Read of Clark, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Wallace, Watts, Wiley, Wolfe, Wanderlich, Zenor, and Mr. President—74.

NAYS.—Messrs. Bascom, Beach, Borden, Bright, Brookbank, Cookerly, Davis of Madison, Gootee, Hall, Hawkins, Hovey, Howe, Kelso, Lockhart, McClelland, Milligan, Milroy, Morrison of Marion, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Monroe, Smiley, Smith of Ripley, Trimble, Walpole, and Yocum—27.

So the section and amendment were laid upon the table.

On motion,

The Convention adjourned.

#### AFTERNOON SESSION.

#### ORDERS OF THE DAY.

The PRESIDENT. The Convention will resume the consideration of the orders of the day, the first thing in order being the first section of Article 55, on its second reading.

The Secretary read the section as follows:

SECTION 1. The powers of the government of Indiana shall be divided into three distinct

departments, and each of them be confided to a separate body or magistracy, to-wit: Those which are legislative to one; those which are executive to another; and those which are judiciary to another. And no person or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

The section, by unanimous consent, was ordered to be engrossed for a third reading.

#### CORPORATION CHARTERS.

The second section of Article 55 next came up on its second reading, as follows:

SECTION 2. From and after the first day of January, in the year 1880, the General Assembly shall have the power to revoke the charters of all corporations whose charters shall not have expired previous to that time, and no corporation hereafter to be created, shall ever endure for a longer term than twenty-five years, except those which are political or municipal.

Mr. MILROY. I move to amend the section by striking out "1880" and inserting "1860," and by inserting after the word "created" the words "by special enactment," and by striking out "twenty-five" and inserting "ten."

Mr. MOWRER. I move to lay the section and the amendment on the table.

A division of the question was called for.

The PRESIDENT. The question will be first taken upon laying the amendment to the section upon the table.

The motion was agreed to.

The PRESIDENT. The question is now upon laying the section upon the table.

The motion was agreed to.

Mr. WALPOLE. I now move to take the section up from the table, and upon that motion I ask for the yeas and nays.

The yeas and nays were ordered and taken, with the following result—yeas 53, nays 51:

YEAS.—Messrs. Anthony, Bascom, Beach, Beeson, Borden, Bracken, Bryant, Butler, Carr, Chapman, Chenoweth, Coats, Cookerly, Crumbacker, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Fisher, Foster, Gordon, Haddon, Helmer, Hitt, Holman, Johnson of Dearborn, Johnson of Orange, Kent, Kendall of Wabash, Kinley, Logan, March, Mathis, McClelland, McFarland, Miller of Fulton, Milligan, Moore, Morrison of Washington, Pepper of Ohio, Pettit, Ritchey, Shoup, Smith of Scott, Steele, Tague, Thornton, Walpole, Wiley, Wolfe, Yocum, and Mr. President—53.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Beard, Bowers, Clark of Hamilton, Clements, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Foley, Frisbie, Garvin, Gibson, Gootee, Gregg, Hall, Hawkins, Hogin, Hovey, Jones, Kilgore, Lockhart, Maguire, Mather, May, Miller of Gibson, Milroy, Morgan, Mowrer, Nave, Niles, Pep-



per of Crawford, Read of Clark, Robinson, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Stevenson, Thomas, Trimble, Watts, Wunderlich, and Zenor—51.

So the section was taken up from the table.

Mr. WALPOLE. I believe that it is now in order to make a few remarks in explanation of this section.

This section was reported by the committee on miscellaneous provisions, of which I am chairman, and guarantees the rights of all corporations in the State, with a reservation of a power given to the Legislature to revoke them after a certain period. The committee thought it wise to put a limitation upon the various existing charters, they therefore guaranteed the existence of the present corporations until the year 1880, after which period the Legislature should have power to revoke their charters, or place them under a general law.

I think, sir, with the gentleman from Tippecanoe, (Mr. Pettit,) that a change of Constitution, as it is proposed to make now, is equivalent to a revolution in the form of government; and that therefore, with reference to charters granted under an outgoing government, the incoming government should have the power to revoke, alter, or amend, as they might think proper. We also provided that no charters hereafter granted should ever endure for a longer term than twenty-five years, except those which were political or social, believing that we should render them as amenable to the people as possible. Already is this State checker-boarded over with corporations, and therefore it was that the committee believed it to be necessary for the good of the people that power should be given the Legislature to revoke these charters after the year 1880. At this day one-half of your railroads are mortgaged to foreign capitalists, as are also the profits of these railroads; and the day may come when all these railroads may fall entirely into the hands of foreigners, and the public good of this State may then require that the charters should be repealed. All these corporations also have the right to fix their own toll in carrying passengers and freight, and the Legislature have no right to restrain its amount; and I think that a restriction of the kind proposed is requisite; we have, too, the example of other States in regard to it. This section is taken from the new State Constitution of Louisiana. I trust the Convention will agree to ingraft this section into the new Constitution.

Mr. DUNN of Jefferson. The sentiment just advanced by the gentleman from Hancock (Mr. Walpole) would be a startling one to the people of this State if they thought it was seriously entertained in this Convention. At the time they called this Convention and elected their Delegates, it was the farthest possible from their expectations that they were engaged in a revolutionary movement, and that their

rights of person and property would be at the mercy of this body. I shall not stop to seriously controvert so ridiculous an idea.

The section under consideration proposes to give to the Legislature, from and after the first day of January, 1880, the right to revoke all charters now existing that shall not have then expired.

This would be a revolutionary movement indeed. The charter of a railroad company, for instance, is in the nature of a contract between the State and the corporators. Being so, the Legislature has no power to revoke it, and this Convention can delegate no such power to the Legislature, for the Constitution of the United States declares that "no State shall pass any law impairing the obligation of contracts." That is "the higher law" that will effectually restrain any such measures as are contemplated by the section under consideration. But, sir, if there were no constitutional provision on this subject, the moral law which requires that we should preserve inviolate our public faith, should prevent the adoption of this section. It is a proposition to give to the Legislature the power to confiscate private property. It would present us to the world in the attitude of a State that has held out to capitalists inducements to invest their money in railroads, plank roads, and other public improvements, and after they have done so, relying upon our good faith, we claim the right to take advantage of their misplaced confidence and sacrifice their property as we may please. Many of those improvements are in an unfinished state, and cannot be completed without borrowing money. How can money be obtained for their completion when capitalists discover a disposition here, on the part of the State, to act in bad faith? I shall steadily oppose anything calculated to embarrass the progress of these great thoroughfares of trade. They are adding every year millions to the value of our lands. They afford the farmers a ready access to the markets, increase the price of all our surplus productions, and stimulate every branch of industry. Believing that this section, if adopted, would tend to embarrass all these improvements, and to retard the prosperity of the State, I move its indefinite postponement.

Mr. PETTIT. I hope this section will not be indefinitely postponed. The section, sir, is not as strong as I would wish to have it; for I would be glad to see a section contained in the Constitution reserving the power to annul all charters at any time; but I shall sustain this section at any rate.

The gentleman from Jefferson says that we have the legal power to frame this law, but that there is a moral power above all law which should prevent us from adopting it. Now I maintain that this section is confirmed and sustained by the moral law. Sir, I ask where are the good morals of a sovereign power, or the

Legislature of a State, in surrendering to a few that which belongs to the many—to all? By this rule you take away from the mass certain rights, and confer them upon others. Can that be a moral principle which requires that the few shall exercise a tyrannical power to the injury of the many? I took occasion to say once before, as I now say, that the only vested right that ought to be recognized in a free State is that one paramount to all others, the vested right of the people, of every freeman in Indiana, to be equal as regards political privileges with every other man. That is the only vested right. If, for instance, the Madison railroad, in which some gentlemen seem to take a great interest, is of such vast importance to the community, and its blessings are scattered broadcast through the State, and it is a benefit to the people, is there any probability that the Legislature will ever repeal its charter? Will not the farmers of this State be so much benefited by it as that they will send up their representatives instructed to continue its charter, and not repeal it? Is there any danger of their laying ruthless hands upon that or any corporation which is for their general benefit? None whatever. But, sir, if it shall be found that that and other corporations is working lasting injury and certain wrong upon the whole community, I ask if the Legislature should not have power to repeal their charters? It seems to me no man can dispute that proposition. Twenty-five or thirty years is a long time for a corporation to hold a franchise from the body of the people, which is mainly for the benefit of the corporation alone. I have no disposition to detain the Convention any longer; I only trust that the section may be passed, and not indefinitely postponed.

Mr. NAVE. So far as I am concerned, Mr. President; I must say that I am not very partial to corporations; but here I am called upon to act in favor of a section that I am satisfied proposes to violate the Constitution of the United States, and being satisfied of this fact, I shall be compelled, from a sense of duty, to vote for the indefinite postponement of this section. How, sir, do I come to this conclusion? I come to it in no other way than from the fact that every charter granting a right to a company to construct a railroad, is a private contract according to law, and it has so been decided in the courts of this confederacy. Yes, sir, I take the position that the grant of a charter to a railroad or bank, or any other corporation, is a private contract between the State and the citizens of the State; and how do I prove this position? Why, sir, by the highest authority in this country. In 2 vol. Kent's Commentaries, it is said: "That a bank, whose stock is owned by private persons, is a private corporation, and that the same thing may be said of insurance, canal, bridge, turnpike, plank, and railroad companies." And the same was held to be the law in the

case of the United States Bank vs. the Planters' Bank, by Chief Justice Marshall. See 9 vol. Wheaton, page 907. Kent also says that a public corporation instituted for purposes connected with the administration of the government may be controlled by the Legislature, because such a corporation is not a contract within the purview of the Constitution of the United States. See 2 vol. Kent, page 305. Same book and page, Kent says, that a private corporation is a contract between the government and the corporators.

Now let us turn our attention to what is said in the Constitution of the United States in regard to the violation of contracts. Look at the tenth section of the first article of that Constitution and you will find it reads as follows:

"No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder or *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

Now, sir, I ask by what possibility the last clause of this section can be so construed as to authorize the Legislature of this State to violate contracts, which I have proven the charters I have referred to to be. Here we see that it is expressly declared that no State shall pass any *ex post facto* law impairing the obligation of contracts; and yet by the present section the Legislature is authorized, after the year 1880, to violate the contracts this State has entered into with the Madison railroad, and with every other corporation in the State, thus violating the provision of the Constitution of the United States on the subject.

But, sir, let us refer to other authorities on this point. In the case of Dartmouth College vs. Woodward, Story, Chief Justice, held that the Legislature cannot repeal, impair, or alter the rights and privileges conferred by the charter, against the consent and without the default of the corporation judicially ascertained and declared. See 4 vol. Wheaton, page 697; and the same had been previously settled by the Supreme Court of the United States, in the following cases, viz.: "The State of New Jersey vs. Wilson, and Fletcher vs. Beck, and Terret vs. Taylor, and also the Town of Parolet vs. Clark."

Thus, sir, the question has been settled by the highest authority in the Union, the Supreme Court of the United States, that in the cases of the charter of these corporations, no Legislature shall ever pass laws impairing or violating them. In conclusion, I simply ask gentlemen if by this provision now before us we are not asked directly to violate the Constitution of the United States, and whether they are prepared to do it?

Mr. PEPPER of Crawford. I move the previous question.



Upon a division—ayes 49, noes 38—the motion was seconded.

The main question was then ordered to be put.

The **PRESIDENT**. The main question is, Shall the section be engrossed for a third reading?

The yeas and nays upon this question were demanded and ordered, and taken, with the following result—yeas 55, nays 63:

**YEAS.**—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Bracken, Butler, Carr, Chapman, Chenoweth, Coats, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Fisher, Foster, Gootee, Haddon, Holman, Johnson of Dearborn, Johnson of Orange, Keat, Kinley, Logan, March, Mathis, May, McClelland, McFarland, Milligan, Milroy, Moore, Morrison of Marion, Morrison of Washington, Nofsinger, Pepper of Ohio, Pettit, Ritchey, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Wiley, Wolfe, Yocum, and Mr. President—55.

**NAYS.**—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bourne, Bowers, Bright, Bryant, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Foley, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hegin, Hovey, Howe, Huff, Jones, Kendall of Wabash, Kilgore, Lockhart, Maguire, Mather, Miller of Gibson, Mooney, Morgan, Mowrer, Murray, Nave, Pepper of Crawford, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Sims, Snook, Stevenson, Thomas, Thornton, Wallace, Walpole, Watts, Wunderlich, and Zenor—63.

So the section was not engrossed.

Mr. **KILGORE**. I move a re-consideration of the vote just taken.

Mr. **WALPOLE**. I move a call of the Convention.

The **PRESIDENT**. The question will be first taken upon the adoption of the motion for a call of the Convention.

Upon this motion the yeas and nays were demanded, and, having been ordered, were taken, with the following result—yeas 46, nays 71:

**YEAS.**—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Bracken, Chapman, Clark of Tippecanoe, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Elliott, Haddon, Johnson of Orange, Lockhart, March, Mathis, McClelland, McFarland, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Pepper of Ohio, Pettit, Ritchey, Sherrod, Shoup, Smiley, Smith of Scott, Tague, Wallace, Walpole, and Yocum—41.

**NAYS.**—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bourne, Bowers, Bright, Bryant,

Butler, Carr, Chenoweth, Clark of Hamilton, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hegin, Hovey, Howe, Huff, Johnson of Dearborn, Jones, Kent, Kendall of Wabash, Kilgore, Logan, Maguire, May, Miller of Gibson, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tannehill, Thomas, Thornton, Watts, Wiley, Wolfe, Wunderlich, Zenor, and Mr. President—76.

So the motion for a call of the Convention did not prevail.

The **PRESIDENT**. The question now is upon the motion to re-consider.

Upon this question the yeas and nays were demanded, and, having been ordered, were taken, with the following result—yeas 48, nays 74:

**YEAS.**—Messrs. Alexander, Bascom, Beeson, Berry, Borden, Bracken, Chapman, Chenoweth, Coats, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Foster, Haddon, Johnson of Dearborn, Johnson of Orange, Kinley, March, Mathis, May, McClelland, McFarland, Milligan, Milroy, Moore, Morrison of Marion, Nofsinger, Pepper of Ohio, Pettit, Ritchey, Sherrod, Shoup, Smiley, Smith of Scott, Spann, Steele, Tague, Walpole, Wiley, Wolfe, Yocum, and Mr. President—48.

**NAYS.**—Messrs. Anthony, Badger, Ballingall, Barbour, Beach, Beard, Bourne, Bowers, Bright, Bryant, Butler, Carr, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Fisher, Foley, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hegin, Hovey, Howe, Huff, Jones, Kent, Kendall of Wabash, Kilgore, Lockhart, Logan, Maguire, Mather, Miller of Fulton, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Niles, Pepper of Crawford, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Sims, Snook, Stevenson, Tannehill, Thomas, Thornton, Wallace, Watts, Wunderlich, and Zenor—74.

So the vote was not re-considered.

Mr. **PETTIT**. I offer the following additional section:

"All charters hereafter granted shall be subject to repeal, but the interests of all parties interested shall be justly protected when such charters are repealed."

This section, sir, simply says that all charters hereafter granted shall be subject to repeal, but that the interests of all parties shall be pro-

tected when any such charter is repealed. It therefore applies to all charters hereafter made, and not to any heretofore made.

Mr. RARIDEN. I do not know, nor can I perceive, that any great injury will result from the adoption of the section proposed by the gentleman from Tippecanoe. But it strikes me on the first view of it, that it will lay down a principle of instability in legislation. Now I do not believe a word in this doctrine put forth, that a change in State government is a revolution; but on the contrary, I maintain that the State lives forever. It is a mere change in her mode of action—she remains the same political being. Now these corporations are nothing more than artificial persons, upon whom are bestowed such rights and privileges such as the law-making power sees proper to bestow upon them. This provision, sir, is denying to future Legislatures the privilege which that body has heretofore exercised. I believe the better policy is not to restrict the action of Legislatures in the future, but leave it for them as the representatives of the people to settle this matter.

By this provision, also, the Legislature may terminate the existence of corporations at pleasure, and as this will deter individuals from forming corporations for useful purposes, I can see no use in it.

Mr. HOWE. I move to amend the section by inserting the word "bank" before the word "charters."

The amendment was not adopted.

The PRESIDENT. The question is upon the adoption of the section.

Upon this question the yeas and nays were demanded and ordered, and taken, with the following result—yeas 76, nays 44.

YEAS.—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Bowers, Bracken, Bright, Bryant, Butler, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Elliott, Fisher, Foley, Foster, Garvin, Gordon, Haddon, Holman, Hovey, Johnson of Dearborn, Johnson of Orange, Kent, Kilgore, Kinley, Lockhart, Logan, Mathis, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Steele, Tague, Tannehill, Thornton, Trimble, Walpole, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—76.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bourne, Carr, Clark of Hamilton, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Frisbie, Gibson, Graham of Miami, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt,

Hogin, Howe, Huff, Jones, Kendall of Wabash, Maguire, March, Mather, Morgan, Murray, Rariden, Read of Clark, Robinson, Sims, Smith of Ripley, Spann, Stevenson, Thomas, and Wallace—44.

So the section was adopted.

The PRESIDENT. The question is, Shall the section be engrossed for a third reading?

Mr. COLFAX. I move to amend by adding at the end of the section the words "by a two-thirds vote of each branch of the Legislature."

I consider, sir, if charters are to be subject to repeal they should be by a vote of two-thirds of each branch of the General Assembly. This vote will indicate whether the repeal of a charter is in accordance with the wishes of a majority of the people of the State.

Mr. WALPOLE. This, sir, is a popular government under which we are controlled by the will of the majority, and we have already passed a section to that effect; I therefore move to lay the amendment of the gentleman from St. Joseph on the table.

Mr. MORRISON of Marion. I move the previous question.

The call for the previous question having been seconded by the Convention, the main question was ordered to be put;

And the main question being upon the engrossment of the section, it was engrossed for a third reading.

Mr. RITCHEY. I move an additional section to this article, as follows:

"No private corporations hereafter chartered shall endure for a longer period than thirty years."

The question was put upon the adoption of the section, and it was decided in the negative.

#### TERM OF OFFICES.

The section providing that "when the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared by law, such office shall be held during the pleasure of the authority making the appointment," came up on its second reading.

Mr. WALPOLE. I would simply remark in relation to this section that there are hundreds of offices the duration of which is not provided for by the Constitution, such as township trustees, treasures, and collectors. This section leaves the matter with the Legislature where it properly belongs.

The section was ordered to be engrossed for a third reading.

#### CENSUS.

The next section, requiring that "the number of the inhabitants of the several counties of this State, together with the agricultural, manufacturing, and other general statistics thereof, shall be taken in the year 1856, and every ten



years thereafter, in such manner as may be prescribed by law," came up on its second reading.

**Mr. WALPOLE.** The general government, sir, has provided for the taking of the census every ten years. The last time it was taken was in the year 1850; the next census will be taken in 1860, and so on every ten years thereafter. This section provides for the taking of a census by the State in the year 1855, and every ten years thereafter, so that by this system, in connection with the present system of the general government, we will have all the statistics of the State laid before us every five years. The section was framed in accordance with instructions given by the Convention.

**Mr. EDMONSTON.** I certainly do not think this section should be adopted, for the reason that it will involve the State in an expense equal to that incurred by the general government for taking the census every ten years. Besides, sir, I think the census taken by the general government is sufficient for all useful purposes, and that an additional enumeration is entirely unnecessary. I therefore move to lay the section on the table.

The motion was agreed to.

#### BANKING PRIVILEGES.

The section declaring that "the Legislature shall have power, whenever it may deem the public good requiring it, to repeal all banking charters or laws granting banking privileges of any kind," next came up on its second reading.

**Mr. BERRY** moved to amend by striking out the words "granting banking privileges."

The motion was not agreed to.

**Mr. LOCKHART** moved to lay the section upon the table.

Upon this motion the yeas and nays were demanded and ordered, and being taken the Secretary reported the following result—yeas 51, nays 68:

**YEAS.**—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bourne, Bowers, Brookbank, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Foley, Frisbie, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Hoggins, Hovey, Huff, Lockhart, Maguire, March, Mather, Miller of Fulton, Morgan, Murray, Pepper of Crawford, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Sims, Stevenson, Tannehill, Thomas, Thornton, Wallace, and Watts—51.

**NAYS.**—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Bracken, Bright, Bryant, Carr, Carter, Chapman, Chenoweth, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Duzan, Edmonston, Elliott, Fisher, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Holman,

Howe, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kinley, Logan, Mathis, May, McClelland, McFarland, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Pepper of Ohio, Pettit, Ritchey, Sherrod, Shoup, Smiley, Snook, Spann, Steele, Tague, Trimble, Walpole, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—68.

So the section was not laid on the table.

**Mr. MILROY** offered the following amendment:

Insert after the word "to" the words "amend or."

The amendment was concurred in.

The **PRESIDENT.** The question now is, Shall the section be engrossed for a third reading?

Upon this question, the yeas and nays were demanded and ordered, and being taken, the Secretary reported the following result—yeas 76, nays 47:

**YEAS.**—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Borden, Bright, Bryant, Butler, Carr, Carter, Chapman, Chenoweth, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Garvin, Gordon, Graham of Miami, Haddon, Hendricks, Holman, Howe, Johnson of D., Johnson of O., Jones, Kent, Kendall of Wabash, Kilgore, Kinley, Logan, Mathis, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Nofsinger, Pepper of Ohio, Pettit, Ritchey, Schoonover, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thornton, Trimble, Walpole, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—76.

**NAYS.**—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Blythe, Bourne, Bowers, Bracken, Brookbank, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Foley, Frisbie, Gootee, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hoggins, Hovey, Huff, Lockhart, Maguire, March, Mather, Morgan, Murray, Pepper of Crawford, Rariden, Read of Clark, Robinson, Shannon, Sims, Thomas, Wallace, Watts, and Zenor—47.

So the section was ordered to be engrossed for a third reading.

#### MISCELLANEOUS.

The Convention then proceeded to the consideration of article 56, on its second reading. The article reads as follows:

*First.* That no inconvenience may arise from the change in the Constitution of this State, and in order to carry the same into com-

plete operation, it is hereby declared and ordained that—

*Second.* All laws and parts of laws now in force and not inconsistent with this Constitution, shall continue and remain in full force until they expire or be repealed.

*Third.* The Governor, Secretary, Auditor, and Treasurer of State, shall severally reside, and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

*Fourth.* All writs, actions, causes of actions, prosecutions, contracts, claims, and rights of individuals, bodies corporate, and of the State, shall continue, and all indictments which shall have been found, or which may hereafter be found, for any crime or offense committed before the adoption of this Constitution, may be proceeded upon as if no change had taken place in the organic law of the State.

*Fifth.* Every person who shall be elected or appointed to any office under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this State and of the United States, and an oath of office.

The above sections of the article were severally ordered to be engrossed for a third reading.

#### APPOINTMENTS.

Mr. MORRISON of Marion offered an additional section, providing that the Governor shall fill such vacancies as may occur in the offices of Judges, Auditors, Treasurers, Secretaries, and all other offices not provided for in the Constitution, who should hold their respective offices until their successors are duly elected. Mr. M. said that he would merely remark that section twenty of the executive report provided for the filling of vacancies under certain emergencies, and this section provided for the balance of those emergencies not provided for in the section already passed.

The additional section was ordered to be engrossed for a third reading.

#### SALARIES.

Section 1 of article 57 next came up on its second reading. It was read by the Secretary, as follows:

Sec. 1. The following officers of government shall be allowed as their annual salaries not less than the following sums, viz. :

The Governor, one thousand five hundred dollars.

The Secretary, Auditor, and Treasurer of State, one thousand dollars each, with such perquisites as the Legislature shall from time to time allow.

The Judges of the Supreme Court, one thousand five hundred dollars each.

The Judges of the Circuit Court one thousand two hundred dollars each.

The members of the General Assembly, three dollars per day each, and three dollars for every twenty-five miles travel on the most direct route in going to and returning from the seat of government.

No law shall be passed to increase the pay of members of the General Assembly until after the close of the session at which such law shall be passed.

Mr. GORDON moved to lay the section upon the table.

Upon this motion the yeas and nays were demanded, ordered, and taken, with the following result—yeas 73, nays 48:

YEAS.—Messrs. Alexander, Barbour, Bascom, Beard, Beeson, Berry, Bowers, Bracken, Butler, Carr, Carter, Chenowith, Clark of Hamilton, Clements, Coats, Cookerly, Crawford, Davis of Vermillion, Duzan, Edmonston, Elliot, Farrow, Fisher, Foley, Gootee, Gordon, Haddon, Hall, Harbolt, Helm, Helmer, Hendricks, Hogin, Holman, Huff, Johnson of D., Johnson of O., Jones, Kinley, Logan, Mathis, May, McClelland, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimby, Watts, Wolfe, and Zenor—73.

NAYS.—Messrs. Anthony, Badger, Ballingall, Beach, Blythe, Bourne, Bright, Bryant, Chapman, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Frisbie, Garvin, Graham of Miami, Hamilton, Hawkins, Hitt, Hovey, Howe, Kent, Kilgore, Lockhart, Maguire, March, Mather, McFarland, Miller of Fulton, Milroy, Morrison of Marion, Murray, Nave, Pettit, Robinson, Steele, Wallace, Walpole, Wiley, Wunderlich, Yocum, and Mr. President—48.

So the section was laid upon the table.

Mr. DOBSON. I offer the following additional section, to-wit: "The Legislature shall have power to fix the salaries of all judicial and State officers, and the pay of the members of the General Assembly."

Mr. KILGORE moved to lay the section upon the table.

The motion was not agreed to.

The PRESIDENT. The question is upon the adoption of the section.

Mr. DOBSON. I do not think, Mr. President, that this section should have been laid upon the table. It was reported after mature deliberation on the part of the committee on salaries, tenure, and compensation of office; and if the salaries were too much, they could have been reduced by amendments. If, however, the Convention does not see fit to take the responsibility of fixing the salaries of the officers of government, and of the members of the Gen-



eral Assembly, let us leave the whole matter with the Legislature, and they can fix it; certainly if we expect to have officers discharge their duty, they must get paid for their services.

I would remark, in addition, that the pay of the members of the General Assembly heretofore has been fixed in the Constitution, in regard to their traveling expenses, for the most usual route in traveling to and fro; but by the section just laid on the table the most direct route has been fixed; there is also a provision embraced in the section, requiring that the General Assembly shall not pass a bill to increase their own pay, which shall take effect during the same session at which it is passed.

**Mr. PETTIT.** The Convention certainly has the right to fix the amount of these salaries; and I think it has done exceedingly wrong in laying the section, fixing their amount, upon the table. Sir, if you want honest and competent men to fill office, you must pay them for their offices, and I believe you should pay them well. Of all things that we shall do, in my judgment, we should fix a minimum of salary for all these officers, below which the Legislature may not reduce them. If you reduce the salaries of these offices, only wealthy men, or such as desire to use office for their own corrupt and selfish purposes, will accept of them. Men of capacity and integrity cannot fill these offices without adequate compensation. I trust the gentleman from Owen (Mr. Dobson) will withdraw the section he has offered as a substitute, and that some gentleman will make a motion to take up the section just laid upon the table. I cannot make the motion, as I voted against laying on the table.

**Mr. DOBSON.** I will withdraw the section I have offered.

**Mr. TANNEHILL.** I move to take up the section just laid on the table.

**The PRESIDENT.** The question is upon taking from the table the section just laid there.

**Mr. WATTS.** All the arguments I have heard on the subject of reform in courts of justice, and everything of that kind, bases the qualifications of the individuals who hold offices in these courts and in the other departments of government entirely upon money. Now, sir, I assert that qualifications and compensation ought to go together. But it has been said, and I am willing to admit the truth of the assertion to some extent, that the salaries paid to our Governors, Judges, and other officers, have been very low, and perhaps lower than they ought to be. Notwithstanding the fact of the smallness of the salary of our Governor, for instance, I believe that, in qualifications, the Governors hitherto elected by either of the political parties in our State, can compare with the Governors of any other State in the Union; and, sir, the decisions of our judges of the Supreme Court and other courts have been looked to as good authority throughout the United States. And

so with our other State officers; in point of qualification, they are behind the officers of no other State government in the Union.

Sir, I consider the time will come, when it will become necessary to give these State officers a much higher salary than is even named in the bill, and therefore I believe that it is impolitic to fix in the Constitution, at the present time, the compensation of these officers. I believe, therefore, that the matter of compensation should be left entirely with the Legislature, and, as they deem it necessary, they can decrease or increase them.

The question upon taking up from the table article 57, was then put, and, upon a division—ayes 43, noes 63—decided in the negative.

On motion,

The Convention adjourned.

FRIDAY, JAN. 31, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. LANG.

The journal of yesterday was read and approved.

**Mr. READ** of Monroe, from the committee on "corporations other than banking," reported in accordance with instructions, a section providing that dues from corporations not possessing banking powers, shall be secured by such individual liabilities as may be prescribed by law.

The question being on the passage of the section,

The yeas and nays were taken, under the rule, and resulted thus—yeas 85, nays 36:

**YEAS.**—Messrs. Alexander, Anthony, Badger, Beard, Beeson, Biddle, Blythe, Bourne, Bowers, Bracken, Brookbank, Butler, Chenoweth, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kelso, Kent, Lockhart, Maguire, March, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Moore, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Schoonover, Sherrod, Shoup, Smiley, Smith of Ripley, Spann, Stevenson, Tannehill, Watts, Wunderlich, Yocum, Zenor, and Mr. President—85.

**NAYS.**—Messrs. Ballingall, Barbour, Bascom, Bright, Bryant, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Crawford, Davis of Vermillion, Fisher, Helmer, Kendall of Wabash, Kilgore, Kinley, Logan, Miller of Gibson, Mooney, Morgan,

Nave, Nofsinger, Pettit, Robinson, Shannon, Snook, Smith of Scott, Steele, Tague, Thomas, Thornton, Walpole, Wiley, and Wolfe—36.

So the section passed, and was referred to the committee on revision.

#### TIPPECANOE BATTLE GROUND.

Mr. BRYANT, from the committee on the public institutions of the State, made a report in relation to the donation to the State of the Tippecanoe Battle Ground by the late General John Tipton, accompanied by the following section, to-wit:

"It shall be the duty of the General Assembly to provide for the permanent inclosure and preservation of the Tippecanoe Battle Ground."

The section was read a first time, and was passed to a second reading.

Mr. HOWE moved a suspension of the rules in order to enable him to introduce the following resolution:

"Resolved, That the order of business be so changed that the first thing in the orders of the day shall be sections reported back from the committee on revision; and that the President be authorized to employ an enrolling clerk to enroll said sections as fast as they are acted upon by the Convention."

The rules were suspended, and the resolution having been read,

Mr. COOKERLY moved to amend the same by striking out the word "President," and inserting the words "principal Secretary."

The amendment was agreed to.

Mr. OWEN. In connection with this matter, I will make one remark to the Convention. I do not know, and the Secretary does not know, whether it is the intention of the Convention that two copies of the Constitution shall be enrolled; one for the office of the Secretary of State, and the other for the State Library. If it be the intention to have two copies made, the Secretary ought to be so informed now, because there is considerable labor attending it. The matter ought to be decided one way or the other.

Mr. PETTIT. The law under which we act settles this matter; it says that we shall deposit our draft of the Constitution, together with the journal of our proceedings, in the office of the Secretary of State. It does not contemplate the making of two enrollments.

Mr. BORDEN. There were two copies of the Constitution of 1816 enrolled, one for the office of the Secretary of State, and the other for the State Library, so that if one would be lost or destroyed, there would be another remaining. It is true the law requires but one; but I suggest whether it would not be better to have two.

Mr. HOWE. I have offered this resolution in order that the Convention may determine

whether there shall be one copy or two. I have no particular preference myself one way or the other.

Mr. OWEN. For the purpose of bringing the Convention to a vote upon the question, whether there shall be two copies or one enrolled, I move to amend the resolution by inserting the words "two copies." I will say to the Convention that the additional expense will be a mere trifle, and that the two copies can be enrolled as expeditiously as one; at least both copies can be completed before our final adjournment.

Mr. WATTS. I believe the law under which we are acting only makes provision for one copy, and the appropriation for the expense of the additional copy will have to be made by the Legislature. I believe from the indications of the feeling existing at present in that quarter, they are not over disposed to make appropriations to pay even the unavoidable expenses of the Convention, and therefore, I am opposed to employing an additional officer, or authorizing the enrolling of an additional copy of the Constitution, unless we can first control the means to meet the necessary expense attendant on it.

Mr. OWEN. Every five minutes that we consume in talking about it, costs more than the entire expense of enrolling the instrument.

Mr. BASCOM. I rise to a question of order. The resolution proposes to change the manner of doing business. I ask if it does not necessarily lie over one day?

A MEMBER. The rules have been suspended.

The PRESIDENT. The rule does not refer to resolutions of this character.

The question was taken on the amendment of the gentleman from Posey, (Mr. Owen,) to insert the words "two copies;"

And it was, on a division, ayes 44, noes 44—not agreed to.

Mr. KILGORE. It does seem to me that the adoption of this resolution at this time would be premature. If we contemplate the enrolling of the Constitution, we had better wait I think until we are through with it. I understand that there will be additional sections ingrafted upon almost every article, and if you commence the enrollment too soon you may have to do the work over again. I do not see how we can with propriety commence the enrollment until we have the Constitution completed.

Mr. BORDEN. The gentleman, I think, is laboring under a misapprehension. The proposition is not that the Secretary shall proceed forthwith to have the Constitution enrolled; it merely declares that the Constitution shall be enrolled.

SEVERAL VOICES. All right—all right.

Mr. KILGORE. I am still not satisfied in



regard to this matter. When the Convention shall have resolved that they will take up no further business, or adopt no further amendments, then it will be proper to pass such a resolution, but we have not as yet even completed the Bill of Rights; alterations may still be made. I move that the resolution be laid on the table for the present. [Cries of "no! no!"] The motion to lay on the table was withdrawn.

The question being on the adoption of the resolution,

Mr. PETTIT. It does appear to me that the Convention is certainly premature in regard to this matter. I certainly for *once*, agree with the "Delaware Chief." [Laughter.] What is it that you are proposing to do? You have not yet come to the conclusion of your work. You may yet put half a dozen new sections into the bill of rights. You may add new sections to the article on the subject of the judiciary, or article on the executive department, and so with regard to all the other articles. Until the Convention determine that they will pass no more sections, the committee on revision will not know how to report; they cannot tell how the sections ought to be arranged until the Convention have acted upon all the propositions that they intend to act upon. Because, otherwise, the committee might introduce a section in the wrong place. When we have finished our work and determined that we will pass no more sections, then the committee will be enabled to report, and we shall then have a vote upon concurring in their report; and the last section we pass may go up to the head, or next to the head, as boys do at school. [Laughter.] Sir, it is useless to pass this resolution at present; you cannot act under it; it is utterly impossible. I hope the resolution will not pass.

Mr. MATHER. I hope the resolution will pass. I cannot see the force of the argument of the gentleman from Delaware, and of the gentleman from Tippecanoe. If their argument is worth anything at all, we must wait here until we have acted upon every proposition that is to be inserted in the new Constitution before we take any steps for the enrollment of the instrument which we have been so long laboring to form. Now when the committee on revision make their report, according to the mode of procedure advocated by the gentlemen, what is the question that will be proposed? The question is, "Shall the amended Constitution be enrolled?" That question being decided affirmatively, we must necessarily wait here in idleness, until the work of enrollment is completed. Why not let it be in progress? I think there is no necessity in waiting until we are ready to adjourn *sine die* before the enrollment is commenced.

Mr. SPANN. This proposition contemplates making no new office; and no matter whether it is adopted or not, the work must be done.

The only question is, whether this enrollment shall be commenced to-morrow or deferred a week. I can see no reason why it should be deferred; on the contrary, if we are to adjourn on the tenth, I think it ought to be commenced at once. If I understood the remarks of the gentleman from Posey (Mr. Owen) the other day, when he proposed to introduce a new section, he seemed to be of the opinion that it would be the last section that would be introduced. So far as the ordering of this work to be done is concerned, it seems to me that it is as appropriate to order it to be done now as at any other time.

Mr. GORDON demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being upon the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

The PRESIDENT. Before the Convention proceeds to any other business, the Secretary desires to know whether it is the pleasure of the Convention that the new Constitution shall be enrolled upon parchment.

SEVERAL VOICES. Certainly: let it be enrolled upon parchment.

It was so ordered.

Mr. HOLMAN moved that the rules be suspended, to enable him to take from the table a resolution that was introduced on Saturday by the gentleman from Johnson, in order that it might be referred to the committee on miscellaneous provisions.

The rules were suspended, and the resolution was taken up and referred to the committee on miscellaneous provisions.

The PRESIDENT. The Convention will now proceed to the consideration of the

#### ORDERS OF THE DAY.

The PRESIDENT. The first thing in the orders of the day is the section of article number fifty-three, relative to any future amendments to the Constitution being voted upon separately, &c.

Mr. PETTIT. It seems to me that the resolution we have passed this morning, makes it necessary to pass another. In order that I may offer the following resolution, I will move a suspension of the order of business:

"Resolved, That after Tuesday next no new section shall be offered, nor shall any motion be made to re-consider the vote upon the engrossment or final passage of any act."

The order of business was not suspended.

The section above referred to, is to the following effect: If two or more amendments be submitted to the people at the same time, a separate vote shall be taken on each; and while one

set of amendments is in progress before the Legislature, or awaiting the vote of the people, no new amendment or set of amendments shall be proposed.

Mr. KELSO. It seems to me there is more in this section than is necessary. I cannot see any good reason why, if there should be an amendment to the Constitution submitted to the people for their action, other amendments might not, previous to the action of the people on the first, be proposed in the Legislature, and the same course taken in regard to them as was taken in regard to the amendment first proposed. There can be no difficulty attending such a course, provided one amendment do not conflict with the other. I do not think there is any necessity for adopting this section.

Mr. RITCHEY. Our Legislature will meet but once in two years, and if one amendment be proposed by one General Assembly and be submitted to the people, and then another amendment be proposed by the next General Assembly, and various propositions in this way be in progress at the same time, the danger is that there will be confusion. I think we ought to provide that not more than one amendment to the Constitution should be mooted at one time.

Now it appears to me that, under the provisions of this section, it will not be permissible while one set of amendments are in progress to introduce a new set of amendments. My opinion is, that no new set of amendments should be introduced until the first set is disposed of; and by that means we will avoid much confusion. There are three stages through which all amendments must pass in their progress, before they finally become a part of the Constitution. Suppose the Legislature that meets in eighteen hundred and fifty-two should propose one set of amendments, and the Legislature that meets in eighteen hundred and fifty-four should propose another, and the Legislature that meets in eighteen hundred and fifty-six should propose a new batch, there would then be a whole string of amendments; some in their inception, and some ready for final action. All these questions being agitated at the one time, it appears to me must produce confusion.

Mr. McFARLAND. I hope the section will not be adopted. I hope the Convention will agree upon some easy mode of amending the Constitution the next time that it is necessary to amend it; and such a mode, I think, may be adopted without the proposition of the gentleman from Johnson. I hope that the citizens of Indiana will hereafter be able to make all necessary changes in their fundamental law without calling another Convention. I believe there is sufficient sterling good sense among the people to restrain them from any hasty or intemperate action. I do not apprehend that any danger will arise from an over-anxiety to make changes in your organic law.

Mr. KELSO. I say, in all candor, that it is my fixed belief if the new Constitution be adopted by the people at all, the credit of its adoption will be entirely attributable to the article that this section is to form a part of. If it were not for the facilities afforded to the people of Indiana for amending the Constitution by the section that has already been adopted, I feel safe in saying that not one-third of the people would support it. The only reason why they will support it at all is, because they will have the means hereafter of making the Constitution what it ought to be. But if we put this provision in the article, it will operate against the adoption of the Constitution to a great extent, without any corresponding good resulting from it. The provision that we have already adopted on the subject, is sufficient without this. And, if no other gentleman desires to address the Convention in regard to it, I move that the section be laid upon the table.

Mr. RITCHEY. I would like to have the yeas and nays on that motion.

Mr. KELSO. In order that we may have a direct vote on the section, I will withdraw the motion to lay upon the table.

So the motion to lay on the table was withdrawn.

Mr. CLARK of Tippecanoe. It strikes me that this section is not so objectionable as the gentleman from Switzerland seems to suppose. The principal object of the proposition is to prevent two or more sets of amendments being in progress at the same time, and by that means prevent the possibility of objectionable amendments being passed, through the medium of the combination of parties. I think the section ought to be adopted.

Mr. MOWRER. I demand the previous question.

The demand for the previous question was, on a division—ayes 46, noes 34—seconded.

So the main question was ordered to be now put.

The question being, Shall the section pass?

The yeas and nays were taken, under the rule, and resulted thus—yeas 100, nays 24—as follows:

YEAS.—Messrs. Anthony, Ballingall, Bascom, Beach, Beard, Beeson, Berry, Biddle, Blythe, Bourne, Bowers, Bracken, Bright, Bryant, Butler, Chapman, Clark of Tippecanoe, Clements, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hendricks, Hitt, Holman, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, Milligan, Mooney, Moore, Morrison of Washington, Mowrer, Murray, Niles, Nofsinger, Pep-



per of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tague, Tannehill, Thornton, Trimby, Walpole, Watts, Wiley, Wolfe, Wunderlich, and Zenor—100.

**NAYS.**—Messrs. Alexander, Badger, Barbour, Carr, Chenowith, Clark of Hamilton, Coats, Cole, Colfax, Crumbacker, Graham of War-  
rick, Hogan, Hovey, Kelso, Kendall of Wabash, McFarland, Miller of Fulton, Miller of Gibson, Morgan, Nave, Rariden, Stevenson, Thomas, and Yocum—24.

So the section was passed, and referred to the committee on revision.

#### COUNTIES.

The section which empowers the Legislature to authorize a union of the counties of Spencer and Perry, provided the same be demanded by a majority of the voters in said counties, was taken up on its third reading.

Mr. FRISBIE moved that the section be re-committed, with certain instructions. [The reporter has not been furnished with a copy of the instructions proposed.]

The motion of the gentleman from Perry prevailed.

So the section was re-committed.

#### POWERS OF THE GOVERNMENT.

**THE PRESIDENT.** The next thing in order is the article reported from the committee on miscellaneous provisions, in relation to the powers of government.

The first section of said article was read, as follows:

"The powers of the government of Indiana shall be divided into three distinct departments, and each of them to be confided to a separate body or magistracy, to-wit: Those which are legislative to one; those which are executive to another; and those which are judiciary to another. And no person or collection of persons, being of one of those departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

The question being, "Shall the section pass?"

On motion,

The rule requiring the yeas and nays to be taken on the final passage of a section, was suspended.

The section passed, and was referred to the committee on revision.

The following section was then read a third time:

"When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared by law, such office shall be held during the pleasure of the authority making the appointment."

The question being, "Shall the section pass?"

On motion,

The rules were suspended requiring the yeas and nays, &c.

The section was passed, and referred to the committee on revision.

The following section was then read a third time:

"The Legislature shall have power, whenever it may deem the public good requiring it, to repeal all banking charters or laws granting banking privileges of any kind."

The question being, "Shall the section pass?"

Mr. KELSO. I move that the section be indefinitely postponed. That is a motion, sir, that will not cut off debate, and it is one that will try the merits of the question. I now beg leave to say, very briefly, that if this section be passed, it is tantamount to declaring that there shall never be a State Bank established in Indiana. Now, when the Legislature grants a charter it will be their duty—and I suppose the Legislature may reasonably be expected to do their duty—to limit the duration of that charter; for we have already provided that the operations of banking corporations hereafter established shall be limited to twenty years; and I understand an attempt has been made to fix a limit in regard to all other charters. Now if we leave it to the Legislature to fix a limit to the duration of bank charters, I think it is giving them enough without giving them the power to repeal them at any time.

Mr. CHAPMAN (in his seat.) The Legislature have never attempted to exercise such a power.

Mr. KELSO. Well, that is not saying that they never will. I am myself willing to vote for a limitation to all charters. Let them, for instance, be limited to twenty years duration. But, to say that after the people have invested their means under a charter granted by the Legislature, the Legislature shall have power to turn round and repeal the charter, and thus annul the contract that they have made, seems to me to be going further than the people desire or the interests of the State require that we should go. Certainly no good can result from it.

Mr. BORDEN said, he trusted the motion for indefinite postponement would not prevail. I had hoped (continued Mr. B.) that the committee would not recede from the position it had assumed yesterday, which was, that laws incorporating banks and authorizing banking associations should always be subject to modification, and if necessary, in case of flagrant violation of their charters, to be repealed.

Sir, it was said in debate on yesterday, that if this section passed no capitalist would ever invest his means in the business of banking in

this State. Now I look upon this as an idle threat. Let me ask gentlemen what State in this Union has the greatest amount of banking capital invested, in proportion to its population and business? Why, unquestionably, sir, the great State of New York, and she has incorporated in her Constitution a section very similar to this. I hope the Convention will excuse me for reading it.

SEVERAL VOICES. Read—read it.

Mr. BORDEN. It is as follows:

“All general laws and special acts passed in pursuance of this section, may be altered from time to time, or repealed.”

By turning to the book—which lies upon our desks—containing the constitutions of all the States in the Union, gentlemen will find that it is a part of the first section of the eighth article of the Constitution of the State of New York, and has reference to the creating of banks under the provisions of the Constitution of that State.

Now, sir, why should we not insert this in our Constitution also? Are we going to create a whole brood of Banks here, and to refuse to confer upon the Legislature the power to modify their charters from time to time in order to secure the people of this State against their frauds? But, say gentlemen, “Oh, it is entirely unnecessary, because the Legislature will necessarily have that power; that it is an admitted principle that one Legislature cannot tie up the hands of another, and that any subsequent Legislature may repeal any general law authorizing banking associations which has been passed by a previous one. If, therefore, the General Assembly desire at any time to amend or repeal any general banking law, they can do it without our authorizing them to do it.” But, sir, I know that some very strong conservatives are disposed to dispute this position; and perhaps even some of those who now admit the correctness of it, will, if it is not expressly reserved in the Constitution, when that instrument has gone into operation, deny the authority of the Legislature to do it—to repeal these charters, &c.

Sir, I have endeavored to have the kind of security which the Auditor of State shall be authorized to receive under this general banking law named in the Constitution. But the union openly consummated here, in the face of the Convention, between the friends of a State Bank and the Free Bankers, has effectually prevented anything of the kind, and they have refused to permit the kind of security to be given to be changed; all that we can have is, that it is to be ample and readily convertible. Yes, sir, it must be ample; but what might appear to be ample to one man might appear to be very insufficient to another. Suppose you should hereafter pass a law by which Banks might carry on their operations on mortgages upon land, to be taken under the supervision of the

Auditor of State as a security for the redemption of their paper, and after a while it should be found that there was not sufficient security, why, sir, then it would be strenuously contended by the friends of those institutions—and they always seem, by “hook or crook,” to have enough of them—that the quantity of the security was fixed; and they will refuse, perhaps, to comply with any law that may be passed, requiring them to give additional and better securities. Why, sir, had not the Legislature of New York this power, and exercised it, too, of requiring from Banks transacting business under the general banking law, to give this additional security; in fact, sir, requiring them to deposit the stocks of the State or of the United States, annually to redeem their circulation, there could have been no doubt that their banking system would long since have exploded.

Sir, the first thing that we shall know after the system has gone fairly into operation, supposing the security to be predicated upon mortgages, is, that it for the most part consists of water lots or Georgia lands. [A Voice.—“And soap factories.”] Yes, sir, and soap factories.

I do hope we shall retain the power in the hands of the Legislature to repeal these charters; and although I believe they would have the entire right whether we make such provision or not, yet, as the question is made, let us insert the provision so that the power may be expressly granted; and then, sir, those who undertake to bank under a State Bank charter, or who go into banking under a general law to be passed by the Legislature, will understand the matter, and govern themselves accordingly.

Mr. HAMILTON. It seems to be my misfortune to differ, on almost every occasion, with my honorable colleague; but I must tell the gentleman, in the first place, that he knows nothing about banking, and I must be permitted to say that I think he knows very little about the common monetary operations of the country.

Now, I undertake to say, that if you pass this section as it now stands, you cannot have a State Bank established, and I doubt very much if you will have any other.

I take different ground entirely from that taken by my colleague. I will meet him before our constituents upon the question. I hope the section will not pass.

Mr. COLFAX. I happen, unfortunately, to differ, and widely, too, from my friend who sits near me (Mr. Borden)—a difference that shall be frankly expressed here, and now. He was understood, when canvassing for the seat he now occupies, to be friendly to free Banking.

Mr. BORDEN (interposing). I will settle that with my constituents.

Mr. COLFAX (resuming). Certainly; but if he had heard the sentence out, he would have seen that I intended to charge upon him no violation of pledges, no matter what I may think



of his course on the currency question. I al-  
luded to that point to state, most explicitly,  
that when he, understood as he is here and else-  
where, to be a Free Banker, intimates, directly  
or indirectly, that "Georgia lands and water  
lots" might be considered, or claimed, or received,  
by Free Bank men themselves, as sufficient  
securities to guarantee the redemption of circula-  
tion, he intimates that which is not endorsed  
by any friend of a General Banking Law in this  
Convention that I am acquainted with, and I  
think that I know them all, or by any other  
friend of Free Banks in this State. I do not  
wish to have such an intimation go forth in our  
Debates, as spoken by a Free Bank delegate  
here, without declaring most emphatically, for  
other Free Bank members, that no such security,  
or any thing like it, is expected, desired, or  
contemplated by them. [Cries of "that's it."]

Mr. BORDEN (interposing.) How do we  
know that such security will not be considered  
sufficient by the Legislature?

Mr. COLFAX. We "know" it because we  
have declared in the Banking section we have  
adopted, that the security shall be amply suffi-  
cient for the redemption of the bills in specie.  
We "know" it, because Free Bankers them-  
selves, after that section passed, asked the privi-  
lege of making it still more stringent, and  
unanimously declared in a section since passed,  
that those securities should not only be "am-  
ple," but also "readily convertible into specie."  
I think, with all kindness to my friend near me,  
that our acts and votes here are sufficient an-  
swer to the intimation, from any quarter, wheth-  
er it comes from a supposed friend, or foe, that  
the advocates of a General Banking Law would  
even permit, if they had uncontrolled power,  
that "Georgia lands and water lots" should be  
received as security for their issues.

But a few words now as to the general ques-  
tion. The section proposes that any charter or  
law granting Banking privileges may be repeal-  
able by the Legislature. Such a provision  
would, of course, put it in the power of State  
Bankers and No Bankers to join together to re-  
peal a General Banking Law—and, as a matter of  
necessity, for Free Bankers and No Bankers,  
in turn, to repeal a charter for a State Bank.  
I have no doubt but that our No Bank friends  
here would have but little objection to such a  
provision, so obviously to their interest.

But, even if such should not be the result, I  
am not in favor of the provision for other rea-  
sons, going more directly to the correctness and  
justice of the proposition itself. Let us see how  
it would work in social or in business life, and  
I will use an illustration not entirely original  
with me. I make a contract with a man to  
clear and break twenty acres of land. He  
goes on to make all the necessary preparations.  
He hires his hands, draws in his means from  
other pursuits, purchases his breaking team,  
builds his shanty, lays in his provisions, has his

axes and every thing ready for the performance  
of his contract. But, just at that time, I step  
in and inform him that, without any cause but  
my own caprice, I have concluded to repeal my  
contract. What would be thought of such jus-  
tice? And in what does it differ, on the prin-  
ciples of right, from authorizing Banks, and  
then, after the stockholders have withdrawn  
their capital from other business to take stock  
in them, have built their Banking houses, pro-  
cured their steel-plates and bills, and organized  
their corps of officers, for the State to step in  
and say, "Stop; we revoke our contract." But,  
in the first case I have cited, the injured party  
has his right of redress. The doors of the  
courts are open, and they will award to him the  
damages he has incurred: while, in the latter  
case, there is no remedy, no redress. The  
State could not be sued, under this section, for  
revoking the privileges they have granted.

I desire to be fully understood. I do believe  
that any Legislature, in granting Banking or  
other corporate powers, should reserve to them-  
selves the right to repeal, when those powers  
are abused, when the charter is violated, when  
the franchises are improperly used. But they  
should not reserve unlimited power of repeal,  
which may be exercised without cause. And  
it was certainly a wise provision, the one intro-  
duced by my friend from Jefferson, (Mr. Dunn,)  
so unanimously adopted, that Bank charters  
should not be granted for a longer term than  
twenty years, and that Banks, organized under  
a General Banking Law, should wind up their  
business at the end of the same term, and take  
from thence an entirely new start if they are  
authorized to continue.

But, if this Convention is determined to pro-  
vide that Banking privileges shall be repealable  
at will by the Legislature—at least, save them  
from the caprice of a mere majority. With  
such a power existing as a Constitutional right,  
and with repeated attacks, session after session,  
upon them in the Legislature by interested or  
designing demagogues, what stockholder in any  
Bank would feel that his investment was safe?  
Who would desire to place his means where  
they would be so insecure? And who, when  
he remembers the proverbial fickleness of Indi-  
ana legislation, would feel at all assured, if one  
Legislature rejected the repealing law, that the  
next one, under the influence of a few promi-  
nent men, enemies to the system, or perhaps  
incensed at being refused some accommoda-  
tions, might not pass it by a decisive majority.

At any rate, if such a section must be adopt-  
ed, I do hope that it will require something  
more than a bare majority vote to pass such re-  
pealing laws. If the power is not to be limited  
to cases where cause is shown, where the par-  
ties shall be notified of the wrongs charged,  
and opportunity given to defend themselves,  
there should at least be the security of a two-  
thirds vote required for the adoption of such

laws. Better than all things else, however, would be to leave our Constitution silent on this subject. Let us give to our constituents a liberal instrument. Let it not seem to have written on it, "Hostility to Banks and all other Corporations." Let us leave to the Legislature the responsibility of deciding for what reasons and by what vote they will reserve to themselves this potent, this important power of repeal; and our constituents will, I doubt not, feel better satisfied than if we load down the Constitution and the Banking systems that are authorized by it, with restrictions that they do not desire, and which may seriously impair their practical and beneficial operations. I would not prohibit the Legislature from reserving this power of revoking; but we can safely leave it to them, knowing full well that they will guard the powers that they grant with all suitable restrictions.

Mr. COOKERLY (without rising from his seat). If you are going to leave everything to the Legislature, what is the use of a Constitution at all?

Mr. COLFAX. To settle general principles, and to leave details to the Legislature, as they should be.

Mr. BORDEN. The gentleman from St. Joseph (Mr. Colfax) says that he is a friend of free banking, and he repudiates the idea that any such securities as I have spoken of will ever be permitted by the Legislature to be taken for the redemption of bank issues. Well, sir, I hope so too. But is it not prudent to be prepared, always, for the worst? Can we now say what a legislature operated upon from without, by what has been so frequently here termed the "outside pressure," may do in time to come?

The gentleman says that I came here, the professed friend of free banks, but he, as a real friend of the free banking system, desires to be saved from such friends as I am. Sir, let me say to him that I am the exponent of the views of my constituents, and whether I truly carry out their views, or misrepresent them in this Convention, no man has a right to call me to account. The course that I marked out for myself, at home, I shall continue to pursue here. If the Convention should decide that there shall be banks of circulation in the State, I will then go for a well regulated banking system, so guarded, however, as in all instances to secure the bill holders. But I never did and never will promise to go for the mongrel system that this Convention has cooked up here. Now, sir, let me ask the gentleman if the security required by the general banking law, is to be so safe and secure as never to require any further action on the part of the Legislature, after this system is once put in operation? Why do the friends of the compromise banking section constantly refuse to designate the stock of the

United States and of this State, as the only security which shall be received for their issues?

Sir, every day convinces me more and more of the all controlling influence of our State Bank; and of the powerful influence of these banking institutions when once put in operation will have over the destinies of the State, and the necessity there is for retaining in the hands of the representatives of the people, the power to restrain them from abuses.

Mr. HALL. I supposed that this banking question had been settled. This certainly bears the general impression, and I regret that an attempt has been made to interfere with the compromise that has been so amicably agreed upon. It seems to me that the Convention ought to dispose of the two sections in relation to this subject, by indefinite postponement. The one is striking at the very root of all banking, and the other militates against any general banking law that may be passed by the Legislature. It is useless to take up the time of the Convention in discussing questions of this nature, for they have already been fully discussed, and as I suppose the free banking men have the majority, they will never listen to the arguments of those opposed to all banks; they are sincere, no doubt. The free bank men and the State bank men have come to what they consider an honorable compromise. It seems improper, therefore, to interfere with the basis upon which that compromise has been effected. But a proposition is here introduced that is not called for by public sentiment.

Mr. PETTIT. This section I will take the liberty of reading in the ear of the Convention:

"The Legislature shall have power, whenever it may deem the public good requires it, to repeal all banking charters, or laws granting banking privileges of any kind."

"When they may deem the public good requires it." The Legislature of the State is by necessity the guardian of the public good, and they are to make and administer laws—they are to make and unmake laws when they deem the public good requires it. I will not say that the Legislature will capriciously and without cause change and modify the laws; but all laws that affect the people of Indiana, ought to be subject to repeal and modification whenever the Legislature deem that the public good requires it. Who is there here that is willing to say, "we have withheld this power from the Legislature—that we have grasped it from the masses, and taken it to ourselves, and although the public good may demand it, we will not surrender this power up—that we hold back these rights, despite the public good." That is what you ask, and that is what the gentleman from St. Joseph (Mr. Colfax) asks. When the public good demand it, let the pruning knife be put to it. Let the law fall—though a few fall, others will go up. If there must be an ine-



quality, let the few go down while the millions prosper.

Sir, are you not willing to trust these matters to the Legislature? Is not the making of laws on all subjects entrusted to them now? And, sir, is it not expected that they will act for the public good, and not from private caprice—that they will not make a change in the laws to suit the views of a few, but will only do so when the public good requires it? Are you not willing that the Legislature shall have power to repeal all laws? I think they should have such power. Is there any danger that the Legislature will act capriciously in regard to this matter, if your banking corporations are good, if they furnish the community with a sufficient circulation, if they are not like leeches on the body politic, that cannot be removed without pulling off their heads, which ought to be pulled off? But if they are doing good, and the community demands their continuance, there is no danger that they will be put down under the operation of this section.

Sir, I hope the section will not be indefinitely postponed, but that it will be adopted, and I shall at least ask for the yeas and nays upon all questions relating to this subject.

Mr. BRACKEN demanded the previous question.

The demand for the previous question was seconded.

Mr. DUNN of Jefferson. Would it be in order to move to lay the section on the table?

Mr. KELSO. That motion is in order at any time before the main question is ordered to be put.

Mr. BORDEN. Upon the question of indefinite postponement I demand the yeas and nays.

Mr. COOKERLY. The previous question cuts off the motion to indefinite postponement.

The PRESIDING OFFICER (Mr McFarland being in the Chair). The President of the Convention has so decided.

The main question was ordered to be now put.

The question being upon according to the ruling of the Chair upon the passage of the section.

The yeas and nays were taken, under the rule, and resulted, yeas 51, nays 73.

Mr. NILES' name being called, he said—

Mr. President. May I say one word in explanation of my vote? [Cries of "Consent."] I vote against this section on the ground that I understand the subject to have been compromised by requiring all banking institutions to be wound up in twenty years. I vote No.

The yeas and nays are as follows:

YEAS.—Messrs. Alexander, Bascom, Beeson, Berry, Borden, Bracken, Carter, Chapman, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Duzan, Edmonston, Elliott, Garvin, Gordon, Graham of Warrick, Haddon, Hendricks,

Howe, Johnson of D., Johnson of O., Kent, Kendall of Wabash, Mathis, May, McClelland, McFarland, Miller of Gibson, Milligan, Milroy, Moore, Pepper of Ohio, Pettit, Ritchey, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Tannehill, Trimble, Walpole, Wiley, Wolfe, Wunderlich, and Yocum—51.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Biddle, Blythe, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Dunn of Perry, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, March, Mather, Mooney, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Snook, Spann, Stevenson, Thomas, Thornton, Watts, and Zenor—73.

So the section was not passed.

The section which provides that the charters hereafter granted may be repealed, but the rights of all interested shall be protected, was read a third time.

Mr. BRIGHT moved that the section be re-committed, with instructions to amend so that special charters, or those granted under general laws, may be repealed by a two-thirds vote of the legislature.

Mr. PRATHER moved that the section, together with the instructions, be laid upon the table.

The question being on the motion of the gentleman from Jennings,

Mr. PETTIT demanded the yeas and nays, and they were ordered, and being taken were, yeas 67, nays 61:

YEAS.—Messrs. Badger, Barbour, Beard, Biddle, Blythe, Bourne, Bowers, Brookbank, Bryant, Butler, Carr, Clark of Hamilton, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Johnson of Dearborn, Jones, Kelso, Kilgore, Lockhart, Logan, Maguire, Mather, Miller of Gibson, Mooney, Morgan, Morrison of Washington, Murray, Nave, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Shannon, Snook, Spann, Stevenson, Tannehill, Thomas, Watts, and Zenor—67.

NAYS.—Messrs. Alexander, Ballingall, Bascom, Beach, Beeson, Berry, Borden, Bracken, Bright, Carter, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Dunn of

Perry, Duzan, Edmonston, Elliott, Garvin, Graham of Warrick, Harbolt, Hendricks, Johnson of Orange, Kent, Kendall of Wabash, Kinley, March, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Moore, Morrison of Marion, Mowrer, Nofsinger, Pepper of Ohio, Pettit, Ritchey, Schoonover, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Steele, Tague, Thornton, Trimby, Walpole, Wiley, Wolfe, and Wunderlich—61.

So the section, together with the instructions, were laid upon the table.

#### SUSPENSION OF THE RULES.

Mr. WATTS moved a suspension of the order of business, that he might be enabled in pursuance of a notice given by him on a former day, to move to rescind the rule which requires the yeas and nays to be taken on the final passage of a section.

The order of business was suspended by consent.

The question being upon the adoption of the resolution to rescind the rule,

It was, upon a division—ayes 52, noes 57—decided in the negative.

The PRESIDENT. The next thing in order is the first section of the No. 56 article, reported from the committee on miscellaneous provisions, on its third reading.

The section is as follows:

"That no inconvenience may arise from the change in the Constitution of this State, and in order to carry the same into complete operation it is hereby declared and ordained—

That all laws or parts of laws now in force and not inconsistent with this Constitution, shall continue and remain in full force until they expire or be repealed."

The section was read a third time.

The question being, Shall the section pass?

The rules were suspended, and the section was passed and referred to the committee on revision.

The section which provides that the Governor, Secretary, Treasurer, and Auditor of State, shall severally reside and keep the public records, books and papers, in any manner relating to their several offices, at the seat of government, was read a third time.

The question being, Shall the section pass?

The rules being suspended, the section passed and was referred to the committee on revision.

The section which provides that all writs, causes of action, prosecutions, contracts, claims, and rights of individuals, bodies corporate, and of the State, shall continue, and all indictments which shall have been found, or which may hereafter be found, for any crime or offense com-

mitted before the adoption of this Constitution, may be proceeded upon as if no change had taken place in the organic law of the State, having been read a third time,

Mr. WALPOLE moved that it be re-committed with certain instructions, which he sent to the Chair.

Mr. KELSO raised the question whether the same in substance had not been voted down.

The PRESIDENT remarked that the same matter had in effect been voted down, and ruled the instructions out of order.

The question being, Shall the section pass?

The rules requiring the yeas and nays to be taken upon the final passage of a section being suspended,

The section passed, and was referred to the committee on revision.

The section which provides that "Every person who shall be elected or appointed to any office under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this State and of the United States, and an oath of office," was taken up on its third reading.

The section having been read a third time,

The question was, Shall the section pass?

The rule requiring the yeas and nays, &c., was suspended, and the section passed and was referred to the committee on revision.

#### RIGHT TO ACQUIRE REAL ESTATE.

The section which provides that "Resident aliens shall have power to acquire real estate in this State the same as citizens, and shall also have power to dispose of their property, whether real or personal, within the jurisdiction of said State, by testament, donation, or otherwise; and when a person dies intestate whose heirs or representatives are aliens, such representatives shall succeed to personal property the same as if they were not aliens, and the heirs, legatees, and distributees of any such intestate, shall succeed to all rights and privileges as such heirs, legatees, or distributees, the same as if they were citizens of the United States: *Provided*, That if aliens residing in foreign countries become the owners of real estate in this State by devise or descent, such aliens shall be allowed ten years to sell and dispose of the same, or to become citizens of the United States; and in default thereof, such real estate shall escheat to the State of Indiana for the use of common schools in the county where such real estate is situate," was taken up on its second reading.

The question being, Shall the section be ordered to be engrossed for a third reading?

The section, on motion, was laid upon the table.

Mr. FOSTER moved to take from the table the section which fixes the minimum of the salaries of Governor, Supreme Court Judges, and other officers.



On this section the yeas and nays were demanded and ordered, and being taken there were—yeas 48, nays 68—as follows:

**YEAS.**—Messrs. Beach, Biddle, Blythe, Brookbank, Bryant, Chapman, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Dunn of Perry, Foster, Garvin, Gibson, Hawkins, Helmer, Hendricks, Hitt, Hovey, Howe, Johnson of Dearborn, Kelso, Kent, Lockhart, Maguire, March, Mather, Miller of Clinton, Miller of Fulton, Milroy, Moore, Morrison of Marion, Murray, Nave, Niles, Pettit, Ritchey, Robinson, Steele, Tannehill, Thornton, Walpole, and Wunderlich—48.

**NAYS.**—Messrs. Alexander, Badger, Ballingall, Barbour, Bascom, Beard, Berry, Bowers, Bracken, Butler, Carr, Carter, Chenowith, Clark of Hamilton, Clements, Coats, Crawford, Dick, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Gootee, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Helm, Hogin, Huff, Johnson of Orange, Jones, Kendall of Wabash, Kinley, Logan, Mathis, May, McClelland, Miller of Gibson, Milligan, Mooney, Morgan, Morrison of Washington, Mowrer, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Thomas, Trimble, Watts, Wiley, Wolfe, and Zenor—66.

So the Convention refused to take the section from the table.

The section which provides that any person of good moral character, and having the right of suffrage, may practice the law in any of the courts in this State, was taken up on its second reading.

The section was read a second time;

And the question being, Shall it be engrossed for a third reading?

The section was ordered to be engrossed for a third reading.

Mr. WOLFE offered an additional section limiting the time to fifteen years within which an action to recover real estate may be brought.

The question being upon the adoption of the section,

It was decided in the negative.

Mr. WALPOLE moved to re-consider the vote by which the section offered by the gentleman from Sullivan had been rejected.

The motion was, upon a division—ayes 56, noes 48—decided in the affirmative.

So the vote was re-considered.

The question then being, Shall the section be adopted?

The yeas and nays were demanded, and they were ordered, and being taken there were yeas 51, nays 63.

So the additional section was not adopted.

Mr. MILROY offered an additional section

providing that the Governor shall never receive a salary of less than \$1,500 per annum, and Supreme and Circuit Judges less than a thousand dollars per annum.

Mr. SMITH of Scott offered an amendment, to the effect that the salaries of all officers other than county officers shall be regulated by law.

On motion by Mr. GORDON, the section and amendment were laid upon the table.

The section which provides that all officers, both civil and military, shall continue in office until superseded by officers elected under this Constitution, was read a second time.

The section was ordered to be engrossed for a third reading.

The section which provides that, "the present incumbents, in the offices continued by the Constitution, (and who are elected by the people,) may exercise the duties of their respective offices until the expiration of the time for which they were elected; provided no incumbent shall continue in such office, by virtue of this section, for a longer period of time than the term of time prescribed by this Constitution to such office, was read a second time.

Mr. FOLEY moved that the section be laid upon the table.

Upon this motion the yeas and nays were demanded and were ordered, and being taken there were—yeas 16, nays 97—as follows:

**YEAS.**—Messrs. Beeson, Bracken, Carr, Davis of Parke, Dobson, Fisher, Foley, Holman, Johnson of Dearborn, Kent, Milroy, Moore, Mowrer, Nave, Smith of Ripley, and Mr. President—16.

**NAYS.**—Messrs. Alexander, Ballingall, Bascom, Beach, Beard, Blythe, Borden, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Haddon, Hamilton, Harbolt, Hawkins, Helmer, Hendricks, Hitt, Huff, Johnson of Orange, Jones, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Tannehill, Thomas, Thornton, Trimble, Wallace, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—97.

So the section was not laid on the table.

Mr. COLFAX moved to amend so that the incumbent may continue in office, after the adaptation of the Constitution, a full term, as pre-

scribed in the new Constitution, if his term, under the previous election, has not expired.

The question being on the adoption of the amendment,

It was decided in the affirmative.

The question recurred upon ordering the section as amended to be engrossed for a third reading.

The question was decided in the affirmative.

So the section was ordered to be engrossed.

On motion,

The Convention adjourned.

#### AFTERNOON SESSION.

The PRESIDENT. The Convention will resume the consideration of the orders of the day, the first thing in order being article fifty-eight, on its second reading.

The Secretary read the article, as follows:

"SECTION 1. Resident aliens shall have power to acquire real estate in this State the same as citizens, and shall also have power to dispose of their property, whether real or personal within the jurisdiction of said State, by testament, donation, or otherwise; and when a person dies intestate whose heirs or representatives are aliens, such representatives shall succeed to personal property the same as if they were not aliens, and the heirs, legatees, and distributees of any such intestate, shall succeed to all rights and privileges as such heirs, legatees, or distributees, the same as if they were citizens of the United States: *Provided*, That if aliens residing in foreign countries become the owners of real estate in this State by testament or descent, such aliens shall be allowed ten years to sell and dispose of the same, or to become citizens of the United States; and in default thereof, such real estate shall escheat to the State of Indiana for the use of common schools in the county where such real estate is situate."

Mr. HENDRICKS. As this article seems to be a matter purely legislative in its character, I move to lay it upon the table.

This motion, upon a division—ayes 38, noes 25—was decided in the affirmative.

So the section was laid upon the table.

#### QUALIFICATIONS TO PRACTICE LAW.

Article fifty-nine, providing that any person of good moral character, and possessing the right of suffrage, shall be entitled to admission to practice in all the Courts of this State, next came up on its second reading.

Mr. SMILEY. I move to amend the section, by striking out the words "shall be entitled" and inserting the words "have a right."

Mr. FRISBIE. I move to lay the section and the amendment upon the table.

A division of the question was called for.

The PRESIDENT. The question will be first taken upon laying the amendment on the table.

The question was put, and decided in the affirmative.

The PRESIDENT. The question now is, upon laying the section upon the table.

The question was put, and decided in the negative.

The section was then ordered to be engrossed for a third reading.

#### REAL ESTATE.

Mr. WOLFE offered an additional section, requiring the Legislature to make provision limiting the right of action to recover real estate to fifteen years.

Mr. W. I desire to say a word or two upon this proposition. We have been here now four months, and have done nothing having particular reference to the interests of the farming community. The peace and prosperity, sir, of our State, depends upon the settled titles of those owning real estate within her borders to their estates. Much difficulty has arisen in other States upon this subject, and in some of them they have limited the right of action to recover real estate, to seven years. Sir, I think that a farming community, such as is Indiana, should be protected in its rights of property; their interests should be attended to as well as the interests of other classes and professions. It is impossible for a farming community to keep perfect their titles for fifty or a hundred years, so that there should be some reasonable limit to the extent of the title under which recovery might be claimed; and I think fifteen years amply sufficient for that purpose. In one of the counties the records of titles were consumed by fire, through accident, so that it would be almost impossible to restore those titles; this I give as an example in point. There have been cases, also, in my own county, where government lands, given under patents, that have been held in occupancy for thirty or forty years, have been recovered by the government because of broken titles. I trust the Convention will unanimously adopt this measure.

The question upon the adoption of the section having been put, upon a division—ayes 30, noes 41—it was rejected.

Mr. WALPOLE. I voted in the majority by which this section was laid upon the table, for the purpose of allowing the gentleman from Sullivan to have an opportunity of calling for the yeas and nays upon the question. This is a matter in which not only Sullivan county but every other county in the State is interested in having settled, undisputable titles to real estate. I move, sir, that the vote just taken upon the section under consideration, be re-considered.

Upon this question the yeas and nays were demanded, and ordered; and were taken, with the following result—yeas 66, nays 48.

YEAS.—Messrs. Balingall, Bascom, Beach, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Chapman, Chenowith, Cole, Colfax, Cookerly,



Davis of Parke, Dobson, Dunn of Jefferson, Dunn of Perry, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Gregg, Haddon, Hamilton, Harbolt, Hawkins, Helm, Helmer, Holman, Huff, Johnson of Dearborn, Kinley, Logan, Maguire, Mather, Mathis, McClelland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morrison of Washington, Mowrer, Murray, Pettit, Read of Clark, Ritchey, Schoonover, Smith of Ripley, Smith of Scott, Tague, Thornton, Trimble, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—66.

**YAYS.**—Messrs. Alexander, Anthony, Badger, Beeson, Biddle, Blythe, Brookbank, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Crawford, Davis of Madison, Dick, Duzan, Edmonston, Garvin, Hendricks, Hitt, Hovey, Jones, Kelsa, Kendall of Wabash, Lockhart, Match, May, McFarland, Miller of Gibson, Morgan, Morrison of Marion, Nave, Nofsinger, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Thomas, Wallace, Wheeler, and Wiley—48.

So the vote rejecting the section was reconsidered.

**The PRESIDENT.** The question now is upon the adoption of the section.

Upon this question the yeas and nays were demanded, and ordered; and, being taken, the Secretary reported the following result—yeas 51, nays 63.

**YEAS.**—Messrs. Beach, Beard, Bowers, Bracken, Butler, Carr, Chenoweth, Cole, Cookerly, Crawford, Davis of Parke, Dobson, Dunn of Perry, Elliott, Farrow, Fisher, Foley, Frisbie, Gibson, Gootee, Gordon, Gregg, Haddon, Hall, Harbolt, Helm, Hitt, Holman, Huff, Johnson of Dearborn, Logan, Mathis, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morrison of Washington, Mowrer, Murray, Read of Clark, Schoonover, Smith of Ripley, Smith of Scott, Tague, Tannehill, Walpole, Watts, Wolfe, and Yocum—51.

**YAYS.**—Messrs. Alexander, Anthony, Badger, Bascom, Beeson, Biddle, Blythe, Bourne, Bright, Brookbank, Bryant, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Davis of Madison, Dick, Dunn of Jefferson, Duzan, Edmonston, Foster, Garvin, Hawkins, Helmer, Hendricks, Hovey, Johnson of Orange, Jones, Kelsa, Kendall of Wabash, Lockhart, Maguire, March, May, McClelland, McFarland, Miller of Gibson, Morgan, Morrison of Marion, Nave, Newman, Nofsinger, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Thomas, Thornton, Wallace, Wiley, Wunderlich, Zenor, and Mr. President—63.

So the section was not adopted.

**Mr. MILROY** offered a section providing that the Governor should never receive a salary less

than fifteen hundred dollars per year, and the Supreme and Circuit judges less than one thousand per year.

**Mr. SMITH** of Scott offered the following amendment to the section: "That all officers other than county or township officers, and members of the General Assembly, shall receive for their services such compensation as shall be prescribed by law, and no increase or diminution shall take effect during the terms for which they shall be severally elected."

**A MEMBER.** I move to lay the amendment upon the table.

**Mr. SMITH.** I believe, Mr. President, I have the floor, and I am not disposed to yield it to gratify the wish of any gentleman, without first explaining the object of my amendment. It is plain to be seen what class of gentlemen are so sensitive upon this subject. Yes, sir, these gentlemen are here claiming the privilege of raising the salaries of the different officers of the State; but I would advise the Convention to be careful upon this subject; we should, by no means, take such a responsibility. It should be recollected that the Convention of eighteen hundred and sixteen, which assembled to frame our present Constitution, took upon itself no such responsibility; and I should think, also, that this Convention had taken upon itself a sufficient amount of responsibility already, without increasing it by the adoption of the section before us. We have already given the General Assembly power to increase the present number of Supreme judges to five, and also a reporter, which is equal to an increase of three officers in the Supreme Court; and now who supposes the people will be willing to increase the salaries of those Supreme judges, as asked for in the section? But this does not yet satisfy these worthy gentlemen. They ask that Circuit judges may be better paid, in order to support their dignity, and the Governor and Treasurer, Auditor and Secretary, and all. All have some peculiar kind of dignity which gentlemen seem to be extremely anxious to sustain. Now let me say to these gentlemen, that I look at the tax-payer on his farm, or in his shop, or store, as possessing as much dignity as any person whom they may choose to give these offices to. And I verily believe that the people, who are the employers, will be willing to pay the employee a sum sufficient to support their dignity equally as well as their own is supported, and that should satisfy them; if not, they can resign. Now, sir, I know of no salary but what is of a fair amount, and a good compensation for the services rendered; however, let us leave the matter of increase or diminution of salaries, to be determined by the Legislature.

It is said that the Legislature will not do this; that we must take the responsibility. The gist of that argument is simply this: they refuse to take the responsibility in their individual capacity to raise the salaries of individual officers,

but this Convention may take that responsibility. Now, sir, if the General Assembly, fresh from the people, have refused to increase these salaries from year to year, with nothing but their individual reputation at stake, I think, sir, we should be cautious about acting in the matter. After having gone to the expense we have to prepare a Constitution to present to the people, we should keep from it everything that will encumber it.

The amendment which I have offered, I think, should satisfy every gentleman here; for it leaves to the people, through their representatives, the settlement of this entire subject of compensation of office. It is a conservative measure. If suitable officers cannot be procured for the present amount of pay, which will probably be agreed upon by the Legislature, why they can easily be increased; but I think the present compensation is sufficient.

I do not believe in the suggestion thrown out that we must give higher salaries than we are now giving, in order to secure suitable and talented officers. I ask gentlemen, in all sincerity, if they expect, by giving higher salaries, to get more talented State officers than we now have? Can we obtain a better array of talents on the judicial bench, a better Governor, Secretary, Auditor, and Treasurer of State, than we now have? I do not believe that any gentleman will say so.

MR. KELSO. Yes ———

MR. SMITH. The gentleman from Switzerland says "yes," and confirms it with language which I cannot consent to pollute my lips by repeating.

Now, sir, the same assertion was made the other day by the gentleman from Allen, (Mr. Borden,) and the gentleman from Delaware (Mr. Kilgore). But what do the facts demonstrate? Why, sir, it is simply this: when the salary of judges was one thousand dollars per year, both the gentleman from Allen and the gentleman from Delaware were elected to that highly dignified office, and before the expiration of their term of service the salary of Circuit judges was cut down to eight hundred dollars. At the expiration of their term, what did those talented judges? Why, sir, the gentleman from Allen came here and asked the General Assembly to re-elect him, which they did; and as for the gentleman from Delaware, he seems to have been equally anxious for re-election; but, less fortunate than his worthy friend from Allen, was unsuccessful, and in his anger and wrath declares that salaries were too low to secure the best talents. [Laughter.] So much for the testimony of these gentlemen.

This amendment further provides that the salaries of these officers shall not be increased or diminished during the term for which they are elected. This was drawn up so as to prevent officers from having the opportunity of increasing their own salaries while holding office,

or rather of exerting their influence to secure that object.

It will be noticed, further, that county and township officers and members of the General Assembly, have been exempted in this amendment. This exception was made on account of a section we have already adopted, section seventeen, which provides for their compensation. I trust my amendment will be adopted.

MR. GORDON. I move to lay the section and pending amendment upon the table.

A division of the question was called for.

The PRESIDENT. The question will be first upon laying the amendment of the gentleman from Scott (Mr. Smith) upon the table.

Upon this motion the yeas and nays were demanded, and ordered, and taken, with the following result—yeas 43, nays 73:

YEAS.—Messrs. Biddle, Blythe, Bourne, Brookbank, Butler, Carr, Clark of H., Clark of Tippecanoe, Clements, Crumbacker, Davis of Madison, Dunn of Jefferson, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gordon, Gregg, Hamilton, Hawkins, Helmer, Hitt, Holman, Hovey, Kelso, Kendall of Wabash, Logan, Miller of Gibson, Milroy, Mooney, Nave, Niles, Pettit, Prather, Rariden, Robinson, Thornton, Wallace, Walpole, and Mr. President—43.

NAYS.—Messrs. Alexander, Ballingall, Bascom, Beach, Beard, Beeson, Borden, Bowers, Bracken, Bryant, Chapman, Chenoweth, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Foley, Gootee, Haddon, Hall, Harbolt, Helm, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kinley, Maguire, March, Mathis, May, McClelland, McFarland, Miller of Fulton, Milligan, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Ritchey, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steels, Tague, Tannehill, Thomas, Trimby, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—73.

So the amendment was not laid upon the table.

The PRESIDENT. The question is upon laying the additional section offered by the gentleman from Carroll upon the table.

The question was put, and decided in the affirmative.

MR. WATTS. Do I understand, Mr. President, that by laying this amendment upon the table the section goes with it?

The PRESIDENT. Yes, sir.

#### CONTESTED ELECTIONS.

The following section came up on its second reading:

"The General Assembly shall provide by law for empowering boards of canvassers in



each county to hear and determine all contested elections, for the offices of members of the General Assembly, and for all county offices; and a mode by which appeals may be taken from the decisions of such boards to the Circuit Courts, and for empowering such boards and courts, when justice cannot otherwise be done, to refer contested elections back to the people."

Mr. PEPPER of Crawford. I believe that this is more appropriately a statutory provision. I therefore move to lay it upon the table.

The motion was agreed to.

#### BOUNDARIES AND OFFICES.

Article 61 next came up upon its second reading.

It is as follows :

SECTION 1. In order that the boundaries of the State of Indiana may more certainly be known and established, it is hereby ordained and declared that the following shall be and forever remain the boundaries of said State, to-wit: Bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash river from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north-western shore of the said Wabash river; and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north by the said east and west line until the same shall intersect the first mentioned meridian line which forms the western boundary of the State of Ohio.

SECTION 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries as declared in the preceding section, and have concurrent jurisdiction in civil and criminal cases with the State of Kentucky on the Ohio river, and with the State of Illinois on the river Wabash so far as said rivers form the common boundary between this State and said States respectively.

SECTION 3. All officers, both civil and military, shall continue in the exercise of the duties of their respective offices until said officers are superseded under the authority of this Constitution.

SECTION 4. The present incumbents in the offices continued by this Constitution, (and who were elected by the people,) may exercise the duties of their respective offices until the expiration of the time for which they were elected: *Provided*, No incumbent shall continue in such office by virtue of this section for a longer period of time than the term of time prescribed by this Constitution to such office.

Mr. LOCKHART moved to lay the first and second sections of this article upon the table.

He said that if the chairman of the committee who reported these sections was here, he would make the same motion, inasmuch as a report upon the subject of boundaries was now ready prepared by a select committee who had charge of the subject.

Sections one and two were accordingly laid upon the table.

Section three, relative to the tenure of military and civil offices, was then read a second time and ordered to be engrossed for a third reading.

Section four, relating to the present incumbents in office, was then read a second time.

Mr. FOLEY moved to lay the section upon the table.

Upon this motion the yeas and nays were demanded, ordered, and taken, with the following result : yeas 16, nays 97.

So the section was not laid upon the table.

Mr. COLFAX moved to amend by striking out and inserting, that the incumbent may continue in office after the adoption of the Constitution a full term, as prescribed in the new Constitution, if his term under the previous election, has not expired.

The amendment was concurred in.

The section, as amended, was then ordered to be engrossed for a third reading.

Article No. 62 then came up on its second reading.

The Secretary read it, as follows :

SECTION 1. In order that the boundaries of the State of Indiana may be known and established, it is hereby ordained and declared that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river from the mouth of the Great Miami to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwest shore of said Wabash river, and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north by said east and west line until the same shall intersect the first mentioned meridian line which forms the western boundary of the State of Ohio.

SEC. 2. In order that the southern boundary of this State may be better known and established than is declared in the preceding section, it is hereby ordained and declared that the boundary of this State upon the Ohio river extends to the centre of the Ohio river, and that Indiana has concurrent jurisdiction with the State of Kentucky on said river between the mouth of the Great Miami river and the mouth of the Wabash river, and that all the counties of this State bound by the Ohio river, shall have and

exercise such original and concurrent jurisdiction fronting said counties.

Mr. PETTIT. I think the committee has made a mistake in the second section of this article. That section declares a usurpation, in my judgment, upon the rights of the State of Kentucky, which, if the members of this confederacy were separate nations, might be a cause of war between us and Kentucky. It is always a most flagrant offense, and has been the occasion of war between neighboring nations for one nation to assert jurisdiction over the territory of another. This section declares that our territory extends beyond where it really does extend; and it is an encroachment which I do not think the State of Kentucky will submit to. If in like manner the States of Kentucky and Illinois were to usurp dominion over the soil of Indiana, we would not be likely to submit to it. The territory of Indiana, on its southern boundary, goes to the low-water mark of the Ohio river and no further, in my judgment. That assertion is predicated on the deed of cession given by Virginia to the United States, of the territory, out of a portion of which was formed this State. That deed of cession gave to the United States all the territory northwest of the Ohio river; mark the language—northwest of the Ohio river; and it has been judicially decided that the territory extends no further.

The learned gentleman of the law who has reported this section may be able to convince me that I am in error upon this subject. I desire to hear from him. But, sir, I hold, with the light I have at present upon the subject, that our territory goes no further than low water mark on the Ohio River, and to extend it beyond that line, is, in my opinion, a plain usurpation of the territory of Kentucky, an infringement upon her rights. The boundary of the State of Ohio only extends to low water mark on the Ohio River. If I am in error I trust the gentleman of the committee that framed this section will correct me.

Mr. LOCKHART. I am fully prepared to satisfy not only the gentleman from Tippecanoe (Mr. Pettit) but the most skeptical mind upon the subject that we have an undoubted right not only to the territory extending to the borders of the Ohio river on our side, but to the centre of the stream; but, as I have some geographical statistics to present, I trust the further consideration of the subject may be postponed until to-morrow.

Mr. PETTIT. I hope the subject will be postponed until to-morrow, as it is one of vital importance and we should have further light in regard to it.

The further consideration of the Article 62, was accordingly postponed until to-morrow.

On motion, the Convention adjourned.

SATURDAY, FEB. 1, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

The journal of yesterday was read, and approved.

#### BOUNDARY OF THE STATE.

The PRESIDENT. The Convention will take up article sixty-two, the consideration of which was postponed until this morning.

Mr. PETTIT. I rise to ask a question in relation to this matter. I was not aware that this article was made the special order.

The PRESIDENT. The consideration of the article was postponed until this morning. It is, consequently, the first thing in order.

Mr. LOCKHART. I am again under the necessity of asking the indulgence of the Convention to make a further postponement of this subject until Monday. I desire to make some remarks in relation to it, and I am now laboring under a severe cold.

The consideration of the article was postponed, by unanimous consent.

#### REPORTS FROM COMMITTEES.

Mr. HAWKINS, from the committee on miscellaneous provisions, reported a section declaring the present Constitution superseded by the new, &c.

The section was read a first time, and was passed to a second reading.

Mr. OWEN, from the committee on revision, reported the first article of the new Constitution, revised and arranged, and ready for final adoption.

Mr. PETTIT inquired of the Chair whether the sections reported were subject to amendment, *seriatim*, as they were read.

The PRESIDENT. It will be for the Convention to determine its mode of action in regard to them. The Chair would, however, suggest the propriety of allowing the article to be read through.

The article having been read by the Secretary.

Mr. RARIDEN. I should be glad to know whether the report is susceptible of amendment at this time.

The PRESIDENT. The Chair is under the impression that the only amendments in order will be amendments in relation to the arrangement which the committee on revision have made.

Mr. EDMONSTON. I will move that the Convention take up the article, section by section, and pass upon it.

Mr. BORDEN. I would inquire if this is not to be treated like every other report, to be taken up for the action of the Convention in its proper order?

The PRESIDENT. The Chair would remark, in reply to the gentleman from Allen,



that the Convention adopted a resolution yesterday, to the effect that they would take up and act upon the reports from the committee on revision in preference to any others.

Mr. PETTIT. I will move that the report of the committee on revision be concurred in.

Mr. NILES. I should be sorry to see the entire report thrown open so that every section could, in effect, be re-considered; but, whenever the committee have changed even the phraseology, it does seem to me that the Convention should take time to consider the changes thoroughly before adopting them.

It is evidently impossible for any man, on merely hearing the report once read, to say whether he would concur in all the changes or not. Many changes would not affect the sense, but, in some instances, a mere verbal alteration in a section may give an entirely different meaning from that intended by the Convention. I, for one, have had no opportunity to compare the report with the sections as referred to the Committee; but I notice a change, which I deem an unfortunate one, in the preamble. The sentence is made longer, less forcible, and more unmeaning. I can see no object in such an alteration. It would look as if it was made from the mere love of change. I hope that the motion to approve the report entire, will not be passed through at the present moment.

Mr. OWEN. I should imagine that it would be more satisfactory to the Convention to take up the report section by section.

Mr. PETTIT. There can be no other alternative but that this report must be rejected as a whole or sustained as a whole. If you open up the matter again to a direct vote upon each proposition, why the things that we have debated longest and contended most about, may be changed, and the whole thing will again have to go back to the committee on revision; and it will be impossible to say when our work may be completed. The only question is this: is there any substantial difference between the sections as passed by the Convention and as reported back by the committee? There is a difference, it is true, in the very outset—in the first section—but it is a difference arising from transposition, and is not a difference in substance. There is nothing, sir, that even cavil could find fault with in the alteration that has been made by the committee, and if you undertake to say that the whole matter is again open to amendment, section by section, when on earth are you to get through? If you are going to reverse now, when the attendance of members is thin, what you have done when the Convention was full, our time will have been spent in vain. Sir, there are sections that I do not approve of, yet I do not ask that they shall be re-considered. The question must necessarily be now, Will the Convention concur in the report of the committee?

Mr. BADGER. The gentleman from Tip-

pecanoe has said that we must either concur in the report of this committee of revision or reject it. Now, sir, I would like to know if we have not the power still to amend this report? We certainly have. And, sir, rather than be compelled to accept the report of this committee without the power to amend it, I am willing that it should be rejected.

We have here an important change made in the preamble; a change that I can by no means sanction. Sir, the sentiment is not only changed, but the preamble, as reported by the committee, is not true. It expresses our gratitude to Almighty God, for what? For the free exercise of the right to choose our own form of government. Now this, I say, is in part untrue; for we have only a right to establish a government which, in all its relations to its sister States, will conform to the requirements of the Federal Constitution. Now, sir, were we disposed to form any other sort of government, we have not the freedom to do it and comply with our oath of office, which is to support the Constitution of the United States.

I have no disposition to charge the committee with doing wrong intentionally, but being human, they too may err. Now, sir, I suggest to the Convention the propriety of postponing any further action upon this report until Monday next. Let us take up the sections which are yet to pass their third reading; dispose of them to-day, and we shall have nothing to do next week but to canvass the reports of this revisionary committee. I notice several changes in sections referred to this committee, and I desire an opportunity so to amend, as that they shall appear in the most unexceptionable form possible. I hope the Convention may act in conformity with this suggestion.

The PRESIDENT. The Chair would remark to the gentleman from Putnam, that his suggestion cannot be carried out. There is an established rule of the Convention which requires one day's notice to be given of any amendment to the rules.

Mr. NILES. I would inquire whether it would be in order to amend the motion of the gentleman from Tippecanoe, so that we may concur in all that part of the report in which there is no change of phraseology, leaving the other portions for consideration afterwards?

The PRESIDENT. The Chair thinks not. The motion of the gentleman from Tippecanoe is simply to concur in the report of the committee. The Chair would further remark to the gentleman from Laporte, that if the Convention do not concur in the report, he can accomplish his object by making the motion he proposes to make.

Mr. NILES. Then, sir, ———

Mr. READ of Clark. I move the previous question.

The PRESIDENT. The gentleman from Laporte has the floor.

Mr. READ of Clark. I think this is the second time the gentleman has spoken on this question.

The PRESIDENT. If no other gentleman desires to speak, the gentleman from Laporte (Mr. Niles) has a right to speak a second time.

Mr. NILES. Then, sir, as we have no opportunity to see what changes have been made, we must vote in the dark; I therefore move to amend the motion of the gentleman from Tippecanoe.

The PRESIDENT. The Chair has just remarked that such a motion would not be in order.

Mr. NILES. I would inquire if it were not in order to concur in the report, with an amendment?

The PRESIDENT. No, sir, not under the present circumstances. The gentleman from Tippecanoe has moved that the report be concurred in as it stands.

Mr. NILES. Were it in order I would move an amendment substituting the form of the preamble as adopted by the Convention, instead of that reported by the committee; and though it may be a matter of small practical importance, I think it worthy of a moment's consideration. The preamble, as adopted by the Convention, was brief, terse, and classical. "We, the people of the State of Indiana, grateful to Almighty God for our freedom," is a sentence for fullness, force, and beauty, hardly surpassed in the English language. In point of style, it is worthy of the Declaration of Independence. But the committee change its whole effect when they substitute for the one word "freedom" the words that they use: "for the free exercise of the right to choose our own form of government." Indeed, sir, the preamble reported by the committee is not strictly true. We have not the right to choose our own form of government. We are confined, by the Constitution of the United States, to a republican form of government; and could not, if we would, choose a monarchy. The word "freedom" includes our civil and religious liberty. It is a fine old household word. I have the highest respect for the committee, but I do think that the change is unworthy of a school boy. Without this change we should have a preamble shorter and more appropriate than could be found to any other written constitution in the world. The one sentence, "We, the people of the State of Indiana, grateful to Almighty God for our freedom, do ordain this Constitution," would convey a full recognition of the Divine Providence in human affairs, and of our obligations of gratitude for the blessings which are secured by good government. It would produce a wholesome impression upon the mind of every person who should ever read it; and would, of itself, secure something of respect for the Constitution, even if it had not one other redeeming feature.

Mr. BORDEN. I wish to call the attention

of the Convention to a single fact. Without designing to throw any censure upon the sub-committee, I will state that this article was referred to the full committee and it was concurred in by them. The sub-committee have chosen to make an alteration, and I am not prepared to say whether or not I shall concur in the report of the sub-committee. I was under the impression that this committee had been instructed by a resolution, to lay their reports on the tables of members one day at least, before we were called upon to act on them. Now there are two material points in which this article has been varied from the shape in which it stood when passed by the Convention. I trust that the report will be allowed to lie over for examination.

Mr. OWEN. In explanation, I will say that we supposed we had submitted to every member of the Convention the alteration in the phraseology that was proposed to be made. It is a mere transposition; there is no alteration in substance whatever.

But a word in reply to the gentleman from Laporte. Now I not only hold that the report of the committee is as good as the article referred to the committee, but I believe that it is a good deal better. Now the gentleman says that we restrict the matter by saying that "we are grateful to Almighty God for the free exercise of the right to choose our own form of government." I ask him why not say that we are grateful for a thousand other things; for our prosperity, for the peace that prevails, &c.? Why not say we are grateful for everything we enjoy, and why not specify everything that we are grateful for? No, sir; but here we are about to choose our own form of government, and the appropriate thankfulness to God is, that we are free to choose our own form of government. We might go on and say, we are thankful for health, for life, and for all the blessings attendant on our existence. But while we are about, in this solemn manner, to thank God for what we enjoy, we should make that expression of thankfulness correspond with the particular work in which we are engaged. It is peculiarly appropriate for us to say in this Convention, while we are establishing a form of government, that we are grateful to Almighty God for the right to establish a form of government for ourselves. That is precisely what we are going to do. And as to what is said by the gentleman from Putnam about our right to change or alter what we have already done, have we not that right? Certainly. We have a right to change or alter the Constitution in any particular. Nothing is more certain than that we have the right to alter or change the form of our government, and no expression can be more appropriate, in a restrictive sense, than this: that being about to change our form of government, we are thankful for the right to do it.

Mr. CRUMBACKER. In order that gentlemen may have time to examine this report and



make up their minds with reference to the changes that have been made by the committee on arrangement and phraseology, I move that it be made the special order for to-day at two o'clock, P. M.

Mr. KELSO. I wish to suggest a point of order. The printing of the sections, as passed by the Convention and as reported by the committee on revision, arrangement, and phraseology, and placing them side by side, was authorized and directed by a resolution of the Convention; and that resolution, if my recollection is correct, declared that they should be printed and laid upon the tables of members at least one day before we should be required to vote upon them. Now, however, when the first report is made, we are called upon instantaneously to vote upon it. Now some important changes have been made, which I am not prepared to vote upon at this time. My point of order is, that the report should be laid upon our tables one day before we be required to vote upon it.

I ask that the resolution be read. If I am right in regard to this matter, it will be out of order to act upon this report at present.

The PRESIDENT. The Secretary informs the Chair that the resolution that was passed upon this subject, is in the hands of the printer; it consequently cannot be referred to at this moment.

Mr. KELSO. I will appeal to the recollection of every gentleman in this body.

The question was taken on the motion to postpone the consideration of the report until 2 o'clock P. M. this day.

The question was, on a division, ayes 52, noes 38—decided in the affirmative.

So the consideration of the report was postponed until 2 o'clock, P. M.

#### TAXATION OF CORPORATE STOCK.

Mr. WALPOLE, from the committee on miscellaneous provisions, reported a section to the effect that the capital stock in plank road, railroad, and moneyed corporations, upon which a profit may be derived, shall be subject to the like State and county tax, as the property of individuals; the county tax shall be equal to the State tax, which tax shall be paid into the State treasury—the county tax to be appropriated to the several counties for the use of common schools.

The section was read a first time, and passed to a second reading.

Mr. WALPOLE, from the same committee, also reported a section, that the Constitution shall be submitted to the people for adoption on the first Monday in June—the vote to be by ballot—the article in relation to negro exclusion to be submitted at the same time—the vote to be also taken by ballot—the ballots in favor of exclusion to contain—“*For the Exclusion of Negroes and Mulattoes and their Colonization.*”

Those opposed to contain the words, “*Against the Negro and Mulatto Article.*” A majority of votes to carry the Constitution, and a majority to carry the separate article, and which is to form a part of the Constitution, whether the main Constitution is adopted or not. Should the Constitution be adopted, an election is to take place on the second Tuesday in October, 1851, for the election of three Judges of the Supreme Court, a Judge and Prosecutor for each Judicial Circuit, Auditor, Treasurer, and Secretary of State, Representatives to Congress, Clerk of the Supreme Court, and all other State and county officers, whose election would have taken place on the 1st Monday of August had there been no change in the Constitution of the State.

The section was read a first time, and was passed to a second reading.

Mr. KELSO, from the same committee, reported a section providing for a division of the State into three Supreme Court districts, and designating the counties in each district.

The section was read a first time and passed to a second reading.

Mr. KELSO, from the same committee, reported back a section amended according to the instructions of the Convention, allowing the counties of Perry and Spencer to form a new county whenever a majority of the citizens in said counties shall so decide.

The question being “Shall the section pass?”

Mr. COOKERLY moved that the rule requiring the yeas and nays to be taken on the passage of a section be suspended.

The question on suspending the rule was, upon a division—ayes 79, noes 22—decided in the affirmative.

So the rule was suspended and the section passed, and was referred to the committee on revision, arrangement, and phraseology.

Mr. KELSO, from the same committee, reported a section allowing Dearborn, Ohio, Switzerland, Blackford, and Wells to retain their present mode of doing township business, if permitted by the Legislature.

Mr. KELSO, on making this report, remarked that the committee had sent a resolution expressly directing the committee to report such a section as this one. There was, he added, nothing wrong in the provisions of the section.

The section was read a first time and passed to a second reading.

#### ORDER OF BUSINESS.

Mr. PETTIT, in pursuance of notice previously given, offered for adoption the following resolution:

“After Tuesday next, no new section shall be introduced, and no motion shall be entertained to re-consider the vote on the passage of any section.”

Mr. COLFAX. It is doubtful to me if we are not tying up our hands too much by adopt-

ing such a resolution as this. I suggest to the gentleman to insert a provision to this effect: "without the consent of two-thirds of the members."

Mr. PETTIT. I am willing to say three-fourths.

Mr. WALPOLE. I will suggest to the gentleman to add to his resolution the words "unless the committee on revision, arrangement, and phraseology propose any new matter."

Mr. PETTIT. We must, if we are going to adjourn on the tenth inst., pass a peremptory resolution prohibiting the introduction of any new proposition from any quarter.

Mr. WALPOLE. Well, sir, I give it up. The question being upon the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

#### RESOLUTIONS.

Mr. HITT. I desire to introduce a resolution in this form:

"Resolved, That hereafter no delegate shall speak more than five minutes at a time."

Mr. LOCKHART moved that the resolution be laid on the table.

The motion was not agreed to.

The question then being on the adoption of the resolution.

Mr. McFARLAND. It is well known that there is a question pending, and one of very considerable importance, too, upon which the gentleman from Vanderburg (Mr. Lockhart) desires to address the Convention, and that that question has been postponed until Monday next. I hope, therefore, that this resolution will not be now adopted.

Mr. KELSO. Now I do not know but that I may want to say a word before the end of the session upon some question, and if I do, and if it should be a matter of sufficient importance to detain the Convention in speaking upon it, I may take ten or fifteen minutes in doing so, and I believe I have not detained the Convention fifteen minutes at any one time for the last ten days. Whenever there is a subject before the body that is worthy of its attention, I do not hesitate to say that the man who will not express his views in regard to it, is recreant to his duty, to his constituents. Now, I do not want to speak for over fifteen or twenty minutes at any time. But there are many important matters yet to be acted upon, and I ask if this resolution is offered for the purpose of closing our mouths when the sections reported by the smoothing iron committee come up for consideration? If that be the object, I hope the Convention will make a summary disposition of it, by voting it down. I think we have been sufficiently gagged throughout the session. I ask if there has been a single important measure that has not been passed under the lash of the previous question? And I ask, too, if it

would not much better have satisfied the people at home if that restriction on free discussion had not been imposed? And now, forsooth, when we come to the last and most important stage of our proceedings, the most important not only to us, but to the interests of the people of the whole State, we are to be cut off by a five minutes rule, scarcely affording time for a respectable exordium, much less for an argument. I say, for one, that such a resolution ought not, for a moment, to receive the favorable consideration of this Convention.

Mr. SHERROD demanded the previous question.

The demand for the previous question was, on a division—ayes 53, noes not counted—seconded,

And the main question was ordered to be now put.

The question being upon the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

Mr. BADGER offered the following resolution.

"Resolved, That the Convention now take up the orders of the day."

The resolution was not agreed to.

Mr. EDMONSTON offered the following resolution:

"Resolved, That all the committees except the committee on revision and the committee on accounts, be discharged, &c., &c."

The question being on the adoption of the resolution,

It was decided in the affirmative.

So the resolution discharging the committees, &c., &c., was adopted.

Mr. BORDEN. Mr. President, I hold in my hand two resolutions, which I desire to submit to the Convention for their adoption; and which I presume, when explained, will meet with little or no opposition. When we assembled here last fall to commence the work of revising the Constitution, some of the members, through curiosity to examine the venerable instrument, applied to the Secretary of State to see the original copy of the present Constitution. It could not then be found, and it was not until diligent search was made that it was accidentally discovered in a corner of a room filled up with old papers and a variety of rubbish. And, although the tenth section of the sixth article of the Revised Statutes enjoins that the Secretary of State shall have the charge of, and carefully preserve, the enrolled copy of the Constitution of the State of Indiana, yet it seems it was mislaid, and for a time was thought to be lost. My object in offering one of these resolutions is, that hereafter a suitable case shall be provided, and both the old Constitution and the new one deposited in it for safe keeping, and that the case shall be carefully pre-



served among the archives of the State; and also that the duplicate copy which we ordered on yesterday shall be preserved in the same manner in the State Library, so that in the event of any accident by fire or other casualty, if one of the copies shall be lost the other may be preserved.

One of the resolutions also directs the Secretary of this Convention to have the manuscript journal which he has copied to be neatly bound in one or more volumes, as circumstances may require, and to be deposited as the law convoking this assembly directs, with the Secretary of State.

As to the original papers of this body, the law by which it was called into being makes no provision as to the manner in which they shall be disposed of; but it will be recollected that it is made the duty of the State Legislature, by law, to take into its custody and safely keep the papers on the file of the two Houses of the General Assembly at the end of each of their sessions; and this resolution proposes to pursue the same course with the original papers of this Convention. I hope that the resolution will be adopted.

The question being upon the adoption of the resolution,

It was decided in the affirmative.

Mr. WILEY submitted the following resolution:

*"Resolved, That the committee on revision, &c., be instructed to insert after the word "oath," wherever it occurs, the words "or affirmation."*

The resolution was adopted.

Mr. BROOKBANK offered a resolution to the effect that members be furnished with one copy each of the Debates, in book form. He remarked that he had omitted to state that the copies to be furnished should be bound, and he did so for this reason: it would be remembered by every member of the Convention that there had been already two or three efforts made to have the Debates bound and they had failed. It was plain, he thought, that the Convention was indisposed to order the binding.

Mr. BASCOM remarked that he understood from very good authority, the matter had been before the Legislature, and that provision had been made by them for the necessary expense of binding the Debates. It appeared to him that unless the Debates were bound so as to be preserved, the expense of publishing them in a book form would to a great extent be thrown away.

Mr. PETTIT. I would like to be informed by some gentleman who may happen to know, whether an Index to the Debates has been prepared?

THE PRESIDENT. I am informed that the Secretary is authorized to prepare an Index.

Mr. CHAPMAN. I will state for the information of the gentleman from Tippecanoe, and

others, that there is an Index being prepared by the Stenographer. It is essentially necessary, it appears to me, that the Debates should be bound, otherwise they will not be in a proper state for preservation.

Mr. KELSO. If the gentleman from Union will withdraw his resolution, I have one here that I will offer in the place of it.

Mr. BROOKBANK withdrew his proposition.

Mr. KELSO offered for adoption the following resolution:

*"Resolved, That there be printed and bound seven hundred and fifty copies of the Journal of Debates, and the same number of the Legislative Journal, and that each member and officer of this Convention be entitled to one copy of each of said Journals; that there be three copies of each deposited in the offices of the Clerks of the Circuit Courts of this State for the use of the public; and that the Stenographer be authorized to furnish a complete Index to the Journal of Debates."*

Mr. KELSO. I will remark that the Stenographer informs me that there is an Index already prepared for the first volume, and that he will proceed and complete the Index for the second if it be the pleasure of the Convention to order the work to be done.

The question being on the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

Mr. WATTS offered the following resolution:

*"Resolved, That the names of the Delegates to this Convention be prefixed to the Constitution, and that said Constitution be signed by the President, and attested by the Principal and Assistant Secretaries."*

Mr. BORDEN. I would merely remark that if the intention be to sign the Constitution by way of attestation, there can be no objection to it, but if it be the purpose of the mover of the resolution that members will be obliged to sign it as an expression of their entire approval, it occurs to me there may be many gentlemen who will not be willing to attach their signatures with that understanding.

Mr. PETTIT. It seems to me that we are about to pass a resolution which it will be utterly impossible to carry out. Members will not all be here when the instrument shall have been enrolled upon parchment. Many will be gone, many are now gone, not to return; and how are their names to be affixed? The customary mode is, that the instrument be signed by the officers of the Convention. The President and principal Secretary will sign it in their official capacity, in the same way that a bill passed by the Legislature is signed by the Speaker and Secretary; and it appears to me the resolution should be drawn up to that effect.

If it be required that the instrument be signed by members, you will not have it signed by one-half of the Delegates in this Convention. The Constitution of the United States was signed by Washington, as President of the Convention by which it was formed, and not by the members of that body. The present Constitution of this State was signed by Mr. Jennings, as President of the Convention.

**A VOICE.** It was signed by all the members.

**Mr. PETTIT.** I think not. I am not sure about that, however, but in this case many of the members will have gone home and their names will not be attached to the instrument.

**Mr. SMITH of Ripley.** I understand the purpose of the resolution is that the attaching of the signatures shall be a mere matter of form, in obedience to the order of the Convention that the names of members may go out with the instrument, but not as certifying their approval of it.

**A VOICE.** That is the idea.

**Mr. SMITH.** Well then may not the names be appended without the formality of signing?

**Mr. PETTIT.** What is the use of affixing the signatures of members?

**Mr. SMITH.** It may be proper enough to show who the delegates are.

**Mr. PETTIT.** The journals will show that.

**Mr. SMITH.** That is true enough, and therefore there is no actual necessity for signing the Constitution. I think perhaps the better way would be to direct that it be certified by the President and Secretary.

**Mr. DOBSON.** I am not particular about this matter myself, but I am satisfied that it was contemplated when this Convention was called, that the Constitution formed by it should be signed by every member of the Convention. I am convinced of this from conversations I have had with men who were members of the Legislature at the time the act calling the Convention was passed. And, in addition to that, from the reading of the law, it is clear to me, that the delegates to the Convention should sign the Constitution, and I believe it is a thing that has been customary in all the States where Conventions have been held.

In regard to those who have gone home, it is a matter of no importance whether they sign the Constitution or not.

**Mr. KELSO.** I apprehend that if the President of the Convention and the principal Secretary, sign the Constitution, it will be sufficient. So far as I am concerned, I will never put my name to a document that I would not vote for.

[Cries of "Consent! You shall be excused!"]

**Mr. SPANN.** I desire to say a single word in relation to this question. It is not a matter

of such importance, and whatever importance attaches to it, arises from the fact of its connection with the ordinary mode of transacting business in bodies of this character. I have examined the Constitutions of several of the States—some of them I have seen on manuscript—and I have observed that in most cases the names of the framers of these instruments have been appended, together with the names of the counties represented by them. Now in this view of the question, it is not important whether members personally attach their signatures to the document, or whether they be appended by the Secretary; it is a mere matter of form. The appending of the names is merely to show who were the delegates, and what counties they represented. Gentlemen who do not approve of the Constitution as finally adopted, as in the case of the gentleman from Switzerland and others, may withhold their names if they please. Those gentlemen have fully illustrated their views by their speeches and votes; and if they choose to withhold their names it is a matter for themselves to determine. But, I think that in accordance with the usual practice in all States the names of members ought to be appended to the new Constitution.

**Mr. DUNN of Perry.** Will it be in order to amend the resolution?

**The PRESIDENT.** Certainly.

**Mr. DUNN of Perry.** Then I offer the following:

"Strike out the words 'principal Secretary,' and insert the words 'all the Secretaries.'"

**Mr. WATTS** accepted the amendment as a modification of his resolution.

The question being on the adoption of the resolution as modified,

It was decided in the affirmative.

So the resolution was adopted.

**Mr. DAVIS of Parke** offered for adoption the following resolution:

"Resolved, That the Convention now take up the orders of the day."

The resolution was agreed to.

Before the Convention proceeded to the consideration of the orders of the day,

**Mr. WALPOLE** said, I rise to a privilege question.

The Convention then proceeded, in accordance with the resolution previously adopted, to the consideration of the

#### ORDERS OF THE DAY.

The first thing in order being the section reported by the committee on the practice of law and law reform, upon its third reading.

The section is as follows:

"Any person of good moral character, and possessing the right of suffrage shall be entitled to admission to practice in all the courts of this State."



**Mr. KELSO.** The section ought to be amended by the striking out of two words, and I hope the Convention will agree to the amendment by unanimous consent. The words are "to admission." The section contemplates that there shall be an examination. I would prefer that it should be in this form, that any man of good moral character and possessing the right of suffrage shall be entitled to practice in all of the courts of this State.

**SEVERAL MEMBERS.** "Consent! Consent!"

**Mr. KELSO.** I do not care one farthing about it. Take the section as it stands, it just amounts to what the law now is.

**The PRESIDENT.** The gentleman will send up his amendment in writing.

**Mr. KELSO.** Yes, sir, I will send it up in writing.

I move that the section be re-committed with instructions to strike out the words "to admission."

**Mr. BORDEN.** I ask whether it is the intention of this provision that a man who knows nothing about the law at all, will be permitted to come into court and practice law!

**A VOICE.** "Lay members" for instance.

**Mr. BORDEN.** I move that the section be laid upon the table.

[Much confusion here prevailed throughout the Chamber.]

**Mr. MILROY** demanded the previous question.

The demand for the previous question was seconded.

The main question was ordered to be now put.

**The PRESIDENT** (without noticing the motion of the gentleman from Allen) said: The main question is upon the passage of the section.

**A MEMBER.** I want the yeas and nays upon this question.

**Mr. COLFAX.** The previous question I think brings the Convention to a vote first upon the motion to re-commit.

**A VOICE.** There has been no motion to re-commit.

**Mr. COLFAX.** There certainly was such a motion, and it was made by the gentleman from Switzerland (Mr. Kelso).

**Mr. PETTIT.** The motion to re-commit was made to my certain knowledge.

**Mr. WATTS.** I make a point of order. The gentlemen of the bar have no right to vote upon this question, because they are personally concerned.

**The PRESIDENT** (Laughing). Members of the legal profession will be excused from voting.

**Mr. GIBSON.** I would inquire whether an amendment could now be made, by universal consent?

**The PRESIDENT.** Not under the operation of the previous question.

**Mr. GIBSON.** As the proposition at present stands, it gives the right to practice law to any person.

**A VOICE.** Possessing the right of suffrage. It strikes me that this is too broad.

The question then, according to ruling of the Chair, being upon the adoption of the section, the yeas and nays were taken, under the rule, with the following result—yeas 84, nays 27.

**YEAS.**—Messrs. Alexander, Anthony, Badger, Bascom, Beach, Beard, Beeson, Bowers, Bracken, Butler, Carter, Chapman, Chenoweth, Clark of Hamilton, Clements, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Haddon, Hamilton, Harbott, Hawkins, Hogin, Holman, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kinley, Maguire, March, Mather, Mathis, May, McClelland, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Mowrer, Niles, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Schoonover, Sherrod, Sims, Smiley, Smith of Ripley, Smith of Scott, Steele, Tannehill, Thomas, Trimble, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—84.

**NAYS.**—Messrs. Ballingall, Berry, Blythe, Bryant, Carr, Clark of Tippecanoe, Dunn of Jefferson, Hall, Helmer, Hitt, Kilgore, Logan, Miller of Gibson, Morgan, Morrison of Washington, Nave, Pepper of Ohio, Pettit, Rariden, Shannon, Shoup, Snook, Stevenson, Thornton, Wallace, Walpole, and Zenor—27.

So the section was adopted and referred to the committee on revision, arrangement, and phraseology.

The section which provides that the present officers shall continue in the exercise of their respective offices until superseded under the authority of this Constitution, was taken up on its third reading.

The question being, "Shall the section pass?"

**Mr. DOBSON** asked the unanimous consent of the Convention, to amend the section so as to provide that where any officer continues to discharge the duties of his office under the new Constitution, he shall be required to give new bonds.

**Mr. KELSO** was of opinion that such a provision was wholly unnecessary. He held that the sureties to the former bonds would continue to be liable, and that no renewal of the bonds was necessary.

**Mr. DOBSON.** I do not profess to be much of a lawyer, but I will undertake to say that the gentleman is wrong in regard to this matter. Under the old Constitution, the law is that the election shall take place in August. Now, sir, we propose to change the time of holding the

elections, and we propose, also, that the officers who were elected in pursuance of the former law, shall continue to discharge the duties of their respective offices, until a period later than that contemplated by the law heretofore in force. My opinion is that you will thus discharge the liability of their sureties, in all such cases where bonds have been required to be given.

**Mr. PETTIT.** I think the gentleman, though he says he is no lawyer, has certainly shown that upon this subject he is a lawyer. There can be no question clearer than that neither conventional or legislative authority can render a man liable upon bonds that he would not have been liable upon under the law as it existed when the bonds were given. That is, the Legislature cannot extend the operation and obligatory force of a bond further than it would extend by construction of the law existing when the bonds were given. The bonds given by the sureties of an officer, as sheriff for example, expire in August, and then cannot be vitalized by any subsequent legislative action.

**Mr. KELSO.** Suppose that no other officers are elected to supersede those already in office, but that they are directed to continue to discharge the duties of their offices?

**Mr. PETTIT.** You then have, to all intents and purposes, new officers; and the liability of their sureties ceases when the time expires for which they were originally elected.

**Mr. WALPOLE.** I have examined the Constitutions of several of the States, and I find nothing of this kind contained in them. They, in general terms, confirm existing obligations. If the gentleman from Tippecanoe were right in the ground he took the other day, that any change in the fundamental law is tantamount to a revolution of the government, the proposition that he now makes is perfectly consistent with the doctrines he has previously enunciated.

**The PRESIDENT.** Gentlemen will remember that debate is altogether out of order. Will the Convention unanimously consent that the gentleman from Owen (Mr. Dobson) have leave to amend the section in the manner proposed by him?

[Cries of "no, no."]

**The PRESIDENT.** There is objection.

**Mr. DOBSON.** One additional remark. If the bonds that these officers have already given are sufficient, or if the Convention so consider them, I have no desire to press the amendment.

**The PRESIDENT.** The gentleman can attain his object by moving to re-commit the section.

**Mr. DOBSON.** It appears to me there ought to be no objection to making this matter perfectly certain. There are officers who must necessarily be entrusted with large amounts of money.

**The PRESIDENT** again put the question, "Will the Convention unanimously consent to permit the amendment to be made?"

Objection was made.

**Mr. KENT.** I am under the impression that the subject has been acted upon yesterday, in the section that was offered by the gentleman from Marion. I would like to have the Secretary read that section.

**The PRESIDENT.** Objection being made, the amendment is out of order, and debate is out of order.

The question being on the passage of the section, the rule requiring the yeas and nays to be taken on the passage of a section, was suspended, and the section passed, and was referred to the committee on revision, arrangement, and phraseology.

The section which provides that the present incumbents in the offices continued by this Constitution, (and who were elected by the people,) may exercise the duties of their respective offices, until the expiration of the time for which they were elected; provided, no incumbent shall continue in such office by virtue of this section, for a longer period of time than the term of time prescribed by the Constitution to such office, was taken up on its third reading.

The question being on the passage of the question, the rule requiring the yeas and nays to be taken on the passage of a section, was suspended, and the section passed, and was referred to the committee on revision, arrangement, and phraseology.

**The PRESIDENT.** The Chair would inform the Convention that there is nothing on the files.

**SEVERAL DELEGATES.** Let us adjourn.

**Mr. KELSO.** Allow me to make a suggestion to the Convention. The standing committees, on motion, have been discharged from this day forward; there are some reports perhaps remaining to be made, and I think we should allow them to be made now.

**Mr. NILES.** Mr. President, I rise for the purpose of submitting the following section in regard to the school fund.

**The PRESIDENT.** The Chair would inform the gentlemen from Laporte, that his motion is not in order.

**Mr. NILES.** I understood that permission was granted to introduce this section. I ask the unanimous consent of the Convention, to introduce the section, that it may be read and laid upon the table. It is as follows:

"The General Assembly shall have power to consolidate and invest in the bonds of this State or otherwise, the entire common school fund, and in case of such consolidation, interest thereon, at the rate of six per cent., shall be invariably appropriated from the annually accruing revenues, to the same specific purposes to which said funds are applied under this Constitution?"

Leave was not granted.

On motion by Mr. PETTIT,

The Convention adjourned.



## AFTERNOON SESSION.

The Convention resumed the consideration of the report of the committee on revision, &c.

Mr. PETTIT. I believe that my motion is still pending.

The PRESIDENT. The question is on the motion of the gentleman from Tippecanoe to concur in the report.

Mr. OWEN. I will very briefly state, if the Convention will allow me, what are the alterations, if alterations they can be called, which have been made by the committee on revision in the sections referred to them, and reported back this morning. They are four in number; the first is, the transposition of words without any alteration of the sense. The first section of the Bill of Rights, as reported to the committee, reads as follows:

"SECTION —. We declare that all power is inherent in the people: and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends the people have, at all times, an inalienable right to alter and reform their government.

"That the general, great, and essential principles of liberty and free government may be recognized and unalterably established, we declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness."

As reported by the committee, it reads as follows:

## "ARTICLE I.

## "BILL OF RIGHTS.

"SECTION 1. To the end that justice be established, public order maintained, and liberty perpetuated, WE DECLARE, That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasible right to alter and reform their government."

Mr. OWEN proceeded to describe certain other alterations which had been made by the committee in the phraseology of the sections contained in the article, but which did not at all affect them as to their sense.

Mr. THORNTON. When this question was up this morning, and the gentleman from Laporte made some remarks in regard to it, I felt compelled to dissent from the position he assumed. I thought the language adopted by the committee preferable to that employed in the article referred to the committee. I will remark, however, that if it be thought by the

Convention the changes made by the committee should not be concurred in, it is a very easy matter, and entirely within parliamentary rules, to concur in an amendment. But the Chair is entirely correct, that where a motion is made to concur simply, the only question to be decided is, whether we will concur or not. My own opinion is, that we should concur. But if gentlemen dissent from that opinion, and think that a modification is necessary to be made in the report, they can vote down the proposition to concur and come to a vote upon concurring with an amendment.

Mr. FOSTER expressed his dissatisfaction with the report. He thought the committee had made an unwarrantable alteration in the very spirit and meaning of the preamble. He preferred the phraseology as it originally stood: "We, the people of the State of Indiana, grateful to ALMIGHTY God for our freedom, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution."

As the committee had made it, it declared that, "We, the people of the State of Indiana, grateful to ALMIGHTY God for the free exercise of the right to choose our own form of government, do ordain this Constitution."

If (continued Mr. F.) we are grateful to Almighty God for our freedom, it certainly implies the right to establish our own form of government; and it is altogether a more appropriate and comprehensive phrase.

Mr. OWEN. The gentleman certainly could not have heard what I said. I stated that the committee had deemed it necessary to transfer a portion of the preamble to the first section.

Mr. FOSTER. It is true that I had not paid particular attention to the explanation of the gentleman, and what he now suggests, removes to a great degree, the objection that I entertained; at the same time, I most decidedly prefer that the article should stand as originally passed by this Convention.

Mr. RARIDEN. I desire to know, and it is important for the Convention to know, the position in which the article will be placed if we concur in the report of the committee. Now I have no doubt as to the fidelity with which the committee have fulfilled their trust, yet there are things contained in their report which this House would not agree to were they pointed out. I should like to know whether we are to have an opportunity to examine the report closely, and ascertain in what particulars changes have been made by the committee. I would like to be informed by the Chair, at what stage in the progress of this report it will be in order for the Convention to give an expression of its views in regard to the changes which have been made.

The PRESIDENT. The Chair will remark, that there will be a proper time for the expression of the views of the Convention in regard to the subject. A motion may be made to re-

consider the vote taken upon the final passage of any section.

Mr. RARIDEN. Should not that motion to re-consider be made now, instead of after the vote on concurring in the report has been taken? My understanding of the matter is this: that the committee on revision should have done nothing more than embody with fidelity that which has heretofore been adopted by the Convention. My impression is, that we ought to have this expression of the sense of the Convention in regard to the changes that have been made, before we take the vote upon concurring in the report.

The PRESIDENT. The motion may be made either before or after.

Mr. MURRAY. It seems to me that we have been contending, like Timothy, for the true faith. [Laughter.] We have been contending for principles, for matters of substance, and that is all right and proper, but we are now contending about words. I should certainly like to see the best language made use of in the wording of the Constitution, but it seems to me that there is no necessity of wasting much time upon a question of mere words, where the sense is perfectly conveyed and where there is no ambiguity.

Mr. MILROY demanded the previous question.

The demand for the previous question was seconded,

And the main question was ordered to be now put.

The question being, Will the Convention concur in the report of the committee?

Mr. PETTIT demanded the yeas and nays, and they were ordered; and, being taken, resulted—yeas 91, nays 14—as follows:

YEAS.—Messrs. Alexander, Anthony, Ballingall, Barbour, Bascom, Beach, Berry, Blythe, Bourne, Bracken, Bryant, Butler, Carter, Chapman, Chenoweth, Clark of Tippecanoe, Cole, Colfax, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Elliott, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Gordon, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Huff, Johnson of Orange, Jones, Kent, Kinley, Lockhart, Logan, Mather, Mathis, McClelland, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Mower, Murray, Nave, Newman, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Tannehill, Thomas, Thornton, Trimby, Watts, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—91.

NAYS.—Messrs. Brookbank, Clark of Hamilton, Clements, Davis of Madison, Foley, Howe, Johnson of Dearborn, Kelso, Maguire, March, May, and Rariden—14

So the report was concurred in.

Mr. RARIDEN. I now move to re-consider the vote taken upon the final passage of the third section.

Mr. PETTIT. Did the gentlemen vote in the affirmative on that question?

Mr. RARIDEN. I am under the impression that I did. I believe there were very few votes given in opposition to it. I understand the Chair to say that a motion can be made at any time, to re-consider the vote taken on the passage of a section.

The PRESIDENT. The gentleman could not have understood the Chair to say that a motion to re-consider could be made by a member who did not vote with the majority.

Mr. RARIDEN. Well, sir, I voted with the majority on the passage of the section. I understood the Chair to say that the report of the committee on revision was not subject to amendment until after the vote had been taken on the motion to concur. I think it is desirable, at least, that the matter should be in such a situation that if there is anything seriously objectionable, it might be amended. But if it be not amendable before or after concurrence, I do not know how we are to get at it at all.

The PRESIDENT. The Chair would remark, that when a report is made by a committee, the motion usually made is, "that the report be concurred in." A motion may be made that the report be concurred in, with an amendment. Or, a motion may be made to reject the report, or to refuse to concur; but when the motion to concur is first made, the question must first be put upon that motion; and pending the question on that motion, no motion is in order. If the Convention disapprove of the report of the committee, the motion to concur would very naturally be rejected.

The Chair would further remark to the gentleman from Wayne, and to all others, that the arrangement made by the committee, if not acceptable to a majority, would necessarily be rejected; and this mode is, perhaps, the shortest mode of determining whether a majority approve of it or not.

Mr. RARIDEN. Well, then, I will make a motion that will be in order; and before I make that motion allow me to explain the object, and then the Convention will be able to determine whether it ought to be adopted or not. The second section reported by the committee is, "All men shall be secured in the inherent right to worship Almighty God according to the dictates of their own consciences." The section, as referred to the committee, contains this language: "No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience." This, it appears to me, is much more forcible and appropriate: "No law shall be passed interfering with the rights of con-



science." The rights of conscience then will be in a man's own keeping.

Now the motion that I am going to make, is to have this article re-committed, with a view to have so much of it stricken out by the committee on revision; and I believe it is the only way in which we can get at it. I move that the article be re-committed, with instructions to strike out the third section. That will certainly be in order.

**The PRESIDENT.** It is in order for the gentleman to move to re-consider the vote taken upon the adoption of the section, provided he voted with the majority.

**Mr. RARIDEN.** I am not moving to re-consider, but to re-commit.

**The PRESIDENT.** The Chair would remark that the motion is clearly not in order.

**Mr. RARIDEN.** There has never been a time when I could reach the object that I wish to accomplish, by a motion that is in order. I have made repeated efforts for that purpose.

**The PRESIDENT.** I trust the gentleman will not charge it as a fault upon the Chair, if he has not been able to make the proper motion.

**Mr. KELSO.** I have to make the last report, perhaps, that any of us will have occasion to make. It is a report from the committee on miscellaneous provisions. Mr. K. then reported sundry sections, permitting the Legislature to pass a law for the State to borrow money to establish a State Bank and branches, the State having the right to be a stockholder in such bank and branches, &c.; the salaries of the Supreme and Circuit Judges to be \$1,000 each, until changed by the Legislature; no county, with an area of four hundred square miles, or less, shall be divided or have any part stricken therefrom, without submitting the same to a vote of the people, &c.; and all State and county officers shall be ineligible to any other office during the time for which they are elected.

The sections were read a first time.

**Mr. PETTIT.** It seems to me that this is a very miscellaneous report. [A laugh.] I move that it be indefinitely postponed.

**The PRESIDENT.** The Chair would remark that there is but one privileged motion in reference to the report at its first reading.

**Mr. PETTIT.** Well, sir, I move, then, that the report be rejected.

**Mr. KELSO.** A portion of that report is founded on resolutions of this honorable body, if it be entitled to that appellation. There was a resolution introduced by the gentleman from Hancock, and concurred in by the Convention without opposition, for the purpose of getting it on the record to be passed thereafter. Gentlemen may do just what they please with the report.

The question being on the rejection of the report,

The yeas and nays were demanded and they were ordered.

**Mr. SMITH of Ripley.** I rise to a point of order. I want to know if a standing committee may bring in a report without having been instructed so to do by the Convention?

**The PRESIDENT.** The Chair understands that a part of the matter which is embodied in this article, has been introduced in the shape of a resolution which was adopted by the Convention.

**Mr. SMITH of Ripley.** I make the point then, whether that part of the report which was not embraced in the resolution, is to be considered as matter proper to be acted upon by the Convention?

**The PRESIDENT.** The Chair is of opinion that when a committee is instructed in general terms, in reference to a subject, they are left free to bring in such a report as a majority of the committee may agree upon.

**Mr. KELSO.** Another thing. Our committee was required from the very nature of its duties, to hunt up all the odds and ends of everything.

**Mr. McFARLAND.** I would inquire whether all the committees have not been discharged?

**The PRESIDENT.** The resolution discharging the committees is to take effect from and after to-day.

The yeas and nays were taken with the following result—yeas 72, nays 39:

**YEAS.**—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Bourne, Bracken, Bryant, Carr, Chapman, Chenoweth, Clark of Tippecanoe, Colfax, Cookerly, Crumbaker, Davis of Vermillion, Dick, Duzan, Edmonston, Elliott, Fisher, Foley, Garvin, Gordon, Haddon, Hall, Harbolt, Helm, Helmer, Howe, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Mather, Mathis, McClelland, McFarland, Miller of Fulton, Milier of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Read of Clark, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Thomas, Thornton, Trimble, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—72.

**NAYS.**—Messrs. Badger, Ballingall, Bowers, Brookbank, Butler, Carter, Clark of Hamilton, Clements, Cole, Crawford, Davis of Madison, Dobson, Farrow, Foster, Frisbie, Gootee, Hamilton, Hawkins, Hitt, Holman, Huff, Kelso, Maguire, March, May, Milligan, Milroy, Mowrer, Nave, Prather, Rariden, Robinson, Smith of Ripley, Stevenson, Tannehill, Wallace, Walpole, Watts, and Zenor—39.

So the report was rejected.

**Mr. PETTIT** moved that the Convention adjourn.

**Mr. RARIDEN.** Will the gentleman withdraw his motion for a single moment?

Mr. PETTIT withdrew the motion.

Mr. RARIDEN. It has been suggested to me that I misapprehended the decision of the Chair, when I moved a re-consideration. My motion was to re-consider the vote upon the final passage of section three.

The PRESIDENT. The Chair would remark to the gentlemen that he has a right to move the re-consideration of any vote, provided he voted with the majority.

Mr. RARIDEN. Then I move to re-consider the vote upon the final passage of section three. I hold that that section is altogether useless and unmeaning in the connection in which it stands. The same thing that it contains substantially, is embodied in the preceding section. "No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience."

Conscience, sir, is a thing which is in the keeping of no law. I move to re-consider the section for the purpose of striking out that part of it.

Mr. PETTIT moved that the Convention adjourn.

Mr. WALPOLE. Just one moment.

Mr. PETTIT. Well, now, I think we had better adjourn.

The question was put upon a motion to adjourn, and on a division—yeas 33, nays 41, The Convention refused to adjourn.

Mr. WALPOLE. I have got a section to propose and I think there will be no objection to it.

[Cries of "Read it."]

Mr. WALPOLE read the section; it was to the effect that it should be the duty of the General Assembly to reduce the salaries of public officers, in case of neglect of duty on their part, &c... &c.

The PRESIDENT. The question will be upon suspending the order of business, to enable the gentleman to introduce the proposed section.

The Convention refused to suspend the order of business.

Mr. MILLER of Gibson. Mr. President—

Mr. RARIDEN (interposing). I thought I had made a motion to re-consider?

The PRESIDENT. That is true—the gentleman is right. The Chair was misled by the motion to adjourn, which took the precedence.

The question being on the motion to re-consider the vote taken upon the final passage of the third section,

Mr. MILLER of Gibson. It strikes me the motion is entirely out of order, unless we re-consider the report of the committee, and then go back step by step.

The PRESIDENT. In the opinion of the Chair, the Convention has a right to re-consider any vote while the subject is yet within the control of the body. As for instance, in the Legislature, a bill may at any time be re-

considered while it is yet in the possession of the House by which it was passed. But, after it goes out of the control of the body, a motion to re-consider is not in order. The subject matter in this case being yet in possession of the Convention, the Chair thinks the gentleman has a right to move to re-consider.

Mr. MILLER of Gibson. There is this difference between the view taken by the Chair and that which I take of the matter. Suppose a bill to have passed finally, I am of the opinion that a motion to re-consider the vote ordering it to a third reading, would not be in order, without first re-considering the vote on its final passage. And in this case, it appears to me that the gentleman cannot move to re-consider the vote taken on the final passage of the section, without the Convention first re-considering the vote by which the report of the committee was concurred in.

Mr. RARIDEN. The gentleman from Gibson and myself do not agree in the view we take of the report of the committee on revision. I look upon the article as being in precisely the same condition—so far as the action of the Convention is concerned—as it was before being referred to the committee. The action of the committee forms no part of our legislative proceedings; it is merely a revisory process, having reference to propriety of phraseology. It is merely a matter of convenience to ourselves, that that work should be performed by a committee. And the concurrence of the Convention in the report, simply amounts to this—we say that the committee have done that which we have directed them to do—and have returned to us the sections we have passed in the form in which it is our intention they shall stand, after the final action of the Convention upon their adoption.

Mr. SPANN. A single word by way of inquiry of the Chair, for I am not sure that I clearly understand the ruling of the Chair, and I would like to be better informed before giving my vote. This report was made this morning from the committee on revision. I desire to know—and it was my purpose to make the inquiry, if I could have got the floor, when the gentleman first made his motion to re-consider—whether the rules do not require that the first and only question shall be upon concurrence in the report?

The PRESIDENT. The Chair would remark that two or three motions may be made. A motion may be made to concur, or a motion may be made to concur, with an amendment, or a motion may be made to reject.

Mr. SPANN. Does not the motion to concur take precedence?

The PRESIDENT. It does, if that motion be first made; not otherwise.

Mr. SPANN. I wish to ask further, if, when a motion be made to concur, a motion



may not also be made to concur with an amendment?

**THE PRESIDENT.** The Chair has already stated that the motion first made must be first put.

**MR. SPANN.** I ask whether a negative proposition may be made when an affirmative one has been already made?

**THE PRESIDENT.** The negative in the one case is the affirmative in the other.

**MR. SPANN.** Am I right in supposing, then, that the affirmative proposition is the only one to be put?

**THE PRESIDENT.** The Chair has already remarked, that when a report is made from a committee, two or three motions are in order: for instance, a motion to concur in the report.

**MR. SPANN.** That is first in order—

**THE PRESIDENT.** Not unless it be first made. A motion to refuse to concur, and a motion to re-commit the subject matter, are also in order. These motions take precedence of each other as they are moved. The motion first made, is to be first put. So far as the motions to concur and non-concur are concerned, the positive in the one case is the negative in the other.

**MR. SPANN.** That is true. The thing that I want to understand distinctly—for I confess I am at a loss—is this: after the vote is taken to concur in the report, will it be in order to concur, with an amendment?

**THE PRESIDENT.** In this case the motion to concur must be first put because it was first made.

**MR. SPANN.** Precisely so. I understand the present question is upon re-considering the vote by which the third section was passed.

**THE PRESIDENT.** That is the pending question.

**MR. MOWRER** moved that the Convention adjourn.

The Convention refused to adjourn.

**THE PRESIDENT.** The question is on the motion of the gentleman from Wayne, (Mr. Rariden,) to re-consider the vote by which the third section of the article was passed.

**MR. FARROW.** I ask leave to record my vote upon the question of concurring in the report of the committee.

**THE PRESIDENT.** Was the gentleman within the bar when his name was called?

**MR. FARROW.** No, sir. I ask the unanimous consent of the Convention to record my vote in the affirmative.

Leave was granted.

**MR. WATTS.** I ask the gentleman, inasmuch as leave has been granted to him to record his vote, whether he voted against me on a recent occasion when in the lobby, while the vote was being taken? [Much laughter.]

**MR. COOKERLY.** I ask the same favor that has been extended to the gentleman from

Putnam. I had a violent head-ache, and was not present when the vote was taken.

**MR. PETTIT.** If the gentleman was not here, he certainly is not entitled to the privilege of voting.

The question upon granting leave to the gentleman from Vigo to record his vote upon the motion to concur in the report of the committee on revision, was then put, and decided in the negative.

So leave was not granted.

The question being on the motion of the gentleman from Wayne to re-consider the vote on the passage of the third section,

It was decided in the negative.

So the Convention refused to re-consider.

**MR. CLARK** of Tippecanoe gave the following notice of an amendment to the rules, that to-morrow, or on some subsequent day, he would move to amend the standing rules as follows:

“Reports made by the committee on revision, arrangement, and phraseology, may, if a majority of the Convention so direct, be considered by sections, so that the question of concurrence may be taken upon each section separately.”

**MR. PETTIT.** I believe that there is another section to be considered by the Convention, and it may as well be done at this time.

**THE PRESIDENT.** The Convention will now take up that section. It provides for the inclosure and permanent preservation of the Tippecanoe Battle Ground.

The question being on the engrossment of the section,

**MR. NILES** moved to amend by inserting a provision to the effect that the Legislature shall have no power to sell the block in the centre of Indianapolis, known as the “Governor’s Circle.”

I make this motion (said Mr. Niles) because I observe that the Legislature is assailed every year with importunities to sell, or give away the Governor’s Circle; and my desire is, that the public grounds within this city shall be preserved as a beautiful ornament to the town and the State.

**MR. RARIDEN** moved to amend the amendment of the gentleman from Laporte, by striking out the word “not,” so that the Legislature may be empowered to sell the Governor’s Circle, if they should deem it proper to do so.

**MR. KELSO.** I am in favor of the amendment of the gentleman from Laporte, as I understand there is a proposition now before the Legislature, to devote that ground to the purpose of building a monument upon it in memory of our soldiers who fell in Mexico. Such a clause inserted in the Constitution, would rather sanction the appropriation of it to such a purpose, and I am decidedly in favor of devoting it to that purpose.

The question being on the amendment to the amendment,

It was rejected.

The question then being on the amendment of the gentleman from Laporte,

It was decided in the affirmative.

The section was then ordered to be engrossed for a third reading.

Mr. MILLER of Gibson. It seems to me that the provision ought to include all the public grounds; and unless a provision to that effect be inserted in the Constitution, take my word for it, they will be disposed of by the Legislature.

The PRESIDENT. The section has been ordered to be engrossed.

Mr. SMITH of Scott. I move further to amend—

The PRESIDENT. It is not now in order to amend.

Mr. SMITH of Scott. Then I will offer my proposition as an additional section. It provides that all officers other than county and township officers, and members of the Legislature, shall receive such compensation as shall be fixed by law, which shall not be increased or diminished during their term of service, &c.

The question being on the adoption of the additional section.

Mr. KENT moved that the Convention adjourn.

The Convention refused to adjourn.

Mr. KELSO moved that the section proposed by the gentleman from Scott be laid upon the table.

Mr. SMITH of Scott demanded the yeas and nays, and they were ordered, and being taken there were yeas 61, nays 50, as follows:

YEAS.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Beeson, Blythe, Bourne, Bowers, Brookbank, Butler, Carr, Clark of Hamilton, Clark of Tippecanoe, Clements, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Farrow, Fisher, Foley, Frisbie, Haddon, Hall, Hamilton, Hawkins, Helmer, Hitt, Jones, Kelso, Logan, Mather, McFarland, Miller of Fulton, Milroy, Mooney, Morrison of Marion, Mowrer, Murray, Nave, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Shannon, Sherrod, Snook, Smith of Ripley, Stevenson, Tannehill, Thomas, Thornton, Wallace, Wiley, Wunderlich, Zenor, and Mr. President—61.

NAYS.—Messrs. Alexander, Anthony, Bascom, Borden, Bracken, Bryant, Carter, Chapman, Chenowith, Cole, Colfax, Cookerly, Crawford, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Foster, Garvin, Graham of Miami, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Kent, Kendall of Wabash, Kinley, Maguire, March, Mathis, May, McClelland, Moore, Morgan, Morrison of Washington, Prather, Read of Clark, Robinson, Shoup, Sims, Smiley, Smith of Scott,

Spann, Steele, Trimby, Watts, Wolfe, and Yocum—50.

So the section was laid upon the table.

Mr. HOWE offered an additional section providing that the Judges of the Supreme Court, of the Circuit, and other inferior courts, shall receive at stated periods a compensation to be fixed by law, &c.

The question being on the adoption of the section,

Mr. McCLELLAND moved that the section be laid upon the table.

The PRESIDENT. The Chair would remark that the proposition of the gentleman from Lagrange is not in order, inasmuch as it contains in substance the same provision as that contained in the proposition of the gentleman from Scott, which has just been voted down.

Mr. BORDEN. It only contains a part of the proposition of the gentleman from Scott.

The PRESIDENT. The section proposed by the gentleman from Scott declares that all officers other than county and township officers, &c., and as a matter of course the officers embraced in the proposition of the gentleman from Lagrange are included.

Mr. NILES. I desire now to submit the section which I referred to this morning:

"The General Assembly shall have power to consolidate and invest in the bonds of this State, or otherwise, the entire common school fund, and in case of such consideration, interest thereon at the rate of six per cent. shall be invariably appropriated from the annually accruing revenues, to the same specific purposes to which said funds are applied under this Constitution."

Mr. NILES. This section is somewhat similar to one offered a few days ago by the gentleman from Marion, but drawn with a view to obviate the objections which were suggested against it.

I have given some little attention to the condition of the school funds, and have conversed with several gentlemen in and out of the Convention on the subject. It seems to be admitted by all that the present system of managing them is a bad one. It is both expensive and insecure. They are scattered over the State, in the hands of an hundred different agents, and are loaned out to our citizens on long times and at a high rate of interest. A fund managed in such a way, must be subject to constant losses. In the county of Laporte, we have lost some three thousand dollars of the principal already. The gentleman from Warren informed us incidentally, in connection with a proposition to make the counties liable for the fund, that a similar or heavier loss had been sustained in his county. And indeed an accurate history of the school fund would show more improvidence and folly in its management, than is often witness-



ed in connection with any fund either public or private. It is a bad system, in every view that can be taken of it.

A gentleman who is a member of the committee on education, informs me that he has carefully examined the reports, and finds that the cost of taking care of the school funds, in seventy counties, last year, amounted to over seventeen thousand dollars. The expense for the entire State can fall little short of twenty thousand dollars. When we add to this, the expense of perpetually occurring law suits and the diminution of the principal by occasional losses, it is safe to estimate the aggregate at not less than the cost of the entire judiciary system of the State. In the county of Laporte, there have been a dozen law suits growing out of the management of this fund, which have been making their way back and forth through the Circuit and Supreme Courts. It is safe to say that there is not less, upon an average, than one law suit, in each county, at every term of the Circuit Court, on account of the school funds—that is to say nearly two hundred in a year, for the whole State. And, sir, it requires no spirit of prophecy to say that a year never can go by without more or less losses from the insolvency of borrowers and insufficiency of security, or from the dishonesty or bad management of the public agents. Under the present plan of managing it, it is a real injury to the people of the State. An occasional short loan may be a benefit to the borrower, but loans made as those are, are always an injury. While it remains in its present condition it must always be liable to be made a kind of corruption fund to be loaned out to political and personal favorites. And it is my deliberate judgment that it had better be all sunk at once, than to remain as it is at present.

Now, sir, in contrast with this expensive, insecure, and complicated system, what do we propose? Simply that these funds be collected in slowly and without injury to the borrowers, and invested in the public securities of this State. Our bonds can be bought any day in the market. As the money is paid in, instead of being loaned out again in the counties, it could be applied in the manner to be pointed out by law, in purchasing our own bonds. In order to guard the rights of the respective townships and counties the section provides that interest on the bonds which may be purchased shall be invariably appropriated from the annually accruing revenues to the same *specific purposes* to which the funds themselves will be applied under the New Constitution. Then suppose that the three millions of our school fund were collected in and invested in this manner, what a difference in the expense of managing them, and in the danger of loss. There could be no loss, so long as there is faith or honor among men, or any reliance upon Constitutional guaranties. And the whole expense of managing them

would be the wages of one clerk, for a few hours in each year, while by a simple process in the rule of three, he could ascertain the amount to be paid to each county or township. An order could then be given upon the county treasurers to pay over to the proper persons their respective amounts instead of paying it into the State Treasury, to be paid over to foreign bond holders. And after the whole fund had been consolidated, the amount to be paid annually to each county for the use of the townships, would be ascertained by law, so that even the few hours' clerk hire could be avoided. There would be just the difference between such a disposition of the school fund and the present plan, as between having the Smithsonian bequest invested in government securities or scattered over the country, in the hands of an hundred different agents. Now it is secure against all contingencies, and its management does not cost a farthing—in the other case it would be insecure, expensive, and troublesome. It is surely just as well that the government should owe half a million to that fund as to a foreign capitalist. Were it necessary to create a State debt for the purpose, we should have a different question; but our bonds are out, and the interest on them must be paid. Why then may they not be purchased and the interest paid for the use of schools? Were it left to myself I would make the section imperative. In its present form it is only permissive, but it secures the faithful application of the interest in case of consolidation. And without some such guarantee, higher than a statute subject to repeal at any time, the townships would not feel safe in assenting to any consolidation of the funds. I will not disguise in fear that this subject will not receive the attention at this late day, which its importance demands, but I hope that before a motion is made and carried to lay on the table, an opportunity will be given to the gentlemen from Washington and from Warren, and perhaps to some others, to be heard for a few moments. The subject is worthy of deliberate consideration.

Mr. READ of Clark moved that the Convention adjourn.

The motion was, upon a division—ayes 42, noes 38—decided in the affirmative.

So the Convention adjourned.

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MONDAY, FEB. 3, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BABB.

The journal of yesterday was read and approved.

The Convention proceeded to the consideration of the special order, being the section in relation to the boundary of the State.

[Mr. Lockhart made a speech which was not furnished the printer.]

Mr. WALPOLE. I was not in my place the other morning when this report was made. I consented, however, that the article reported by me in view of the intention of the gentleman from Vanderburg, to introduce his report, that the article which I reported should be laid upon the table. Not that I thought there was any error in the article, because it is a faithful transcript of a similar provision of the Convention of 1816.

"SECTION 1. In order that the boundaries of the State of Indiana may more certainly be known and established, it is hereby ordained and declared that the following shall be and forever remain the boundaries of said State, to-wit:—Bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north-western shore of the said Wabash river, and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north by the said east and west line until the same shall intersect the first mentioned meridian line which forms the western boundary of the State of Ohio."

The next section contains a provision similar to that contained in an act of the Legislature of Kentucky, which was passed in pursuance, or further to carry into effect the act of the Legislature of Virginia, when she ceded to the United States the territory north-west of the Ohio River. The committee thought that it was important that the same thing should be introduced into this Constitution, and therefore reported the following section:

"SECTION 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries, as declared in the preceding section, and have concurrent jurisdiction in civil and criminal cases with the State of Kentucky, on the Ohio river, and with the State of Illinois, on the river Wabash, so far as said rivers form the common boundary between this State and said States respectively."

The river is a great national highway, and unless there be concurrent jurisdiction exercised over the waters of the rivers, by the States lying contiguous, there would be great difficulty in preventing the escape of offenders against the law. And inasmuch as the formality of going before the authorities, and making affidavit and procuring process to arrest an offender would interpose an obstacle to the administration of justice, the committee thought it best not to declare that the courts shall exercise jurisdiction, but that the States shall exercise concurrent jurisdiction, not making the wa-

ters lying opposite the county of Jefferson, for instance, a part of that county for judicial purposes; the committee thought it would be altogether less embarrassing if the Legislature were authorized hereafter to make the necessary provisions on the subject, in view of there being concurrent jurisdiction. If we were to claim absolute jurisdiction, we might be trenching upon the rights of Kentucky. It would be equal to claiming the right to tax a portion of her citizens; they would never submit to it; and if it were made a permanent provision in the Constitution, there would have to be another Convention called to alter it. I trust we shall stand by the old land marks which our fathers have adopted, and which, up to the present day, we have adhered to. Then, that the question may be fairly presented, having heard the argument of the gentleman from Vanderburg, I move that the section now under consideration be laid upon the table, with a view to taking up the report of the committee on "miscellaneous provisions."

The PRESIDENT. The Chair would remark that the whole article is under consideration.

Mr. WALPOLE. I desire merely that one section be laid upon the table.

The PRESIDENT. Which section does the gentleman refer to?

Mr. WALPOLE. The one in reference to the boundary.

Mr. PETTIT. It seems to me that the first section of the report—

The PRESIDENT. Debate is not in order.

Mr. PETTIT. I am not going to debate the question; I only rise for information. I understand the section introduced by the gentleman from Vanderburg was ordered to be engrossed on Saturday?

The PRESIDENT. The Convention considered the whole article, and all the sections were postponed.

The question was then taken on the motion of the gentleman from Hancock, to lay the second section on the table, and it was decided in the affirmative.

So the section was laid upon the table.

The question then being,

"Shall the section be ordered to be engrossed for a third reading?"

Mr. WALPOLE moved to strike out that section and substitute for it the second section of the article reported by the committee on miscellaneous provisions.

Mr. HOVEY. I think the second section should not be ingrafted into our Constitution. I was the attorney who submitted the case of McFaden vs. The State, mentioned by the gentleman from Vanderburgh, (Mr. Lockhart,) and I am under the impression that I know something about the question of jurisdiction on the Ohio river, but I do not wish to detain the Convention with on argument. This section is an ex-

act copy of the second section found on page 66 of the Revised Statutes of 1843, and consequently is now the law, *if we have the power to make such a one*. The decision of the case mentioned by the gentleman from Vanderburgh, (Headley's Lessees vs. Anthony), to say the least of it, throws some doubt upon our right to enact such a law, and where our power is questionable, sound policy would dictate that we should take the sure side. If I remember correctly, the Judge, in giving the opinion in that case, decides "*that the boundary of Indiana extends to ordinary low-water mark.*" This I think should be sufficient at least to cause us to hesitate, even though the decision of that point was not demanded by the facts of the case, as has been intimated.

I move that the amendment of the gentleman from Hancock be laid upon the table.

Mr. PETTIT. I will ask the gentleman to withdraw that motion for a moment.

Mr. HOVEY. If the gentleman desire to speak, I certainly will withdraw the motion.

The motion was accordingly withdrawn.

Mr. PETTIT. I am not prepared to admit that either of the States adjoining the Ohio river owns the soil of the bed of the river, for it is covered by navigable waters, which are common to the citizens of all the States of the Union, and subject to the laws of the General Government as the tide waters are. The General Government has exercised this right from time immemorial by the establishment of ports of entry and delivery along these waters. That these waters are common to the citizens of all the States—that they are not within the territorial limits of any State, and that no State has a right to the submerged soil, I do not doubt. And I have no doubt, also, that Indiana has the same rights as Ohio or Kentucky. That Kentucky has no right to exercise jurisdiction over the waters of the Ohio if Indiana have not, I think equally evident. The jurisdiction of each extends to the river, and that of Virginia precisely in the same way. The question might have been debated if we relied upon the act of Virginia in 1783, and the deed of cession made by Mr. Jefferson, in pursuance of that act, in 1784.

When Virginia ceded to the United States the territory lying north-west of the Ohio river, she did not surrender her sovereignty over the river itself, but she subsequently, and before surrendering to Kentucky the sovereignty over the soil which now forms that State, voluntarily passed an act by which she declared that neither herself nor Kentucky should have any more jurisdiction over the waters of the Ohio than those States which might be formed out of the territory lying north-west of that river, but that their jurisdiction should be equal and co-extensive. It will be recollected that the act by which Virginia ceded to the United States this territory, was passed on the 20th of De-

cember, 1783, and that the deed of cession made in pursuance of it, was made in the year following. In December, 1789, Virginia, on the occasion of creating a new State out of her reserved territory, expressly declares what shall be the jurisdiction as between Kentucky and Indiana, and between herself and Ohio; circumscribing her own jurisdiction, and making it only co-extensive with that of the territory adjoining. If she had at first reserved too much power, she now surrendered more, so as to place herself upon an equal footing with the State thereafter to be carved out of the ceded territory.

The seventh section of the act which was passed by Virginia six years after the cession of the territory, reads as follows: "That the use and navigation of the Ohio river, so far as the territory of the proposed State (that is Kentucky) or the territory which is within the limits of this commonwealth, (that is Virginia,) lies thereon, shall be free and common to the citizens of the United States; and the jurisdiction of this commonwealth, and that of the proposed State (that is Kentucky) respectively, on the river as aforesaid, shall be concurrent only with that of the United States, and may pass to the opposite shores of said river." Virginia, by this act, restricts her jurisdiction and that of Kentucky, and places it upon a par with our own and that of Ohio. So far as our jurisdiction is concerned, it is precisely equal to that of Kentucky. The jurisdiction of the two States is concurrent—it is precisely the same. But I am not prepared to say that either of the States owns the land under the water, or that either of them owns the land that may be formed in the river, or have jurisdiction over it; I mean so far as taxation is concerned; but each has jurisdiction to punish crime. This necessarily attaches to the sovereignty possessed by each concurrently. I therefore think we had better pass this second section of article sixty-one, in preference to the one proposed. The section that I refer to reads as follows:

"Sec. 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction in civil and criminal cases, with the State of Kentucky on the Ohio river, and with the State of Illinois on the Wabash river, so far as said rivers forms the common boundary between this State and said States respectively."

It will be recollected that the first section of this article is precisely the same as the first section reported by the gentleman from Vanderburgh, so that it makes no difference which of them we adopt. But there is a very considerable difference between the second section as reported by the committee, and that reported by the gentleman from Vanderburgh. It will be seen that the second section reported by the gentleman from Vanderburgh declares that our

territorial limits extend to certain places ; it is as follows :

"In order that the southern boundary of this State may be better known and established than is declared in the preceding section, it is hereby ordained and declared that the boundary of this State upon the Ohio river extends to the centre of the Ohio river, and that Indiana has concurrent jurisdiction with the State of Kentucky on said river between the mouth of the Great Miami river and the mouth of the Wabash river, and that all the counties of this State bound by the Ohio river, shall have and exercise such original and concurrent jurisdiction fronting said counties."

Mr. WALPOLE (in his seat). Why does not the gentleman declare that we have concurrent jurisdiction on the Wabash ?

Mr. PETTIT. That ought to have been done. The report of the chairman of the committee is, in my opinion, much preferable ; it avoids creating controversy with a sister State, a thing that we ought by all means to avoid. We ought especially to avoid giving offense by any usurpation of jurisdiction.

But one word further in regard to this subject: If the doctrine that is contended for, with a great deal of plausibility, at least, by the gentleman from Vanderburg, be true, that the boundaries of those States that border upon navigable rivers give them a colorable title to concurrent jurisdiction, then we do not need the second section at all, for, the first section reported by him, and the first section reported by the chairman of the committee, are alike. They both declare that the boundary shall be on the Ohio river. And if then the common law construction comes in and declares that we have concurrent jurisdiction, we need no additional declaration of ours to settle the point. The common law applicable to the case will, in this instance, settle the question as to the jurisdiction. I fear, however, the gentleman's doctrine is not altogether correct, but that our territorial limits reach only to the low-water mark of the river, and that we shall be compelled to resign the whole authority on the river, or to stipulate that while our territorial limits extend only to the shore, our civil and commercial jurisdiction shall be concurrent with that of the State on the opposite shore. It can do no harm to adopt the first section, but I fear it may do harm to adopt the second proposed by the gentleman from Vanderburg.

Mr. HOVEY moved that the section be laid upon the table.

The motion was not agreed to.

The question being on the adoption of the section,

It was decided in the affirmative.

It was then ordered to be engrossed for a third reading.

EXTENSION OF THE BANK CHARTER.

Mr. DOBSON offered a section declaring that the Legislature may, in the passage of a general banking law, have power to extend the present bank charter for a period of five years, the profits derivable from the funds of the State invested therein, to be devoted to common school purposes.

I desire (said Mr. D.) to offer a few words in explanation of the section. The "compromise section," as it is called, that has been adopted by this Convention, will, in my mind, create a great deal of difficulty and embarrassment in this State. I do not believe that it is the intention of delegates to bring about such a state of things as will be brought about if the section which I have offered be not passed. We have all seen the combinations that have been and are being formed, between the anti-bank men and the friends of free banks, to accomplish the overthrow of the State Bank. These combinations have been witnessed all over the State; and we know, too, that a union between the State Bank men and the anti-bank men, may defeat any general system of free banking. We all know that no bank charter can pass the Legislature without a union in its favor on the part of those friendly to the different banking systems; and without such union, I undertake to say that there will be no free banking law passed in Indiana until the expiration of the present charter of the State Bank. Unless you identify the interests of the two parties, you will get no general banking law. It is to obviate this difficulty that I propose this section.

Now I am opposed, although I am not much in favor of banks, to winding up our system of banking until a better one is established. It will produce ruin and disaster in this country, such as has not been seen for many years, if you compel the bank to wind up its affairs and call in the sinking fund, that has been loaned out on mortgage security. If you compel these mortgages to be redeemed, you take away from the circulation some millions of dollars, and there will be much embarrassment occasioned thereby to the business of the State. We all know that these lands, if carried to a forced sale, would not bring their value. If you go into the collection of your funds loaned on these mortgages all at once, when there is not a sufficiency of money in circulation, the property mortgaged must, to a great extent, be sacrificed, and in all probability the fund itself will be diminished. As a means of avoiding this difficulty I propose this section. It is not made imperative on the Legislature, but they are empowered, if they should see proper to do so, to extend the charter of the bank for five years. And I ask you, what possible harm can it do? It only extends the charter of the bank to the year eighteen hundred and sixty-two. And the question is, whether it would be good policy on the part of the State of Indiana to compel the bank to

wind up its business within a shorter period, and to take out of circulation this fund belonging to the State when, if it be allowed to remain, it will produce sixty-five thousand dollars a year for the school fund, or three hundred and sixty-five thousand in the five years. That is an item of some importance; and it is important, too, that you should avoid the embarrassment that will necessarily arise if you compel the bank to wind up its business before some other banking system goes into operation.

It appears to me it should be the policy of all those who do not desire to see the energies of Indiana crippled, to identify the interests of the State Bank and the free bank men. It will have the effect of retaining in the State money which we have borrowed at five per cent. and upon which we are making much more than five per cent. If you withdraw these funds, I ask, to what purpose will you appropriate them for five or six years to come, until the time when they are to be paid to the creditors of the State?

Mr. PEPPER of Ohio. I have expected ever since the commencement of the session of the Convention, that this monstrous monopoly, this favored corporation, would struggle hard for existence and would die hard. I did not know that the gentleman from Owen had been of either of the parties that entered into the compromise. If he do belong to either of them, I must say that he is acting very disingenuously in coming in at this late hour with this proposition. I want to know if this monopoly is to struggle on until the very last hour, as it has struggled from the first, and if, when members have scattered off, a measure is to be forced upon us that is contrary to the judgment of a large portion of the Convention, heretofore expressed. I move that the section be rejected.

Mr. DOBSON. I will ask the gentleman one plain question; that is, whether he is an anti-bank man or not?

Mr. PEPPER of Ohio. I am in favor of a free banking system; I have pledged myself to it, and will stand up to it in good faith.

The PRESIDENT. The Chair would remark to the gentleman from Ohio, that the section is not in a position when his motion would be applicable; it is offered as an additional section.

Mr. PEPPER of Ohio. Then I move it be laid upon the table.

The question being on the motion to lay on the table,

The yeas and nays were demanded, and ordered; and, being taken, were—yeas 52, nays 70—as follows:

YEAS.—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Bracken, Bryant, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cookerly, Dick, Duzan, Edmonston,

Elliott, Foley, Gibson, Graham of Miami, Had-don, Harbolt, Helm, Hovey, Howe, Johnson of Orange, Jones, Mather, May, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Schoonover, Sher-rod, Shoup, Sims, Smiley, Smith of Scott, Steele, Thornton, Trimby, Walpole, Wiley, Wolfe, and Wunderlich—52.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beard, Bourne, Bowers, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Colfax, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Gordon, Gregg, Hall, Hamilton, Hawkins, Helmer, Hitt, Hogg, Huff, Johnson of Dearborn, Kelsa, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mathis, McClelland, Milligan, Mooney, Moore, Morgan, Mowrer, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Robinson, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Wallace, Watts, Yocum, Zenor, and Mr. President—70.

So the section was not laid upon the table.

Mr. DUNN of Jefferson. I trust gentlemen will give to this subject that calm and deliberate consideration which its importance entitles it to receive. There should be no hasty action on propositions affecting the currency of the State. It appears to me that the section introduced by the gentleman from Owen (Mr. Dobson) harmonizes with the spirit of the compromise on the subject of banking, heretofore adopted by this Convention. The section provides that the General Assembly may, in any general banking law passed under the provisions of this Constitution, extend the termination of the charter of the State Bank, five years beyond the period fixed in the charter, and that the net profits accruing to the State, on her stock, during such extension, shall be appropriated to the use of common schools. It does not require that the charter *shall* be so extended, but leaves the question of its extension to be decided by the people through their representatives in the General Assembly. But there is one important condition attached to the privilege of extension; that is, that this extension can only be granted in a law providing for free banking. We do not propose to extend the exclusive privileges of the State Bank one day longer than can be avoided. We expect, if this section is adopted, that it will secure the early enactment of a general banking law. We desire to make it the interest of the friends of the State Bank to assist in procuring the passage of such a law. From the embarrassments we have experienced in this body, in adjusting and compromising the difficulties growing out of the conflicting views of the members, on the subject of banking, we may reasonably expect that the friends of free bank-

ing may have to encounter similar difficulties in the Legislature. Those of us who are in favor of free banking, must consider that the State Bank is now in the possession of the field, and that with the aid of the same allies who have given her aid and comfort here—I mean the no bank men—she may be able to maintain that exclusive possession, until the expiration of her charter. But the privilege of an extension of her charter will, no doubt, induce her friends to admit a rival, and when that rival is admitted, I trust she will be able to maintain her ground. I do not fear that the free banks will be unable to exist in connection with the State Bank. There is an outside pressure that will operate upon all the banks of the State, and will compel them to act harmoniously for their mutual benefit and protection. We can establish no system or systems of banking in this State, that will be independent of the operations of banking institutions of the surrounding States, and it would be folly and madness in our banks, to act hostilely to each other. Let us secure the early establishment of a free banking system. Let it have a parallel existence with the State Bank, and when that system expires, we will be the better prepared to judge of the comparative merits of the two systems.

But, sir, there are other reasons why I think we should leave the subject of the extension of the charter of the State Bank, to the sound discretion of the Legislature. I am afraid we have not yet sufficient private capital in the State, to afford us all the facilities the demands of trade require. In the State of New York, where the free banking system works so well, there is a large amount of capital seeking investment. Here we have more borrowers than lenders. But we are rapidly increasing in wealth, and a few years will make a great difference in this respect. In the mean time, is it sound policy to break down the system we have, before another banking system can grow sufficiently strong to supply its place?

The circulation of the State Bank averages about four millions. This is a large amount to draw from the business operations of the State, and we should endeavor to make sure of the supply of an equal amount of currency in some other way. I fear, sir, that by mistaking our true policy, we may bring upon the people a pecuniary pressure, which, however much we may regret, it will be out of our power to relieve.

The State borrowed for banking purposes, \$1,390,000, and issued her bonds for that amount bearing five per cent. interest, payable as follows: \$500,000 in Sept., 1864, \$450,000 in August, 1865, and \$440,000, in July, 1866. Of these bonds, \$84,000 have been redeemed by the bank, leaving outstanding, \$1,306,000. I think it a safe calculation that the bank can make ten per cent. interest on this money, five of which will pay the interest on the bonds, and five per cent. will remain as a profit to be

devoted to the use of common schools. Putting this profit at the sum of \$65,000 per annum, it would amount in five years, to the sum of \$325,000. That is a large sum of money and ought not to be inconsiderately thrown away. The bank bonds were negotiated on better terms than they could be now negotiated. The question before the committee is not one of borrowing money, but whether we should pay, before it is due, money borrowed on so favorable terms. The charter of the bank expires in 1857, and none of the bonds mature before 1864. If the charter should be extended to 1862, it would then expire in ample time before the maturity of the bonds, to enable the bank to pay them promptly as they fall due. It should be remembered that the State borrowed from the school fund and expended in internal improvements, \$665,580. This amount, the State pledged her faith to pay, "whenever the bank stock loan shall be paid off and the bank wound up." I am afraid this pledge will be forfeited. How is that loan to be paid? Can our people bear any heavier rate of taxation than is now laid upon them? We ought to make every effort to protect our common school fund from loss. I have shown you here, I believe, a large amount of this prospective loss may be covered by the earnings of the bank, if her charter should be extended five years. I do not desire to make this extension imperative upon the Legislature, but I do desire that the question may be left to be decided by the people through their representatives, in such manner as they, upon mature deliberation, may think best.

Mr. BASCOM moved to amend the section so as to provide that the stock of the State Bank shall be taxed the same as any other property.

Mr. WALPOLE. I had the pleasure, some two or three weeks ago, of addressing some remarks to the Convention, on the subject of the State Bank, and of the policy and interest of the State in maintaining it. The old "monster" has made his appearance again. At the time the first bank charter was passed by the Legislature, this was the assertion that was put forth—"after two years the bank shall not issue bills of less denomination than ten dollars." Before the expiration of two years, however, she came to the Legislature for an alteration of the act of incorporation, so that instead of being restricted to the issue of bills of a less denomination than ten dollars, she might have the privilege of issuing bills of any amount down to one dollar. She found the Legislature of Indiana in the condition similar to that in which the Convention finds itself now, without a dollar to pay the per diem of its members, and in debt to every body. She said "we will advance you \$80,000, if you extend our charter for five years. She obtained what she asked for; and a second time she found the Legislature in a position of embarrassment, and tendered them a loan on similar terms; and to-day she comes in

and tells you that if you will extend her charter for five years, she will advance the money to pay your per diem, and enable you to go home. ["Consent! Consent!"]

Sir, let us deal honestly. I am surprised to hear gentlemen rise and say that through the influence of this "monster," you may have your system of free banking adopted.

The gentleman from Jefferson (Mr. Dunn) has said that if you comply with the demand of the free bank, you will be enabled to carry into effect your proposed free bank system.

Mr. DUNN of Jefferson (interposing). Permit me to correct the gentleman—

Mr. WALPOLE (without noticing the interruption). It is to protect the purity of the Legislature, that I protest against the introduction of such a proposition as this at this late period of our session. It is a duty that is incumbent on the highest deliberative body of the State, at once to spurn this outrage—this attempt to practice on the necessities of the people. The people do not want the bank charter extended for five years; it is asked for only to enable them to carry out frauds; depend on it, there is a design in it that is not apparent to us. I hope the section will not pass.

Mr. PETTIT. I am not at all surprised to see this proposition introduced this morning, and I should not be surprised to see just such a proposition introduced at the last hour of the session. I have expected to see such a proposition as this emanating from a concern which pursues a course of fraud, weakness, and villainy, instead of an honorable course; and such will be its career until the last days of its existence.

Sir, the syren song is repeated here by the gentleman from Jefferson, that you make money by your connection with this institution. I pronounce it to be utterly visionary and fallacious to say that this bank has made money for the State. Your State Bank deserves an extension of its charter for five years, in order to make money for the education of your children! Great indeed is the anxiety of that institution for the education of your children! Great indeed is the anxiety of that institution for the welfare of the children of this country! Sir, the feeling of sympathy on the part of that institution for the children of this State, is very much like that of the lion, or of the wolf, towards the lamb. It would take not only the flesh, and the blood, and the sinews, but the very bones. Ave, sir, even the very marrow in the bones, and swallow them all up. "True patriots" they, to be sure! They want to make money for the State; they want the use of the children's money in order to make money for the children's benefit! A very probable thing truly! No, sir; they want to make money for themselves. The naked truth is, the State Bank of Indiana is broken, is rotten, is worthless. It never can redeem its liabilities, and it wants an

extension of its charter for five years in order to hide its worthlessness.

Sir, did not the friends of free banking and the friends of the State Bank make a compromise?—much to my dissatisfaction. But I consented that the matter should go to the people, and be determined by them, through their representatives in the Legislature. But here comes a proposition again for the benefit of the State Bank. And, sir, by what influence is this expected to be carried out? By subornation. Yes, sir, bribery is abroad. False pretences are made to lull you into the belief that all is right, and to induce you to grant them an additional period of time in which to continue the perpetration of frauds upon the community.

Mr. President, is this thing to go on? When are we to have done with it? The present charter of the bank extends to the year eighteen hundred and fifty-seven, and now she comes forward, taking time by the forelock, to secure an additional period of five years in which to enjoy the monopoly she possesses, although you have determined that you will put in practice a different system. Do you expect to see free banking successfully carried on while this monster monopoly is in existence? It is idle to expect it. Sir, the design is to cover up and conceal as long as possible the rottenness of that institution, while they continue to filch from the State every dollar that can be drained from it. It is neither more nor less than that.

The gentleman from Hancock has very properly appealed to the honor and integrity of members of this Convention to stand up against this thing. Sir, adopt such a proposition as this, and every one of you will go home branded with the charge of having been bribed and bought up by this monster. Month after month and time after time have we put it down, and, as we thought, finally put the matter at rest; yet at the last hour because, forsooth, you have not the pitiful sum necessary to pay your per diem allowance, ready to put into your pocket, you are to be pursued by propositions of this kind in the hope that you may be weak enough to yield to their importunities, and permit this worthless institution to go on in its career stealing from the citizens of this State their hard earnings, and sucking their very life blood! Sir, I feel as did the proud woman mentioned in history who, when about to be robbed of her honor, took the dagger and buried it in her breast, saying "mine eyes shall not see my disgrace." Sir, my eyes shall not look upon this outrage. [Enthusiastic applause.]

Cries of "Vote it down!"

Mr. STEVENSON. I have always avoided getting myself into a passion; in the examination of a question of this kind, in which the interests of the country are involved, it is necessary that we should be calm and dispassionate. This old bank, sir, has been loudly denounced, and it has even been charged that this is a

scheme of the bank by which she is to obtain an extension of her charter; that she is to influence the votes of members by holding out the offer to advance the funds requisite to meet the expenses of this Convention. Sir, I for one do not care whether the bank pays our wages or not; nor do I care whether the State pays them at all. I am neither beholden to the bank or the State for the pittance that is due me. But I endeavor to act, in regard to all measures, calmly and dispassionately, and to do what appears to me to be for the best interests of the country, in spite of the ravings of others. This is a question which we should discuss coolly and deliberately, as becomes legislators.

Now I am a State Bank man, but in regard to any proposition, no matter from what quarter it comes, I shall endeavor to act upon it according to the dictates of my judgment, and to determine for myself upon its merits. I do not, as a State Bank man, think that we have so much to gain by the adoption of this proposition as the gentleman seems to suppose. He says it is going to be of enormous advantage to the bank to extend its charter for five years. But, sir, the Legislature will, in the mean time, charter free banks. A free banking system will be put in operation, and it will, by that time, have had an opportunity to become firmly fixed and established; and, when the charter finally expires, there will be a system of banking to supply the place of the State Bank, and to afford commercial facilities to the State. I say then, it is no scheme on the part of the State Bank men. It is, on the contrary, for the public advantage that banking operations should be carried on until your new system shall have been put into practical operation and the people have become acquainted with it, so far as to be willing to repose confidence in it if it be worthy of confidence, for upon this must depend the successful operation of any system of banking. I am, myself, doubtful of the ultimate success of your free banking system; and it appears to me highly essential that there should be an opportunity afforded to fully test its merits and to ascertain whether it will furnish for the country a currency that will supply the necessities of commerce. I say, then, that if at the end of five years it be found to answer the purpose for which it shall have been established, then, sir, there will be no interruption to the business of the country, and the free banking system will continue in operation. But if it should be found not to answer the purpose for which it was established, as I believe will be the case, I have no fears but that the Legislature in its wisdom will establish a State Bank, with branches. Then I have nothing to fear about the matter, for I consider there is no sort of danger that a State Bank will not be in existence. And, sir, in regard to the insinuation that we may be influenced in our action on this question by the consideration of receiving our

per diem, I say for myself, that I care not whether I receive the pittance that is owing to me here or not; I can go home without it. I am neither to be bought nor sold; and the men who intimate a thing of that kind, are the very men most likely, perhaps, to be bought. It is a charge that is unworthy of any man who holds a seat in this Convention.

Mr. HAMILTON. I am exceedingly sorry that the gentleman from Tippecanoe has left his seat.

Mr. HOWE (interposing.) Will the gentleman from Allen give way for a moment, to enable me to offer an amendment?

The PRESIDENT. There is an amendment to an amendment already pending.

Mr. HAMILTON (resuming). I was about to say, sir, that I am exceedingly sorry the gentleman from Tippecanoe is not in his place, for I should be glad to say a few words in reply to the remarks of that gentleman. It is not my purpose to detain the Convention with an argument upon this question. Indeed I was not aware that it would again be brought up, for I have not consulted with any man on the subject. I profess to be a friend of the State Bank, and it is known that I am connected with that institution, being one of the managers. And when a gentleman gets up on this floor and denounces those connected with the State Bank as being corrupt and dishonest, and pronounces the institution to be rotten and insolvent, assigning this as a motive why they seek an extension of their charter, I pronounce the statement false, and without any foundation whatever.

Mr. WALPOLE (interposing). If the gentleman will allow me, for a moment, I will remind him of several occasions upon which money has been loaned by the bank to the State, with the express understanding between the bank directors and the Legislature that the charter of the bank should be amended so as to give them additional privileges. The gentleman will remember ———

Mr. HAMILTON. I do not yield the floor sir.

Mr. WALPOLE. That the Bank made application——

Mr. HAMILTON. I cannot consent to the gentleman's occupying the floor during the time allotted to me.

Mr. WALPOLE. Only a single moment, sir.

The PRESIDENT. The gentleman from Allen is entitled to the floor.

Mr. HAMILTON. I requested the gentleman from Tippecanoe to stay; I am replying to his remarks. If he says that the managers of the State Bank are corrupt men, I have to tell him that he is making a charge that is wholly untrue. The gentleman goes on to state that this institution is rotten; and how does he show it? Does he produce any

statistics in support of his assertion? Is he a gentleman who is accustomed to give us proofs of that kind? He is a man of talent, I admit, but he is not a man of figures. Now, so far as his imputation on the integrity of the managers of the Bank and the solvency of the institution is concerned, I pronounce the charge to be gratuitous and false. I will not sit quietly by and hear those connected with the State Bank denounced as swindlers. It is highly improper for any gentleman to get up here and denounce a set of men by a wholesale declaration of this kind; and when it is made, I pronounce it to be a falsehood, let it come from what source it may.

Mr. WALPOLE. What is the charge the gentleman complains of?

Mr. HAMILTON. That every man connected with the Bank is a rogue and a swindler.

Mr. WALPOLE. There has been no such allegation made. The gentleman from Tippecanoe certainly said no such thing.

Mr. HAMILTON. He said what was equivalent to it.

Mr. WALPOLE. Let me ask the gentleman a question. Does he not know that \$80,000 were loaned by the Bank to the State on consideration that power should be given to the Bank to issue bills of credit?

Mr. HAMILTON. I do not know of any such condition.

Mr. WALPOLE. Was not the gentleman connected with the Bank in 1833-4?

Mr. HAMILTON. I was not. I should not have said a word, sir, in reference to the Bank had it not been for the charges with which that institution has been assailed. I merely rose to put my condemnation upon them; and I must say that I regret very much to hear any man give utterance to slanderous charges of this description, regardless of the feelings of others, when he must be aware that there is no foundation for them. Now the gentleman from Hancock and myself have been on the same side upon this question; he certainly has been as warm a State Bank man as I am.

Mr. WALPOLE. No, sir. It is true I am for a State Bank—

Mr. HAMILTON. Precisely. The gentleman is for a State Bank; but it is a matter of no importance. I merely rose to say what I have said in reply to the gentleman from Tippecanoe.

Mr. DOBSON. With the permission of the Convention I will make a brief explanation; and I should not have said a word on the subject were it not for the remarks of the gentlemen from Tippecanoe and Hancock. Now I have lived long enough not to get scared right away when I see a storm coming. I hardly ever take the trouble even to provide myself with an umbrella, and I don't think I shall require one now.

In regard, sir, to this charge of bribery, all I have to say is, that I have never had a particle of connection with the State Bank of Indiana, or any other Bank, except banks of earth, from which I have raised potatoes and pumpkins.

A VOICE. Go it, Dobson. You are "some punkins." [Laughter.]

Mr. DOBSON. I never asked for a loan from a Bank, and I never expect to. I never had any brothers, uncles, cousins, or aunts, who asked any favors from Banks. It will be admitted, therefore, that I have no great interest in keeping up a State Bank. And as to the contest between the State Bank men and the anti-Bank men, I am pretty much in the situation of the woman, who, when her husband had a fight with a bear, didn't care much which got whipped.

Now as to the sympathy which the State Bank has with the children of the State, whether it is like that of a "lion" or a "wolf" towards a "lamb," or not, I suppose they have about as much sympathy as the free banking men have. Indeed, the former seem better disposed, for they are willing to divide the profits, while the free bank men want to take all. We might retort the charge, but that would be no argument. If I had a mind to deal in abuse, I might compete with even the gentleman from Tippecanoe himself. I might say to him, "Look at your New York stock jobbers, who are here trying to buy you up." But I will not make any such assertion.

One word regarding the obtaining of our pay. It is a consideration that does not affect me in the least; I do not care one cent whether I get my per diem or not. I can go home without it. I did not come here to make money, and I can go home without asking assistance from the State Bank, or any other quarter. As to the fuss that was gotten up in the Legislature a little while ago, in regard to the swelling of the expenses of the Convention, all I have to say is, that if my people complain of it, I am willing to make the State a free gift of all I am entitled to in the way of per diem.

But, sir, I am actuated by the reason which I assigned at first; that is, that we have seen here that the State Bank men and the anti-Bank men outnumber the Free Bank men; and the Free Bank men and the anti-Bank men are too many for the State Bank men. And these combinations may be brought to bear in the Legislature, so as to prevent the passage of any law in relation to banking, or else to secure the passage of a law that will not be acceptable to the people of the whole State; not that they will bribe your Legislature; I am not going to advance any such wholesale charge, although the gentleman from Hancock intimates that every man in the Legislature has, on former occasions, been bribed and bought up.

Mr. COOKERLY (in his seat). I believe they were.

Mr. ROBINSON. It is entirely a mistake.

Mr. DOBSON (continuing). We only propose that the Legislature shall have power, if they deem it expedient to grant the extension that is here indicated; and the opposition that gentlemen make to the proposition only goes to show that in their opinion the Legislature will act dishonestly—that they are corruptible, and that the State Bank will buy them up. We do not say that the Legislature shall pass such a law; but, inasmuch as they are authorized to pass a general banking law, we declare that when they pass the one they may pass the other also; that is all we say about it. My object is, to let the State Bank have an opportunity to pay its debts and wind up its business. And in point of fact, we do not need the money belonging to the State that is deposited in the State Bank, because it is not to be re-paid until the time named to which it is proposed to extend the charter of the Bank. I prefer that the money should be kept here, and not then sent out of the State.

Mr. KELSO. I care very little about the charges that have been made against the Legislature. I have not been a member of that body; therefore, those charges cannot affect me; but as a friend of the State Bank, so far as I am a friend to any bank at all, I will say to the gentlemen from Hancock, and to the gentleman from Tippecanoe, that their charges are rather gratuitous. And let me say that the State Bank is an institution that has been created for the benefit of the State. The State owns half the stock, and individuals own the balance. Now, suppose the State of Indiana should be in a strait for money, and should have to make application somewhere for assistance, where can she so properly go as to an institution of her own, within her own limits, to obtain the relief she requires? Where should she go but to the State Bank of Indiana? If that bank has the means to spare, she will, as a matter of course, at once grant the relief that is asked for. Again, sir, if the State Bank men, those interested in that institution, desire an extension of their charter, where are they to seek for it, but at the hands of the representatives of the people—where else could they obtain it? And, sir, does not the State derive an advantage from the existence of the bank—does not the State receive her share of the profits made by the bank? How should we have obtained a million of dollars for the school fund, if it had not been for her connection with that bank? And what injury, sir, has been occasioned by the operations of the bank? Who has been imposed on? Who has been in the least degree, injured in consequence of authorizing the bank to issue small bills? I say that no evil has resulted from it—no harm has been done. The profits made by the bank have been divided between the State and the individual stockholders share and share alike.

Well, sir, as to the charge of corruption and bribery by the bank, in buying up the members of the Legislature, what advantage could accrue to the bank, that the State did not participate in? None whatever. But where is the evidence of such corruption? Where is the evidence that the bank ever refused to advance money that was asked for by the State, without requiring as a condition of such advance, some privilege to be extended to that institution, as an equivalent? I say that the allegations of the gentleman from Hancock, or of the gentleman from Tippecanoe, or of any other gentlemen, are not sufficient evidence to my mind; and we have had no such testimony from any gentleman who was a member of the Legislature, when the acts referred to were passed.

Mr. WALPOLE. Permit me to remind the gentlemen that the gentleman from Jefferson intimates to the Convention, that the State Bank men in the Legislature, co-operating with the free bank men, may, at any time, succeed in obtaining the passage of any measure desired by them.

Mr. DUNN of Jefferson. No, sir. That is not what I said.

Mr. KELSO. Gentlemen will excuse me—my time is short. I do not see the necessity for any such combination. As I understand the proposition, it is this—that the first Legislature that meets under the new Constitution, may, if a majority of all the members deem it right and proper—if they consider that it would promote the interests of the people of Indiana, extend the charter of the State Bank for five years; and that if this be done, it is to be done in connection with a general banking law. And I ask you if it is not in the power of the Legislature to impose such restriction on free banking as would render any system of free banking inoperative? And if a system of free banking be put in operation, would that prevent the establishment of a State Bank? Now, there can be no difficulty or hardship growing out of this proposition. It is a matter which should be left to the discretion of the people to be acted upon by them through their representatives.

Mr. BARBOUR. Mr. President, I regret very much that we should have anything like an excited debate on this question. There is no subject requiring more cool, calm, deliberation. Why these appeals to prejudice? Are gentlemen afraid of the deliberate judgment of this body? Why impute dishonorable motives to the friends of this proposition? Such a course is unworthy of ourselves—unworthy of those who sent us here—but worthy the source from whence it comes. The question before us is plain, simple, and easy of comprehension, but important in its bearings. Let us approach it then, with candor and fairness, and act on it dispassionately, as becomes men who desire to do what is right. What do we ask? Simply this that in the passage of a general banking

law—the Legislature may continue a charter of the State Bank five years from its termination. Not that the Legislature shall do it, but that if the voice of the people command it, that they may have the power to do it. Is there anything unreasonable in this request? Anything that should excite us with terror and alarm? Is it dangerous to leave in the hands of the people this small pittance of power? Cannot we trust them in one particular? The people, the free bank men, and the State bank men, knowing that this question would be acted on the first session of the Legislature under the new Constitution—would agitate and discuss it in every township throughout the State. A question so thoroughly identified with the industrial resources of the country call forth the business talent of the State. This would produce an enlightened public sentiment on this question. Who dreads that public sentiment? Not we. Who withholds from the people the right to express that sentiment? Our opponents! If the people desire to continue the charter of the bank for five years, they will send their friends to the Legislature to do it. If they do not desire it, they will say so. Now, let me ask, does it become us to deprive our masters of this right? We may think we understand their interests better than they do, and that they are not fit to be trusted with the decisions of this question. If these are your sentiments, tell the people so when next you want their votes. All we ask is to leave the decision to them. They cannot blame us for allowing them to exercise their own judgments, but to refuse the right ought to and may provoke their displeasure. We were sent here to remove restrictions in the old Constitution. Let us not, then, multiply the evils which we were sent here to remedy.

Mr. President, I am a free bank man, but I have great fears, very serious doubts, whether we are, or will be, at the expiration of the present bank charter, sufficiently ripe to rely on an exclusive system of free banking. We are not in the condition of New York and the New England States. They are old and wealthy States. They have been laying up their pennies for years. They had large sums invested in stocks, and the transition to free banking was easy; in fact, it increased their circulation. The case with us—as I had occasion before to remark—is very different—we are a debtor State. Three hundred and twenty-six thousand dollars will soon go abroad annually, to pay the interest on our State debt, and it is as much as our people can well bear. With such a burden on our shoulders, we cannot be expected to accumulate a very large surplus of wealth during the existence of the present charter. Yet, we are making very considerable additions to our wealth, and the addition of five years to our State Bank charter, will bring us to a period when the transition to an exclusive system of free banking will be less injurious to the indus-

trial resources of the country. The shock would then be less severe and the void thus created in the currency would be more easily supplied.

I will now refer the committee to some facts which I have from well informed business men, relative to the operations of the "Wisconsin Fire Marine Insurance Company." This company is chartered by the State of Wisconsin—her real banking-house or office is in the city of Chicago. Illinois, as you are aware, has no banking institutions. Chicago, then presented a point for the profitable employment of banking capital. This company is furnishing a large circulation in the northern part of Illinois and Indiana. So great is the confidence of the public in the ability and integrity of the person who manages the company, that his notes has a wide circulation. Besides this, the necessities of trade compel them to have a circulation. The profits of this company are known to be immense—from a hundred to a hundred and fifty thousand dollars annually.

It may not become me to say how this company makes so much money, but I will describe a plan which a money-making man would be likely to adopt, and gentlemen may regard it as fancy or fact. A dealer wants \$10,000 to buy produce—he applies to the banker, and informs him of the sum he wants, and that it is to be employed in the purchase of grain, to be shipped to New York. The banker says he will take a bill on New York, at sixty days, but it must be at a small discount. A modest hint is given to the trader that he must insure this produce in his company. The rates of insurance are agreed upon, and every thing is fixed to the satisfaction of the banker. Though the terms of the insurance may be high—yet the dealer wants the money. Just in proportion to the stringency of the money market, will the operation be favorable to the banker. Now, who suffers in this operation? Not the trader, but the tiller of the soil. The trader will take care to buy on such terms as will make him safe. Now, if Illinois had such a bank as ours, with a branch at Chicago, furnishing \$2,000,000 of circulation, or what was adequate to the wants of trade, would not the competition resulting from the increased number of purchasers, and the facilities of obtaining money redound greatly to the benefit of the farmer? Most unquestionably.

We ought to look at society as it exists, to see things as they are, and not be misled by theories. In Illinois they have no monopoly of a bank, yet a broker's office there far exceeds in profits the same amount of capital in our State Bank.

Whenever we have wanted money to sustain the credit of our State, the bank has never refused it, but has always furnished it. She has never asked an extension of her charter, and all we ask now, is that one poor privilege may be

allowed the people—that of deciding this question themselves.

Mr. COLFAX. I shall not detain the Convention over the five minutes allotted by our rules, as they know right well that I speak very rapidly. When this matter was first suggested I deliberated long whether I could give it my support. I have finally concluded to vote for it, and will briefly and frankly state the reasons.

The first, the main object, in all the votes I have cast upon the bank question, has been to secure free banking at the earliest possible moment. And though we have adopted a compromise section which authorizes it, yet we cannot shut our eyes to the fact that it is still another thing for the Legislature to pass the required law pursuant to that authority. Fifty-one Representatives and twenty-six Senators must vote for it to secure its adoption, as all laws hereafter passed must receive the affirmative votes of a majority of all the members elected to each branch of the Legislature. And if the same feeling is exhibited there as has been in this body, an union of the friends of the State Bank and the anti-bankers might very easily prevent the passage of a general banking law; at any rate till eighteen hundred and fifty-seven, the time of the expiration of the present charter.

If, therefore, I believe it will hasten the adoption of a free bank law, if it will indeed secure its passage, it seems as if it is clearly my duty to support it. What does it propose? That the charter of the present State Bank may be extended five years in a general banking law. In no other way than in a free bank law can it be extended; and it seems as if this would make it the interest of the friends of the State Bank to assist the friends of free banks in passing their law, in order that under it their charter, if they had sufficient friends for that purpose, might be extended. More than this, it does not say, even then, that that charter *shall* be extended. If the friends of free banks are strong enough in the Legislature to pass their law without assistance from those members friendly to the State Bank, they need not extend the charter another hour. It is not, in the slightest degree, imperative on them. It can be extended only in a free bank law. And it cannot be extended even then, unless the friends of free banks are willing.

But another point still. In what does this proposition differ from the compromise section which I had the honor of introducing, and the passage of which such an overwhelming majority of this Convention so recently refused to re-consider? I am glad to see several gentlemen around me who opposed that compromise to the last, who now say it must be stood by and maintained in its every letter. It authorizes, as all know, both systems; free banks and a State Bank, in which the State should not be a partner. And if this section now before us

should be carried out to the utmost, it would only authorize both systems still. True, for five years longer the present instead of a new State Bank, would be authorized; but no money would be borrowed for the State's share of the capital stock, which is one of the great objections to the State's partnership in banks or other corporations. As has been well remarked, the bank bonds on which the State's capital in the present bank is based, do not fall due till eighteen hundred and sixty-four, and such an extension, if authorized, would only be allowing the bank to live out the same life as those bonds. It would only be authorizing the money to be continued to be used for banking, with its present guaranties and securities, instead of having it lay in our State treasury from eighteen hundred and fifty-seven till the bonds become due and their owners call for their payment. If this section proposed that bonds should be sold and the money borrowed for the State to bank on, there would be a good ground of objection to it, after the decisive action this Convention has taken upon that point.

It may be possible, indeed I consider it highly probable, that if such an extension took place, before its expiration the benefits and excellencies, the safety and permanency of our free banks would be so triumphantly vindicated that no considerable portion of the people would desire any other system. Free banking would then be the permanent system of the State.

Besides preventing the Legislature from loading down a general banking law with amendments and restrictions that would prevent its going into operation, this section, if carried out, would also secure a waiver of the rights claimed by the State Bank to exclusive banking privileges up to eighteen hundred and fifty-seven—the life of her charter. It is well known that she claims such exclusive privileges under her charter, granted under authority of the old Constitution. I differ decidedly with her friends, as to these claims. I believe free banking can and should go into force, immediately on the passage of the law for that purpose, authorized by this Constitution. But I can well see how these claims by the State Bank might make capitalists and others reluctant to invest in free banks, and how the waiver of these claims would facilitate such investments.

But, Mr. President, I shall go for this section mainly to secure the early passage of a free banking law, and a prompt organization of that system; and I shall, therefore, at the proper time, move to add to the section "that it shall apply only if the general banking law is passed at the very first session under this Constitution." I wish to make the friends of the State Bank aid in securing its passage at the earliest possible hour; and even then, as I have before remarked, the extension is not commanded, but the friends of free banks, if they have the power,

without other aid, to pass their own law, need not provide for a year's or a day's extension.

Mr. RARIDEN. I was not aware that this proposition was to be introduced. The first intimation I had of it was when, on coming into the Convention a few moments ago, I found the discussion going on. I heard only a portion of the remarks of the gentleman from Tippecanoe. Now the proposition appears to me as if it came from the free bank men. It seems preparatory to shifting the capital employed in one form of banking to another, which is a very prudent course for gentlemen who maintain that free banks are of more importance to the community than is a State Bank. I had entertained the idea that our present form of banking was secured to the community. I have not favored the State Bank propositions for the purpose of doing a service to State Bank men, nor have I opposed the establishment of a free bank system because I did not wish to see men invest their capital in free banks, but it was simply because I believe that the public interest would not be so secure under a general banking system as under a State Bank system.

Now whether the State Bank is solvent or not, I have no other means of judging than from the reports made officially by the officers of that institution. I have not been in the habit of looking at the dark side of human character, and I am firmly of opinion that if we encourage these uncharitable opinions of our fellow men, the indulgence of those suspicions do us infinitely more harm than those against whom they are indulged. I can see no danger in allowing an extension of the State Bank charter for five years. I take it that if in that time there should be any apprehension of wrong or injustice being contemplated by that institution, as has been supposed in cases heretofore when privileges have been extended to them—as, for instance, that of allowing them to issue bills of a small denomination—it will turn out to be an unfounded supposition, as was the case in that instance, for I maintain that it was for the benefit of the people as well as it was for the benefit of the bank. If it were a privilege to the bank to issue small notes, it was a benefit to the general currency of the State, because it enabled us to protect ourselves against the introduction of a spurious circulation from other States. Now I do not know that it would be a great advantage to the State Bank that her charter should be extended. But, at all events, it is not for the purpose of consulting the wishes of those interested in that institution, but it is for the purpose of making the change gradual from one system to the other, that this proposition has been introduced. The very fact of throwing their capital together in this form, stimulates the industry of the people; and if the country does not receive greater benefit

from this circulating medium than the banks themselves do, I should be against all banks.

The question being on the amendment of the gentleman from Wells (Mr. Bascom),

Mr. DOBSON. I would accept the proposition of the gentlemen but for this fact, that the State Banks yields a profit to the State from the funds invested in the State Bank, and you cannot make a distinction in levying the tax.

Mr. WALPOLE. But the connection ceases at the expiration of the present charter.

Mr. DOBSON. Then I accept the amendment as a modification of my proposition.

Mr. COOKERLY proposed to amend the section to the effect that the Legislature shall, at its first session under the new Constitution, pass a general banking law, in which law they may extend the termination of the present bank charter for five years.

I offer this, said Mr. C., as a compromise proposition.

Mr. GIBSON. (*Sotto voce.*) D—n such compromises.

Mr. COOKERLY. We have compromised this question once, not however to my satisfaction. This question, however, is brought in again at a late hour; at a time when I thought we had settled all the great principles that we were called upon to settle, and when we are about to wind up our business and go home. I say, sir, that under all these circumstances this question has been again thrust upon the Convention. I was sorry to see it introduced. I regret it from the very bottom of my heart, because I believe from the indications which I see around me, that the proposition of the gentleman from Owen will pass. And I tell you now that if it be incorporated in the Constitution, it will create great dissatisfaction, not only among a large portion of the delegates to this Convention, but among the people of the State.

Mr. WALPOLE (in his seat). No doubt of it.

Mr. COOKERLY. I am sincere and earnest in offering what I have offered; and I do trust that if what I propose as a compromise be not adopted, the whole matter will be voted down, and that we shall be governed by the compromise which passed some weeks since in relation to the subject.

The State Bank men say that if we pass this provision, it will favor free banking. I ask in what way will it favor the establishment of a system of free banking? Does it authorize the Legislature to pass a general banking law? No, sir, it only authorizes a continuance, or rather an extension of the charter of the State Bank for five years. The free bank men say that the adoption of this provision will not prevent a general banking law from being passed; but I can tell them, however, that it will retard it.

A VOICE. That is the object of it.

Mr. COOKERLY. I do not know whether that is its object or not; I hope it is not. I dis-

like very much to impugn the motives of men; but I must be permitted to say that it comes from a State Bank man. I am not going to impugn his motives. Is not the question left to the Legislature whether we shall have a State Bank established or not? certainly. And has not the Convention determined that the State shall not be a stockholder? has it not been decided by an overwhelming majority? has not the whole matter been compromised in fine? Yet, at the moment when our work is just on the point of completion—when we are about to adjourn, the question is again pressed upon the Convention. Sir, I protest against it; it is wrong; it is unjust. It is unjust on the part of a minority, those who voted against the compromise originally, to bring forward this proposition at a time when many members have gone home, under the impression that all questions involving important principles had been finally settled. A majority of this Convention have agreed upon a compromise in relation to this question, and have passed it. And now, at the moment of separating, the subject is again introduced in this new form. Sir, I warn the Convention not to adopt this section. If it be adopted I tell you we will hear a voice of disapprobation, coming up from among the people, that will make itself heard by those who vote in favor of the adoption of this section. Sir, there is a great deal of prejudice existing in the community against this Convention. The Legislature has tried to augment this dissatisfaction among the people. And members on this floor have declared in advance that they would vote against the Constitution. Now, under these circumstances, would it be proper, would it be prudent, to adopt the proposition of the gentleman from Owen? Sir, it appears to me that the popular indications are adverse to the adoption of such a proposition as this. Sir, I trust it will not be adopted. But if this section, as proposed by the gentleman from Owen, be adopted, then, sir, I throw myself upon my own rights—and I have a right to determine for myself whether I support this Constitution or not—and as a representative of a free people, I shall decide that the Constitution should not be adopted.

Mr. GIBSON. [Very indistinctly heard, owing to the confusion prevailing throughout the chamber.] I had supposed, sir, that the question was definitely settled. Such was certainly the understanding of nineteen-twentieths of the members of this Convention. But, now, however, at this late hour, when the days and hours of the Convention are numbered, when the hour is fixed for our adjournment, the question is thrust upon us again. I apprehend that no man will deliberately bring a charge of bribery against any member of this Convention. If any such charge were made, I should not believe it. I ask you to consider how this matter will appear when presented before the people,

if we adopt this proposition? I ask you in the phrase which has become so popular, "what will Mrs. Grundy say?" Time and time again has this proposition been voted down. Gentlemen should not obtrude it upon us again. We are here, it is said, depending upon the bank for our pay: then pass it if you dare. Go home to your constituents, and tell them you did this through your anxiety for their interests, and try to persuade them that you are honest. You cannot do it.

Mr. DUNN of Jefferson. All this clamor about bribery and corruption passes by me as unheeded as the idle wind. The gentleman from Clark (Mr. Gibson) dares the advocates of this measure to pass it, and go home to face their constituents. I would say to him that if he would be afraid to face his constituents after having voted for this motion, I am not afraid to vote for it and go home to meet mine. I believe it to be right; and I dare to do what I believe to be right, either here or elsewhere. Sir, however unworthy I may be found in other respects, I trust I shall never prove so craven hearted as to be deterred from the performance of a high public duty by the fear that any motives may be misrepresented, or my acts exposed to unjust suspicion. Indeed I should feel that I had lived to little purpose if I thought my character could be effected by the ridiculous cry of bribery that has been raised on this occasion. The section under consideration has been the subject of free conversation among the members for several days. It would have been introduced earlier, but it properly belongs to the miscellaneous provisions. Moreover there was so much excitement last week on subjects connected with banking, that it was not thought the measure would receive, if presented under such circumstances, that deliberate consideration which its friends desired it should receive. I was aware that a bill was pending in the Legislature providing for borrowing money from the State Bank to pay off the members of this Convention; but such a thought as that members could or would be induced to vote for this section in order to secure their pay, never entered my mind, until it was suggested in this debate. And, sir, I cannot conceive how such a suspicion could have ever entered the brain of any high minded and honorable gentleman.

The gentleman from Vigo (Mr. Cookerly) has moved an amendment, saying that the Legislature shall pass a general banking law at its first session under this Constitution, and that in such law it may extend the charter of the State Bank for five years. However proper his amendment might be, I know this Convention will not adopt it. But I think his object will be accomplished by the passage of the section without the amendment. If the friends of the State Bank should be disposed to procrastinate the passage of a general banking law, the friends of free banking could soon convince them that

if they desired an extension of their charter at all, they must procure it early or never. We will, I have no doubt, by the adoption of this motion, secure the enactment of a free banking law at the next session of the Legislature. In reply to the misrepresentations of my previous remarks upon this subject, I desire to say that I did not speak of the importance of securing the co-operation of the State Bank in procuring a general banking law. I spoke not of the Bank, but of the friends of that institution—not of the stockholders, but of such friends as those who have so ably and earnestly defended her on this floor. Men entertaining the same views will be found in your legislative halls, and will be able to command respect for their opinions. I deem it a matter of importance to secure their good will, for it is never wise to underrate the power of your adversary. I have thought much about this motion, and have come to the conclusion that as a friend to free banking, I ought to support it. I am as liable to err as other men, and in matters of doubt, I prefer to leave the power of discussion to the people, as provided in this section, rather than to impose a restriction upon the exercise of their free will.

Mr. HOWE. I would inquire if it is in order to move to strike out the section?

The PRESIDENT. No, sir. The question pending is on the motion of the gentleman from Vigo (Mr. Cookerly).

Mr. COOKERLY. I have a right to modify my amendment, I believe?

The PRESIDENT. The gentleman from Lagrange has the floor.

Mr. HOWE. I ask if it be not in order to move to strike out the section?

The PRESIDENT. No, sir; the friends of the section have the right to perfect it first.

Mr. HOWE. Then I move to lay the amendment of the gentleman from Vigo on the table.

The question was decided in the affirmative.

So the amendment was laid on the table.

Mr. HOWE then moved to strike out the section, and insert in lieu thereof a section providing that the charter of the State Bank shall be extended to the year 1862, with a proviso that no other State Bank shall go into existence after that period.

Mr. COLFAX. Before the question is put on the motion to strike out, I desire to perfect the section by an amendment, which I have no doubt will be accepted by the gentleman from Owen. It is, that the general law, extending the charter, shall be enacted at the first session of the Legislature, under the new Constitution.

The object of this amendment is to obviate the objections of those who say that the Legislature will defer the passage of a general banking law. I desire that this may be adopted in order to show that their authorizing the extension of the State Bank charter shall be upon

the condition of their passing a general banking law. I ask the gentleman from Owen if he be willing to accept this amendment as a modification of his section?

Mr. DOBSON declined to accept the amendment.

The question being on the adoption of the amendment,

Mr. BASCOM demanded the previous question.

The demand for the previous question was, upon a division—ayes 58, noes 25—seconded.

The question then being, Shall the main question be ordered to be now put,

Mr. WALPOLE demanded the yeas and nays.

The yeas and nays were ordered, and being taken were—yeas 78, nays 45—as follows:

YEAS.—Messrs. Badger, Ballingall, Barbour, Bascom, Beach, Beard, Blythe, Bourne, Bowers, Bracken, Brookbank, Butler, Carr, Chenowith, Clark of Hamilton, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foster, Frisbie, Garvin, Gootee, Gordon, Hadson, Hall, Hamilton, Hawkins, Helm, Helmer, Hitt, Hogan, Howe, Huff, Johnson of D., Jones, Kelso, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, Mathis, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Noisinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Schoonover, Sims, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Wallace, Watts, Wolfe, Yocum, Zenor, and Mr. President—78.

NAYS.—Messrs. Alexander, Beeson, Berry, Bryant, Carter, Chapman, Clark of Tippecanoe, Coats, Cookerly, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foley, Gibson, Graham of Miami, Gregg, Harbolt, Hovey, Johnson of Orange, Kent, March, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Niles, Pepper of Ohio, Pettit, Shannon, Shoup, Sniley, Snook, Smith of Scott, Steele, Trimble, Walpole, Wiley, and Wunderlich.—45.

So the main question was ordered to be now put.

Mr. WALPOLE moved that the Convention adjourn.

The motion was, on a division—ayes 57, noes 39—decided in the affirmative.

So the Convention adjourned.

AFTERNOON SESSION.

The PRESIDENT announced the pending question to be on the amendment proposed by the gentleman from St. Joseph to the section introduced by the gentleman from Owen.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 79, nays 41—as follows:

YEAS.—Messrs. Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Blythe, Borden, Bourne, Bowers, Butler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Clements, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gregg, Haddon, Hall, Hamilton, Helmer, Hitt, Huff, Kelso, Kent, Kendall of Wabash, Kendall of White, Lockhart, Maguire, March, Mather, Mathis, McClelland, McFarland, Miller of Fulton, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Niles, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Sims, Spann, Steele, Stevenson, Thomas, Thornton, Watts, Wunderlich, Yocum, Zenor, and Mr. President—79.

NAYS.—Messrs. Alexander, Beeson, Bracken, Bright, Carter, Chapman, Coats, Dunn of Perry, Edmonston, Elliott, Gibson, Gordon, Hardin, Hawkins, Helm, Holman, Hovey, Howe, Johnson of Dearborn, Jones, Logan, Miller of Clinton, Miller of Gibson, Milligan, Nave, Owen, Pepper of Ohio, Pettit, Ritchey, Shannon, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Tague, Tannehill, Trimble, Walpole, Wiley, and Wolfe—41.

So the amendment to the amendment was adopted.

The question recurred on the motion of the gentleman from Lagrange, to strike out the section and insert the substitute proposed by him, to extend the charter of the present Bank until the year 1862, with a proviso that no State Bank shall be thereafter established.

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 41, nays 85—as follows:

YEAS.—Messrs. Anthony, Bascom, Beeson, Berry, Borden, Bourne, Bryant, Chapman, Chenowith, Clark of Tippecanoe, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Edmonston, Elliott, Garvin, Gibson, Hovey, Howe, Kendall of White, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Niles, Nofsinger, Owen, Pettit, Read of Monroe, Shoup, Smiley, Smith of Scott, Trimble, Wiley, and Wunderlich—41.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Blythe, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Clark of Hamilton, Clements, Coats, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Frisbie, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Holman, Huff, Johnson of Dearborn, Jones, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Miller of Gibson, Milligan, Mooney,

Moore, Morgan, Morrison of Washington, Murray, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—85.

So the amendment was not adopted.

Mr. WALPOLE. I move a re-consideration of the vote by which the amendment of the gentleman from Lagrange was rejected.

The PRESIDENT. The gentleman cannot move to re-consider the vote.

Mr. WALPOLE. I am under the impression, sir, that I can.

The PRESIDENT. The matter is under the operation of the previous question.

Mr. WALPOLE. I must be permitted to take an appeal from the decision of the Chair.

The PRESIDENT. Does any gentleman second the appeal?

Mr. WALPOLE. There will be no difficulty about that, I imagine.

Mr. COOKERLY. I second the appeal.

Mr. WALPOLE. Almost any sensible man will second it. [A laugh.]

Mr. PEPPER of Crawford. If no motion is entertained by the Chair, how can there be an appeal? [Increased laughter.]

The PRESIDENT. The Chair would remark, that that is the very question we are going to try, whether the motion of the gentleman shall be entertained.

Mr. Walpole then commenced writing his appeal.

After a considerable pause, cries of "question," "question." Much impatience was manifested on all sides of the Chamber.

A MEMBER. What has become of the appeal? Is the gentleman writing a letter home? [Laughter, and cries of "consent."] Calls of "Borden," "Prather," "Cockerly," "come up and face the music."

Mr. WALPOLE then proceeded to read his appeal, which had been prepared in a circumstantial manner, and at considerable length.

The reading having been concluded,

The PRESIDENT. The appeal does not state the whole history of the case. [Renewed laughter.] The demand for the previous question had been seconded, and the main question ordered to be put.

Mr. WALPOLE modified his appeal in accordance with the suggestion.

Mr. MAY. I do not believe, sir, that we are doing the State any service in selecting from the Statute Book fragments of laws and inserting them in the new Constitution. I move that the Convention adjourn.

The yeas and nays were demanded.

The PRESIDENT remarked that the Convention was waiting for the gentleman from Hancock to correct his appeal.

The question being, "Shall the decision of the Chair stand as the judgment of the Convention?"

It was decided in the affirmative.

The question then being on the adoption of the section as amended,

The yeas and nays were demanded, and they were ordered, and, being taken, were—yeas 61, nays 67—as follows:

YEAS.—Messrs. Badger, Ballingall, Barbour, Blythe, Bowers, Brookbank, Butler, Carr, Clark of Hamilton, Clements, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foster, Frisbie, Gootee, Gregg, Hall, Hamilton, Hawkins, Helma, Helmer, Hitt, Huff, Kelso, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mathis, Milligan, Mooney, Morgan, Morrison of Washington, Mower, Murray, Nave, Pepper of Crawford, Prather, Rariden, Robinson, Schoonover, Sims, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornon, Watts, Yocum, Zenor, and Mr. President—61.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beach, Becson, Berry, Borden, Bourne, Bracken, Bright, Bryant, Carter, Chapman, Chenoweth, Clark of Tippecanoe, Coats, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foley, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hardin, Holman, Hovey, Howe, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of White, Kinley, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Niles, Nofsinger, Pepper of Ohio, Pettit, Read of Clark, Ritchey, Shannon Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Trimble, Walpole, Wiley, Wolfe, and Wunderlich—67.

So the section, as amended, was not adopted.

The PRESIDENT then called upon committees for

REPORTS.

Mr. HALL, from the select committee to whom had been referred the subject of uniformity of assessment and taxation, reported a section which was read a first time.

Mr. HALL. This subject has been before the Convention, and the section was read a first and second time, and it was then re-committed to the select committee.

The PRESIDENT. It does not so appear by the report that is made from that committee.

Mr. PETTIT. The gentleman from Gibson is a little mistaken. It originated from a motion made by me; this is the first reading of the section.

The section was passed to a second reading.

TIPPECANOE BATTLE GROUND.

The section in relation to the inclosure and

preservation of the Tippecanoe Battle Ground, was read a third time.

The question being, "Shall the section pass?"

Mr. MAGUIRE moved that it be re-committed to a select committee of three, with instructions to amend so as to provide that the State shall never sell the military ground at Indianapolis.

The question being upon the motion to re-commit.

Mr. PETTIT. It appears to me that the Convention might agree to the adoption of the amendment without the re-commitment of the section.

The PRESIDENT. It will require the withdrawal of the motion to re-commit.

The motion was not withdrawn.

The question was then taken upon the motion to re-commit with instructions, and it was on a division—ayes 51, noes 19—decided in the affirmative.

So the section was re-committed with instructions.

THE SCHOOL FUND.

The section offered by the gentleman from Laporte in relation to the consolidation of the common school fund was read a third time.

The question being, "Shall the section pass?"

On motion,

The section was laid upon the table.

SUBSTITUTION OF THE NEW CONSTITUTION.

The section which declares that the old Constitution shall be superseded by the one now being formed, was read a second time and ordered to be engrossed for a third reading.

LOCAL COURTS.

The following section was taken up on its second reading:

"Local courts, established in any city, town, or county, (including the Courts of Common Pleas for the counties of Marion and Tippecanoe,) shall continue with their present powers and jurisdiction until otherwise directed by law."

The question being on ordering the section to be engrossed,

Mr. EDMONSTON rose to inquire whether a provision had not already been adopted directing a law to be passed by the Legislature in reference to this matter?

Mr. WALPOLE. I would explain if the gentleman will allow me. Our new Constitution is intended to be a complete and full indication of what the laws of the State shall be. Well, sir, there are many things contained in the Constitution of 1816 that have not been inserted in this. Under these circumstances, the courts might hold that these portions of the old Constitution were still the supreme law of the land, if that instrument were not, by the

express declaration of this Constitution, declared to be superseded. The committee found examples for such a section in the constitutions of other States. In regard to the second section of this article, we found that it had been usual to insert such a provision as it contains, least it might be considered that certain local tribunals were abrogated by the new Constitution.

Mr. EDMONSTON. I am satisfied that the gentleman from Hancock does not understand the inquiry. It is, whether a section has not already been passed retaining all these courts in existence until the Legislature shall make provision in regard to them. We do not propose to repeal any law. I see no necessity for the second section, and I do not see any necessity, sir, for burthening the Constitution with a provision of this kind.

Mr. WALPOLE. If my recollection is correct, the gentleman from Dubois himself has expressed a doubt whether these courts might not be considered as abrogated. I know there is an apprehension very extensively entertained that such will be the case. I have no anxiety about the matter; but if those who are interested in these courts desire that there shall be an express provision in regard to them, I think it is right that there should be such a provision. The rights of individuals might be compromised by abolishing them. I hope that, for the sake of the interests of those counties, the section will be retained; it certainly can do no harm.

Mr. DUNN of Jefferson proposed to amend the section by striking out the words "including the Courts of Common Pleas for Marion and Tippecanoe."

He could see no necessity for making a special reference to those courts, because there were other local courts in many counties in the State. He would have no objection to see the section laid on the table. But if it were passed at all, it should be without any special reference to these courts.

Mr. PETTIT. There is certainly no design to continue these local courts permanently. But in Tippecanoe we have a court of general jurisdiction called a Court of Common Pleas, in which not only the interests of the people of Tippecanoe are involved, but also the interests of the people of other parts of the State, who, have occasion to transact business there. And, it is important that this court should continue in existence in consequence of a want of sufficient time and energy on the part of the circuit court to transact the business. I am of the opinion that unless there be a provision adopted, making this court permanent, the amendment moved by the gentleman from Jefferson might as well be adopted. Such courts will be found to be necessary in populous counties and large towns.

Mr. WALPOLE. In reply to the gentleman from Tippecanoe, I will say that this section

was copied from a similar provision in the New York Constitution. They are a description of courts having a purely local jurisdiction.

Mr. PETTIT. This court has just as much jurisdiction within the limits of the county as the circuit court.

Mr. WALPOLE. Then I maintain it is not a local court, but has jurisdiction co-extensive with the limits of the State. I think, for the security of all concerned—not only the citizens of that county, but of other counties, and who may have suits there—this section should be retained, and in its present form. This was the view taken by the committee.

Mr. EDMONSTON. I have no wish to disturb any of these local courts. But it does seem to me to be very clear that the general provisions we have already passed in relation to this subject will be quite sufficient. If no other gentleman desires to offer any remarks, I will move that the section and amendment be laid upon the table.

The question being upon the motion of the gentleman from Dubois,

It was decided in the affirmative.

So the section and amendment were laid upon the table.

Mr. HOWE offered an additional section providing that the salaries of Judges shall not be diminished during their continuance in office.

Mr. BORDEN. I think, sir, that I have seen it clearly indicated by the votes of this body for several days past, that they do not intend to fix the salaries of the Governor and other State officers. And those votes seem to indicate also that they intend to refuse to fix the salaries of the Judges of the Supreme and Circuit Courts. I am not disposed now to say anything in regard to this matter in addition to what I have already said, but I do trust that the section proposed by the gentleman from Lagrange (Mr. Howe) will prevail. Can it be possible, sir, that this Convention designs to adjourn and not re-instate this clause of the old Constitution? for I believe the amendment of the gentleman is in substance the same as the provision in the old Constitution.

I trust, sir, that this Convention is not prepared to make a retrograde movement in regard to the independence of the judiciary. According to the system which has now been agreed upon by the Convention the judiciary is dependent enough in all conscience upon the legislative department of the government. I suppose, sir, we will have the usual motion to lay the proposition on the table. But before it is laid upon the table, I trust the Convention will endeavor to reflect that it is a question of no ordinary importance. Let no member of this body suppose that he is not interested in this question. No one can tell what a day may bring forth. Every member has a reputation to protect; and it may be that his life may depend on an impartial

judiciary. And, sir, the least that we can do in this matter is to sustain this proposition; and by so doing, at least say that after a judge has been elected to office, his salary shall not be taken from him, and he be thus compelled to resign. I do hope, sir, that the proposition will be sustained.

Mr. BASCOM proposed to amend by inserting the word "increased," so that the section would read "neither increased nor diminished."

Mr. HOWE. The section is copied from the old Constitution. The object is to save the judges from the danger of having their salaries interfered with; and so, to render them independent, I move that the amendment be laid upon the table.

The question upon laying the amendment on the table was put, and, upon a division—ayes 66, noes not counted—it was decided in the affirmative.

So the amendment was laid on the table.

Mr. BASCOM moved that the section be laid upon the table.

The question upon laying the section on the table was decided in the negative.

So the section was not laid upon the table.

Mr. SMITH of Scott moved to amend by inserting the following:

"That the members of the Legislature at its first session under this Constitution shall receive three dollars a day for their services, and three dollars for every twenty miles traveled in going to and returning from the seat of government."

The question being on the adoption of the amendment.

Mr. STEVENSON moved that it be laid on the table.

The question being put, it was decided in the affirmative.

So the section was laid upon the table.

The question being on the adoption of the section,

It was decided in the affirmative.

The section was then ordered to be engrossed for a third reading.

Mr. MORRISON of Washington. I have a small favor to ask of the Convention, and I am emboldened to make it because I am assured by many gentlemen that it will afford them pleasure to grant it. It will be remembered that the other day when the section in relation to the school fund was under consideration, it was determined that the trust fund should not be diverted, and at the same time an article was on the table which I desire now to have taken up. I will say that if the Constitution should go out to the world as it is at present, it will go out without the word "university" in it; and for the purpose of having the section alluded to, inserted in the Constitution, I now move to take from the table the third section of article 45.

The question being put, it was, on a division—ayes 45, noes 47—decided in the negative.

So the section was not taken from the table.

The section which provides that "The capital stock of all railroad, plank road, turnpike, and moneyed companies, upon which a profit may be derived, shall be subject to the like State and county tax, as the property of individuals,—the county tax shall be equal to the State tax,—which tax shall be assessed and collected as may be prescribed by law, all of which shall be paid in the State Treasury.

The amount of all county tax upon such capital stock shall be appropriated to the several counties of this State for the benefit of common schools"—was taken up on its second reading.

Mr. KENT moved that the section be laid upon the table.

Mr. WALPOLE desired that the gentleman would withdraw his motion in order that he might explain the effect of the section.

Mr. KENT declined to withdraw his motion.

Mr. WALPOLE demanded the yeas and nays on the motion to lay upon the table.

The yeas and nays were ordered, and being taken there were yeas 57, nays 69, as follows:

YEAS.—Messrs. Barbour, Beach, Berry, Blythe, Bourne, Bracken, Bright, Butler, Carr, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Dick, Dunn of Jefferson, Dunn of Perry, Foster, Gibson, Graham of Miami, Gregg, Hall, Hamilton, Helm, Hitt, Hogin, Johnson of Orange, Kent, Kilgore, Lockhart, Logan, Mather, Mooney, Morgan, Morrison of Washington, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Schoonover, Shannon, Sherrod, Smiley, Snook, Spann, Stevenson, Tannehill, Thomas, Thornton, Trimby, Wiley, Zenor, and Mr. President—57.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Bascom, Beard, Beeson, Borden, Bowers, Bryant, Carter, Chapman, Chenoweth, Clements, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Garvin, Gootee, Gordon, Graham of Warrick, Haddon, Harbolt, Hawkins, Helmer, Hovey, Howe, Huff, Jones, Kelso, Kendall of Wabash, Kendall of White, Kinley, Maguire, March, Mathis, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Mower, Nave, Nofsinger, Rariden, Ritchey, Robinson, Shoup, Sims, Smith of Ripley, Smith of Scott, Steele, Tague, Walpole, Watts, Wolfe, Wunderlich, and Yocum—69.

So the section was not laid on the table.

Mr. WALPOLE. I am happy, sir, that a majority of the Convention have felt disposed to hear something in relation to this question before they make a final disposition of it. And I think the gentleman from Floyd had not the

interests of his constituents in view when he made the motion to lay the section on the table.

My attention has been called to this question some three or four years since, at a time when I was a member of the Senate. I found the Madison and Indianapolis Railroad stock ranging somewhere between two and three millions of dollars, furnishing all the revenue that was derived from it by taxation at all, to the county of Jefferson, and consequently the money my constituents of the county of Hancock was transferred to a distant and remote county, thus increasing the burthen of taxation on our county beyond that which was borne by our neighbors of the county of Jefferson. It is time that the benefits to be derived from the taxation of the property of the citizens of each county, in all the various branches of our system of taxation should be equally distributed. Heretofore the benefit has gone to the county in which the principal office of the company, (whatever it may be) is located. My constituents are at this day subscribers to the amount of sixty thousand dollars; and that amount of capital is taxed for the benefit of another county. When you consider the amount that has been subscribed at other points and that it is transferred to the principal station of the company, you must see that the present system operates unjustly. I hold that the tax imposed on this kind of stock should be equal to State taxation, and that it should be paid into the treasury of the county in which such stock is owned. There are now nineteen railroad companies in Indiana, and there are twenty-seven representatives, representing those counties in which the offices of these companies are situated. The aggregate of the stock is about fifteen millions of dollars; and this is transferred from the places where it is owned, to nine or ten counties. The law of 1843 says, these stocks shall be taxed only where they yield a profit. Well, sir, should they not be taxed just as individual property is taxed—is there any reason they should be exempted from the same burthen that the property of the humblest citizen is subjected?

The PRESIDENT. The gentleman's time is up.

Mr. COOKERLY moved to amend, by striking out the section and inserting a provision to the effect that the capital stock in plank road companies, railroad companies, turnpike and monied corporations, shall be taxed in the several counties in the same manner as other property, said roads to be taxed in the counties through which they pass.

Mr. WATTS. We have a right, I believe, to perfect the section. I desire to amend the original section in such a manner that the stocks of these companies shall be made subject to the like county and State tax as all other property, in proportion to the amount owned by each

stockholder. I move to amend the section, by striking from out of it the words "upon which a profit may be derived."

My object in moving this amendment, is to make the taxes fall equally upon the man whose property is in stocks, and the farmer whose property does not yield him a profit. I see no reason why these stocks, even if they do not yield a profit, should not be subject to taxation.

Mr. STEVENSON. I am willing that schools shall be supported by a tax, but it should be equally imposed upon all. And I am opposed to levying a tax in counties that have railroads, for the support of schools in counties that have no railroads. I own a little railroad stock; the gentleman from Hancock I suppose has none: yet he calls on me to tax my stock, for the benefit of schools!

The gentleman proposes to levy a tax in counties which have railroad stock, for the purpose of distributing it in counties in which there are no railroads. I do not think this is fair. The gentleman from Vigo I think is right in the view he takes of this matter.

Mr. KELSO. The amendment offered by the gentleman from Vigo would be correct if the stock owned in these railroads and plank roads were owned by citizens of the State; but, as is the case in the Madison and Indianapolis railroad, three-fourths of the stock is owned by persons living out of the State of Indiana. Now how is Johnson county to know when she receives her due share of the tax? But in the first place, how are you to value the road? For instance, at that place where it crosses the hill at Madison the cost must have been nearly as great as that of the rest of the road. Again, the construction of the road through the county of Jennings must have cost twice as much as through the county of Johnson. Such a tax, in my opinion, can never be levied; and that has been the argument used heretofore, for allowing Jefferson county to apply the whole tax to her benefit as a county tax. Now that certainly is unfair and unjust; and although it may seem hard, as the gentleman from Putnam says, to take the tax on his stock and put it into a general fund for education, I ask which is the more just: to take the county tax which he pays upon his railroad stock—and that should be made equal to the State tax, for the sake of having it equal everywhere and putting it into a general fund for education—or distributing it, in Vigo for instance, for county purposes? Which, I say, is the more just? Now I am free to admit that there is more in the section than there ought to be. I move that the article be referred to a select committee of three, with instructions to amend, in order to so appropriate the taxes.

Mr. DUNN of Jefferson. We have on our files here, a section which provides that all property shall be assessed and taxed at a uniform rate in its value. This will, of course,

embrace railroad property, and it appears to me that such a rule is all we need insert in our Constitution. If the tax on the property of the Madison and Indianapolis Railroad Company has not been properly distributed, that is a matter entirely within the control of the Legislature, and may be remedied by that body. As the whole subject under consideration, in my opinion, properly belongs to legislation, I move its indefinite postponement.

Mr. CLARK of Tippecanoe. I think the article ought to be indefinitely postponed. We have already passed a section providing that all the property in the State shall be taxed.

A VOICE. No, we have not passed it yet.

Mr. CLARK of Tippecanoe. It is ordered to be engrossed, however. If the gentleman from Hancock have perceived those evils which he has described, when he was in the Legislature, he might have remedied them. That was the proper place; this is not. He proposes to provide for this taxation by constitutional provision. If the law has been heretofore unjust, why may there not be equal injustice in our constitutional provision? We ought not to run the risk of making a provision which possibly may operate unjustly.

Mr. SHOUP. Mr. President, I have an amendment in my hand, which I intend to offer, to the original section.

The PRESIDENT. The gentleman's amendment is not in order. The motion is to indefinitely postpone.

Mr. SHOUP. Such I am aware is the fact, and I hope the motion to indefinitely postpone will not prevail. There are some good qualities in this section, and it should be adopted. Let us, for one moment, look at this matter. We are told that Jefferson county is collecting an annual tax upon the stock of the Madison and Indianapolis railroad of twenty-five hundred dollars, for county purposes. When we reflect that this stock is held principally by men in New York, and that the corporate powers of the company have been granted by the people, or the State, I would ask what justice is there, or what right has Jefferson county to this tax more than other counties of this State? None, sir. The mere location of the office at Madison should certainly not give it such extraordinary advantages.

Mr. President, as I remarked, the powers or privileges granted to the various rail, plank, and turnpike roads, and monied corporations of the State, have been taken from the masses or given to them, by the people; and, sir, it is but just that this small tax should go to the benefit of the people, either for common schools or the payment of the public debt.

Mr. PETTIT. I am not satisfied with this section as it stands, and even as proposed to be amended. I think I shall feel compelled to vote against it. I am in favor of the section down

to the word "individuals." It is as follows: "The capital stock of all railroad, plank and turnpike and monied companies, upon which a profit may be derived, shall be subject to the like State and county tax as the property of individuals," &c. I would like, however, once to be with my friend from Hancock and my friend from Dearborn, that whatever may be paid in the way of taxes, whether it be upon private property or not, shall be on a principle of equality.

Mr. WALPOLE. Agreed. Shake hands upon that.

Mr. PETTIT (offering his hand). Certainly; with great pleasure.

A VOICE. I am afraid it is an unholy union. [A laugh.]

Mr. PETTIT. The thing is, shall we equalize the State and county tax so far as regards the property of individuals? I hope that the more general provision of the article will pass, but the latter part I cannot go for. Now it strikes me that the Convention is laboring under a difficulty, and that the chairman on miscellaneous provisions has been laboring under a mistake as to the proper objects of taxation. It is not the stock, or shares owned in a joint stock company, railroad, or plank road, that ought to be taxed. When you talk of taxing stocks, whether they be United States stocks or State stocks or the stock of companies, they are no tangible thing that the sheriff can get hold of. This section ought to provide that the property of the road be taxed in the county in which it lies. You ought to tax the timber and the iron laid down on the road; it is so much property within the county, and should be taxed, whoever owns it, as well as a house or a barn.

A VOICE. That is correct.

Mr. PETTIT. Tax the miles of road, estimate its value within the county of Jefferson, the county of Jennings, Bartholomew, &c. That is the proper system. Then you will have the means by which your law officers may collect the revenue. You will have the means by which they will enforce the payment of the taxes, because in case of refusal to pay the tax they can take up the rails and sell them in the market. But if you undertake to tax stock, merely, you will never have any tangible means by which to compel the payment of the taxes. Sir, I hope the section will not be indefinitely postponed, but that it will be referred to a select committee and a section prepared in accordance with what I have suggested, levying a tax upon the value of the road—upon the tangible and not the intangible thing.

The question was taken on the motion to postpone indefinitely, and it was decided in the negative.

The question then recurring on the re-commitment of the section to a select committee of three,

It was decided in the affirmative.

So the section was re-committed.

The following section was read a second time:

"The provisions contained in this Constitution requiring uniform laws regulating township business, shall not affect the laws now in force regulating the mode of transacting business in the several townships in the counties of Dearborn, Switzerland, Ohio, Wells, and Adams. But the General Assembly may, when deemed expedient, amend or repeal said laws."

The question being, Shall the section be engrossed for a third reading?

Mr. MATHER moved to amend, by inserting "the counties of Elkhart and Lagrange."

The motion was agreed to.

Mr. HAMILTON moved to add the "county of Allen."

The county of Allen was added.

Mr. MAY moved to insert the "county of Steuben,"

Which was agreed to.

Mr. PRATHER moved to add the "county of Jennings."

The motion was agreed to.

Mr. CARR of Jackson moved to amend, by inserting the words "the county of Jackson."

The motion prevailed.

Mr. STEELE moved to introduce the words "the county of Wabash."

The motion was agreed to by consent.

Mr. STEVENSON. We have heard a great deal said about uniform laws. This looks so little like uniformity, that I move the whole article be laid upon the table.

The motion was, upon a division—ayes 62, noes 36—decided in the affirmative.

So the article was laid upon the table.

On motion by Mr. PETTIT,

The Convention adjourned.

TUESDAY, FEB. 4th, 1851.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. —.

The journal of yesterday was read and approved.

Mr. OWEN stated that a report from the committee on revision would be ready to be laid upon the tables of delegates to-day. The sub-committee, he added, would complete their labors to-day, and the whole Constitution would be ready to be submitted to the committee. And he stated this in order that all members of that committee might be apprised that there would be a meeting in the Supreme Court Room this evening, and it was desirable that every one should attend.

Mr. O. further said that he desired to move to take from the table the section in relation to

"the rights of married women," and he would preface his motion with few words.

We have been here together (continued Mr. O.) for nearly four months, and we ought by this time to know something of each other. And I appeal to my colleagues of the Convention whether I have ever shown myself to be a factious member? whether any gentleman has proposed a measure that I have not dealt fairly by? whether I have ever endeavored to load down a measure to which I have been opposed, with vexatious amendments? whether when any gentleman has asked a direct vote upon a measure, I have not aided him in obtaining it? Now, sir, I make a personal appeal to the Convention this morning, not as to how they shall vote upon the merits of the question, for every man ought to vote according to the dictates of his conscience, no consideration of personal favor ought to induce him to vote contrary to his judgment upon any question involving a principle, but in regard to a mere matter of courtesy, as, for instance, the granting to a member the privilege of having a direct vote upon a question in which he is interested; that is but an act of common courtesy from one man to another that every one can render, no matter whether he is in favor of, or opposed to the matter to be voted upon. Now I am about to move to take from the table article fifty-two; it is the article in regard to the property of married women.

[Cries of "no," "no," "no"].

Mr. OWEN. I am not going to ask a direct vote upon the article; there has been a vote already had upon it, and a majority voted against it, and to that vote I submit. I repeat that I am not going to ask another vote upon that article; but I am going to ask the Convention to suffer me to move a substitute for it, and upon that substitute I desire to have a direct vote by yeas and nays. If the Convention grant me this, I will be satisfied. If it be adopted, very well; if it be voted down, I shall not name the subject in the Convention again. I have shown the proposition to some of the warmest opponents of the original article, and they said they should go for it. I have found but one single individual of the Northern part of the State, who said he should go against it. The proposition that I intend to offer is in accordance with the motion that was made by the gentleman from Vanderburg, and is also in accordance with the one that was made by the gentleman from Elkhart. In fact it is not counter to any proposition that has been introduced from any quarter. It merely proposes to call the attention of the Legislature to the subject, leaving them to act on it as their good sense might dictate. It does not say how they shall act, but merely recommends action. I move, therefore, to take from the table the article to which I have referred, in order that I may offer this substitute, and obtain a direct vote upon it.

Upon the motion to take the article from the table,

Mr. WALPOLE demanded the yeas and nays.

They were ordered, and being taken were—yeas 83, nays 45—as follows:

YEAS.—Messrs. Alexander, Anthony, Ballingall, Bascom, Beach, Beeson, Berry, Blythe, Borden, Bourne, Bracken, Bright, Bryant, Chapman, Chenowith, Cole, Colfax, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Elliott, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hall, Hamilton, Hawkins, Hitt, Holman, Hovey, Johnson of D., Johnson of O., Jones, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Maguire, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Tannehill, Thornton, Wiley, Yocum, and Mr. President—83.

NAYS.—Messrs. Badger, Barbour, Beard, Bowers, Brookbank, Butler, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Crawford, Davis of Madison, Davis of Parke, Dobson, Farrow, Fisher, Foley, Gootee, Haddon, Helm, Helmer, Hogin, Huff, Logan, March, Mathis, May, Morgan, Morrison of Washington, Niles, Nofsinger, Pettit, Ritchey, Robinson, Schoonover, Smith of Ripley, Smith of Scott, Stevenson, Tague, Todd, Trimble, Walpole, Watts, Wolfe, and Wunderlich—45.

So the motion prevailed, and the section was accordingly taken up.

Mr. OWEN. I am aware that without the permission of the Convention, the restrictions which are pending in connection with this article cannot be withdrawn. I move, therefore, that the gentleman from Vanderburg and myself have leave to withdraw our instructions.

Leave was granted, and the instructions were accordingly withdrawn.

Mr. OWEN. I now move to recommit the article to a select committee of one, with instructions to strike out all and insert the following:

"Laws shall be passed for the security of the property of married women, of widows, and of orphans."

Mr. PETTIT. I want to have a hand in this matter: I ask for the yeas and nays.

The PRESIDENT. The previous question having been demanded, the question will be on seconding the demand.

Mr. WALPOLE. Did the gentleman from Posey call for the previous question?

The PRESIDENT. The previous question was demanded by the gentleman from Posey yesterday.

Mr. WALPOLE. I know he called it yesterday, and has made a speech to-day.

Mr. OWEN withdrew the demand for the previous question.

Mr. HAMILTON renewed the demand for the previous question.

The demand was seconded, and the main question was ordered to be now put.

The question being on the motion of the gentleman from Posey to re-commit to a select committee of one with instructions.

Mr. WALPOLE. Now we will have the yeas and nays.

The yeas and nays were ordered and being taken were—yeas 77, nays 53—as follows:

YEAS.—Messrs. Alexander, Anthony, Ballingall, Bascom, Beach, Beeson, Berry, Blythe, Borden, Bourne, Bracken, Brookbank, Bryant, Carr, Chapman, Chenowith, Cole, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foster, Frisbie, Garvin, Gibson, Graham of Miami, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hawkins, Hitt, Holman, Hovey, Huff, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Maguire, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Monroe, Sherrod, Shoup, Sims, Smiley, Steele, Tannehill, Thomas, Thornton, Wiley, and Mr. President—77.

NAYS.—Messrs. Badger, Barbour, Beard, Bowers, Bright, Butler, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Crawford, Davis of Madison, Davis of Parke, Dobson, Farrow, Fisher, Foley, Gootee, Gordon, Haddon, Hardin, Helm, Helmer, Hogin, Johnson of Dearborn, Jones, Logan, March, Mathis, May, Morgan, Morrison of Washington, Nave, Niles, Nofsinger, Pettit, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Todd, Trimble, Walpole, Watts, Wolfe, Wunderlich, and Yocum—53.

So the article was re-committed with instructions.

Mr. OWEN. Will the President name the select committee?

The PRESIDENT. The gentleman from Posey will be the select committee.

Reports from select committees being next in order.

Mr. OWEN. Mr. PRESIDENT: The select committee, to which was referred the article in relation to the rights of married women, is prepared to report, in accordance with the instructions, the following section:

"Laws shall be passed for the security of the property of married women, of widows, and of orphans."

The question being "Shall the section pass?"

Mr. RARIDEN. I simply wish to define the position I occupy in regard to this matter. I am not apprehensive that such a provision as this will do a great deal of harm to the community; yet I cannot but say, that I look upon it as simply a question of debtor and creditor, and not as affecting the relation in regard to property as between husband and wife. If it have any effect in regard to property, as between husband and wife, it will be a deleterious effect.

Mr. PETTIT. Well, sir, this thing has been before us interminably: it has been before the Convention from the commencement of its session and is likely to be so until its close. There is such a thing as laudable perseverance, and there is such a thing as a troublesome pertinacity. It strikes me that this is likely to be of the latter class. This smacks a great deal of certain writings I have often seen, very species in their outline, but absolutely a nonentity so far as their substance is concerned, without a beginning, and without an ending. Now, what does the gentleman from Posey propose? Why, sir, after this matter had been disposed of, and when all others had been cut off from speaking by the previous question, the gentleman having first made a speech on a question that was not debatable, comes in with a new proposition; and what is it? That better provision shall be made by law, for married women, widows, and orphans. Now, sir, if you can take a man's estate and make better provision for married women, and better provision for widows, and better provision for orphans out of the whole of it, I give you leave to kick my (loud laughter) head for a foot ball.

Sir, it is an absurdity. Suppose, sir, you take the estate of my friend Watts here, and, in the first place, make a better provision for his wife; in the next place, after he dies, you make better provision for his widow; and strangest of all, when the widow is better provided for, the children shall be better provided for. (Much laughter.) Sir, the idea is irrational. It only shows to what extent a man will go who has an overweening desire to accomplish some innovation.

Sir, I feel sorry to make these remarks, but I am constrained to make them from the unremitting perseverance with which this matter is pressed upon the Convention. When the last vote was given I staid away: I was willing that the matter should be settled. But there is such a thing as a decent respect for the judgment and action of our fellow-men, which should prevent the constant repetition of propositions that have been acted upon adversely; and then to bring in a proposition which means nothing, which bears a contradiction on its very face! You cannot make half a dozen parties better off by making as many distributions as you please. It is very much like two boys swapping jack-knives: in the first place the wife has it all; and, when the husband dies, the widow cannot have more

than all, especially if the children are to have it all too. (Much laughter.) Now, that is exactly the kind of proposition we have here introduced; that a better provision shall be made for married women, widows, and children.

A VOICE. That's not it at all.

Mr. PETTIT. Will the secretary read it again.

The secretary read the section.

Mr. PETTIT. Why, sir, that is an entirely new thing.

A MEMBER. You will have to make your speech over again.

Mr. PETTIT. It appears to me that that is not the same proposition as it was when in the form of instructions.

SEVERAL MEMBERS. It is precisely the same.

Mr. PETTIT. Well, then I was laboring under a misapprehension.

Cries of "You may as well take it all back."

Mr. PETTIT (after a pause) resumed his seat, much laughter and confusion prevailing.

Mr. MATHER. I believe it is in order to move to recommit the section?

A DELEGATE. Do you want to get a lick at it?

Mr. MARCH. I move that the article be re-committed to a select committee, with instructions to add the following:

"But no law shall be passed, in any manner impairing the unity and sacredness of the marriage relation."

Mr. WALPOLE. I rise to a question of order. It was certainly not in order to make the report to-day.

The **PRESIDENT.** The Chair would remark that the Convention, by its own action, granted leave.

Mr. PETTIT. Leave was not granted by a two-thirds vote.

Mr. WALPOLE. Was the question put at all?

The **PRESIDENT.** When the report was made, the Chair was calling upon select committees for reports.

Mr. MARCH renewed his motion to re-commit with the instruction above recited.

Mr. OWEN. Now, I have one thing to say to this Convention. I heard yesterday, that the gentleman from Tippecanoe, to whom I am under great obligations—I will say that in advance—for the honorable and high minded manner in which he once bore testimony to my character, when assailed—but I did hear yesterday, that the gentleman declared that if this sub-committee on revision went out of the House to attend to its duty, and failed to vote finally upon this matter of taxing the stock of corporations, he would oppose this section this morning.

Mr. PETTIT. The gentleman has been misinformed—that is all I have to say.

Mr. OWEN. I heard it from more than one

individual. It is enough for me, however, that the gentleman says it is not the case.

Now, sir, what was the course taken by that gentleman in regard to the grand jury system? When he found that his favorite proposition for the abolition of the grand jury system could not prevail in the Convention, he then took another course, and referred the matter to the Legislature. Was not the gentleman's last proposition a compromise?

Mr. PETTIT. I will say to the gentleman, it was not.

Mr. OWEN. Then I take issue with the gentleman. His proposition is as much a compromise as is mine, and I say further, that it is in accordance with the proposition of the gentleman himself, when he declares that the property of married women should be secured against the debts of their husbands.

Now, all I have to say in regard to the amendment is, that I hope it will be voted down, so that a direct vote may be taken upon the adoption of the section. Let it be voted upon and then pass to other business.

Mr. BORDEN. I would inquire whether it would be in order to re-consider the vote on the grand jury question?

Mr. SHOUP demanded the previous question.

The demand for the previous question was, on a division—yeas 63, nays 43—seconded.

The main question was ordered to be now put.

The question being on the motion to re-commit the section with the instructions proposed by the gentleman from Delaware,

The yeas and nays were demanded and they were ordered.

After a pause, on account of the confusion which prevailed in different parts of the Hall,

Mr. EDMONSTON said: I move that the order of business be suspended, in order to give gentlemen a chance to talk.

The PRESIDENT. The Chair would remark that it is not necessary to make a motion for that purpose; business is suspended [Laughter].

The yeas and nays were then taken, with the following result—yeas 53, nays 73:

YEAS.—Messrs. Badger, Ballingall, Barbour, Beach, Bowers, Brookbank, Butler, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Crawford, Davis of Madison, Davis of Parke, Farrow, Fisher, Foley, Garvin, Gootee, Haddon, Hardin, Helmer, Hogen, Howe, Jones, Logan, Maguire, March, Mathis, May, McClelland, Moore, Morgan, Morrison of Washington, Nave, Newman, Niles, Nofsinger, Pettit, Rariden, Ritchey, Robinson, Schoonover, Smith of Ripley, Smith of Scott, Stevenson, Todd, Trimble, Walpole, Watts, and Wolfe—53.

NAYS.—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Blythe, Borden, Bourne, Bracken, Bryant, Carr, Carter, Chapman, Chen-

owith, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dobson, Duzan, Edmonston, Elliott, Foster, Frisbie, Gibson, Graham of Miami, Graham of Warrick, Hall, Hamilton, Harbolt, Hawkins, Hitt, Holman, Hovey, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, McFarland, McLean, Miller of Gibson, Milligan, Milroy, Mooney, Morrison of Marion, Mowrer, Murray, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Tague, Tannehill, Thomas, Thornton, Wiley, Wunderlich, Yocum, and Mr. President—73.

So the motion to re-commit did not prevail.

The question being, "shall the section pass?"

The yeas and nays were taken, under the rule, and resulted thus—yeas 71, nays 61:

YEAS.—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Blythe, Borden, Bourne, Bracken, Bryant, Carr, Chapman, Chenowith, Cole, Cookerly, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foster, Frisbie, Gibson, Graham of Miami, Graham of Warrick, Gregg, Hall, Hamilton, Harbolt, Hawkins, Hitt, Holman, Hovey, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Sherrod, Shoup, Sims, Smiley, Steele, Tannehill, Thomas, Thornton, Wiley, and Mr. President—71.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bowers, Bright, Brookbank, Butler, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Crawford, Davis of Madison, Davis of Parke, Dobson, Farrow, Fisher, Foley, Garvin, Gootee, Gordon, Haddon, Hardin, Helmer, Hogen, Howe, Huff, Johnson of Dearborn, Jones, Logan, March, Mathis, May, Morgan, Morrison of Washington, Nave, Niles, Nofsinger, Pettit, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Todd, Trimble, Walpole, Watts, Wolfe, Wunderlich, and Yocum—61.

So the section passed and was referred to the committee on revision.

Mr. GREGG. When the section submitted by the gentleman from Owen, was under consideration yesterday, I had a desire to make some remarks, but was cut off by the previous question, though I made a personal appeal to the gentleman from Allen, to withdraw it. And when the vote was taken on the final passage of the section, I voted in the negative, though that was not my true position in regard to the question. I, therefore, move a re-consideration of that vote.

Mr. STEVENSON inquired if the privilege of changing his vote would not answer the gentleman's purpose?

Mr. GREGG. If it be in order to make some remarks, it is all I desire.

The PRESIDENT. It will not be in order; the vote was taken under the operation of the previous question.

Mr. GREGG. Well, then, I ask the unanimous consent of the Convention to change my vote.

The PRESIDENT. A majority can give the gentleman leave to change his vote.

The question being put, leave was granted.

Mr. MAGUIRE from the select committee, to whom was referred the section in relation to the Tippecanoe Battle Ground, reported the same back, amended so as to provide, also, that the Governor's Circle and the Military Ground at Indianapolis, shall never be sold.

Mr. BADGER. Mr. President, I move to re-commit this article to a select committee of three or five gentleman, with instructions so to amend as that the Legislature shall be authorized to sell the Governor's Circle, and the lot known as the Parade Ground, No. 147, for the best price they can obtain, and appropriate the proceeds of such sale to the use of common schools, in the several counties in this State.

I make this motion from two considerations: first, they are yielding the State no profits, but, on the contrary, are an expense; and secondly, it should be our duty, in bringing about a system of free schools, which, in my opinion, will very soon become universal over the State, to bring all possible resources to bear, so that the masses who are already taxed heavily, shall have the smallest possible additional embarrassment.

I am aware of strong objections to this move, but, sir, we should not forget that it is a virtue to cultivate that very necessary ingredient, in a public servant—ECONOMY.

And, if by this means, we can add a few thousand dollars to our common school fund, the undertaking will be a laudable one.

If this amendment should be the means of educating and developing the otherwise hidden intellectual powers of but one man, the end will abundantly justify the means; for remember, sir, that knowledge is power—that a virtuous and an enlightened people can never be enslaved, nor is there any earthly power that can bind down the mighty energies of the human soul, nor rivet the chains of slavery on an intelligent people, who feel that they are free, and know that they are immortal.

I do hope, sir, that the article may be re-committed with the instructions which I now offer.

Mr. NILES. I hope, sir, that the amendment offered by the gentleman from Putnam, will not be adopted. That gentleman has been consistent in his desire to increase and protect the school funds. But it would be a strange movement on the part of this Convention, after refus-

ing to do anything with a view to save the school funds from utter loss, to order the sale of the public grounds in this city, for the sake of the little pittance which they would bring. We lose twice as much every year, on account of the bad system of managing the school funds, as all the public grounds in this city would sell for; but if they would bring an hundred thousand dollars, I should be only the more anxious to have them protected from sale by the Constitution. Public squares and parks in cities are hardly second in their humanizing influences to public schools. Who would be willing to fill up the public grounds of large cities with brick and mortar? Such a policy would be a greater injury to the present and succeeding generations than could be repaired by adding an hundred times their value to school funds.

Mr. WOLFE demanded the previous question.

The demand for the previous question was seconded.

The question being taken on the re-commitment of the section, with the instructions as proposed by the gentleman from Putnam,

It was not agreed to.

The question then being, "shall the section pass?"

On motion by Mr. COOKERLY,

The rule requiring the yeas and nays to be taken on the passage of a section, was suspended, and the section passed, and was referred to the committee on revision.

Mr. HOLMAN asked leave to introduce a section.

The PRESIDENT remarked that it would require a suspension of the rules.

Mr. HOLMAN. Then I move a suspension of the rules, and hope that gentlemen will not object to suspend the rules in order that I may introduce the section. If it be wrong in itself, it can be voted down; but I think it will recommend itself to their favor.

The question on suspending the rule was, on a division—yeas 43, nays 17—decided in the affirmative.

So the rules were suspended.

The section was then read as follows:

"All acts of incorporation, created for municipal purposes, shall remain unaffected by the provisions of this Constitution, until such time as the General Assembly shall in its discretion, repeal the same."

Mr. HOLMAN. I would like to say to the Convention, in regard to this subject, without detaining them unnecessarily, that the people of Indiana ask no injustice of this Convention—they ask no injustice at the hands of this body. The sense of justice on the part of this Convention, is alone appealed to in support of this section. It does not propose to allow the Legislature even to amend those acts of municipal incorporation, but only gives the power to repeal them. If the words "amend or repeal," were inserted in the section, the legislature

might perpetuate them. This section will not allow the Legislature to amend them; but allows time to do one of two things; either to repeal the acts of municipal incorporation of towns or cities, or else to let them remain in force until such time as the public interest will not suffer by their repeal. I hope that gentlemen, from a sense of justice—a sense of propriety—will allow this section to be adopted.

The section was passed to a second reading.

STATE BOUNDARIES.

The PRESIDENT. The next thing in order is the following section, on its third reading:

SEC. 1. In order that the boundaries of the State of Indiana may be known and established, it is hereby ordained and declared that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio river from the mouth of the Great Miami river to the mouth of the river Wabash; on the west by a line drawn along the middle of the Wabash from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the north-west shore of said Wabash river, and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north by said east and west line until the same shall intersect the first mentioned meridian line which forms the western boundary of the State of Ohio.

The question being, Shall the section pass?

On motion by Mr. KENT,

The rule requiring the yeas and nays was suspended and the section passed, and was referred to the committee on revision.

The following section was taken up on its third reading:

"The Constitution adopted in the year eighteen hundred and sixteen, is hereby declared to be superseded by this Constitution."

The question being, Shall the section pass?

On motion of Mr. READ of Clark,

The rule was suspended and the section passed, and was referred to the committee on revision.

The section which provides that the compensation of judges shall not be diminished during the term for which they were elected, was read a third time.

The question being, Shall the section pass?

On motion by Mr. MORRISON of Marion,

The rule requiring the yeas and nays was suspended and the section passed, and was referred to the committee on revision.

Mr. PRATHER moved a re-consideration of the vote on the adoption of the resolution introduced by the gentleman from Dearborn (Mr. Watts) on Saturday, requiring the names of delegates to be affixed to the Constitution.

The motion was agreed to.

The question then recurring on the adoption of the resolution,

Mr. PRATHER moved to amend, by striking out all after the word "Resolved" and inserting to the effect that each of the enrolled copies of the amended Constitution heretofore ordered, be signed by the President and Secretary of the Convention.

Mr. WALPOLE moved to amend the amendment of the gentleman from Jennings, by substituting therefor "that the enrolled copies be signed by the members of this Convention, by way of attestation."

Many members (said Mr. W.) might not desire to sign the Constitution as approving of it.

The PRESIDENT remarked that the resolution did not require that members should sign it; they were under no obligation to do so unless they pleased.

Mr. WALPOLE. But I want it left entirely free, so that every man may sign it or not, as he pleases.

Mr. DOBSON. The proposition of the gentleman from Jennings I think should be modified in this way: "That the Constitution shall be attested by the Secretaries."

The question being upon the adoption of the amendment of the gentleman from Jennings, it was decided in the affirmative.

The question recurring on the adoption of the resolution as amended,

It was decided in the affirmative.

So the resolution as amended was adopted.

Mr. KELSO. I believe it has not been my misfortune to be under the necessity of moving to re-consider any vote since the commencement of the session of the Convention. But there is one vote that I gave, under an entire misapprehension, in the early part of the session, and I would take it as a great favor if the Convention would consent that the vote upon that question be re-considered.

A VOICE. Ask leave to change your vote.

Mr. KELSO (without noticing the interruption). This is the last day upon which a motion of that kind can be made. My friend from Carroll moved an amendment to an article abolishing capital punishment, and a motion was made to lay it on the table, which I did not observe. I thought I was voting for the adoption of the amendment, and accordingly voted in the affirmative. I now ask that that vote may be re-considered, and the yeas and nays taken either upon laying the amendment on the table or on its adoption; that is all I ask.

A VOICE. Oh! Colonel, change your vote.

Mr. MORRISON of Washington. I move that the gentleman have leave to change his vote.

Mr. KELSO. If gentlemen do not feel disposed to have the vote taken over again they can vote against the motion to re-consider, but it is my privilege to make that motion as it is theirs to refuse to re-consider.

Mr. MORRISON of Washington renewed his motion to allow the gentleman to change his vote.

Mr. KELSO. I will not accept it.

The PRESIDENT. That part of the journal which contains the vote referred to by the gentleman, the Secretary informs the Chair, has been sent to the printer.

Mr. KELSO. I suppose it is not necessary for the Secretary to refer to it expressly; I believe I can almost state the proposition *verbatim*. When the ninth section of article twenty was under consideration, Captain Milroy of Carroll offered an amendment in relation to the abolition of capital punishment; that amendment was laid upon the table. My motion is to re-consider that vote.

The question being put upon the motion to re-consider,

It was not agreed to.

Mr. DOBSON. I believe this is the last day for motions of this description, and as I am not a pugnacious or stubborn man, I rise to ask to have my name taken from a protest that I signed heretofore, in relation to certain action on the part of the Convention. It is the protest that was drawn up by the gentleman from Hancock to which I refer. I ask leave to have my name taken off.

Leave was granted.

Mr. BORDEN (addressing the Chair). Is there any business before the Convention?

The PRESIDENT. There is none.

Mr. BORDEN. Then, sir, as this is probably the last day on which an opportunity will be offered for the purpose, I desire to ask of the Convention to suspend the rules, in order to enable me to introduce a resolution which I hold in my hand. The resolution is as follows:

"Resolved, That the committee on revision, phraseology, and arrangement, be instructed to insert in the fifth line of number thirty-four, after the word "provide," these words: "as far as the same may be found practicable and expedient."

Sir, (continued Mr. B.,) it will be recollected that at the time the section was passed which provides for the appointment of commissioners to reform the practice of our courts and to revise the Statutes of the State, much opposition was made on the part of some gentlemen of the bar to that portion of the section which makes it imperative on the commissioners to abolish all distinction between actions, and also all distinction between proceedings at law, and in equity. Some of those gentlemen are men for whose opinions I have always entertained the highest respect; and although, sir, I do not agree in opinion with them, yet I was then willing to leave the question, whether the distinction between actions, and also the distinction between proceedings at law and in chancery should be abolished, either for the com-

missioners or the Legislature to determine. I wish it, however, to be distinctly understood, that I am not willing to leave the question of abolishing the law fictions and reforming the practice and proceedings of our courts open to the Legislature; on the contrary, so far as these are concerned, I still insist that it should be made imperative. It should be recollected, however, sir, that we are forming a Constitution that has yet to be submitted to the people for adoption, and I am convinced that if the Convention will suspend the rules and adopt the resolution I propose, it will obtain for the new Constitution some supporters who would otherwise feel constrained to vote against it.

Since the passage of this section I have reflected on the subject much, and I am convinced on mature reflection, that the best plan will be to leave this question, at least so far as abolishing the distinction between law and chancery proceedings is concerned, with the Legislature. And then, sir, if it should turn out, on trial, that the system will not work well, the Legislature will have it in their power very easily to alter it and to restore the old system of chancery practice. On the other hand, if it be made imperative, by a provision in the Constitution, it must stand whether it be found to work well or not. I trust, therefore, the rules will be suspended and the resolution adopted.

The question being on suspending the order of business,

The yeas and nays were demanded, and they were ordered; and, being taken, there were—yeas 40, nays 76—as follows:

YEAS.—Messrs. Anthony, Badger, Ballingall, Barbour, Beach, Blythe, Borden, Brookbank, Bryant, Carter, Clark of Tippecanoe, Clements, Colfax, Davis of Madison, Dobson, Dunn of Jefferson, Duzan, Foster, Frisbie, Garvin, Gregg, Harbolt, Hitt, Holman, Hovey, Howe, Kelso, Kilgore, Maguire, May, Miller of Fulton, Nave, Niles, Rariden, Read of Clark, Robinson, Smith of Ripley, Stevenson, Walpole, Wunderlich, and Mr. President—40.

NAYS.—Messrs. Alexander, Bascom, Beard, Beeson, Berry, Bourne, Bowers, Butler, Chapman, Chenowith, Clark of Hamilton, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Hardin, Hawkins, Helmer, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kinley, Logan, March, Mathis, McClelland, McLean, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Pepper of Ohio, Pettit, Prather, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Scott, Steele, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Watts, Wiley, Wolfe, Yocum, and Zenor—76.

So the order of business was not suspended.

Mr. GORDON. I rise to ask leave to change a vote I gave this morning. I voted "aye" on the motion of the gentleman from Posey to take from the table the section in relation to the rights of married women. I wish to vote "no."

Leave was granted.

Mr. Pepper of Ohio moved that the order of business be suspended, in order to enable him to introduce a resolution declaring that after this day it shall not be in order to move to take from the table any section that has, by a vote of the Convention, been laid upon the table.

The motion was not agreed to.

Mr. THORNTON moved to take from the table the section in relation the Attorney General, &c. He stated that the section had been laid upon the table on his motion, in order that time might be afforded to obtain certain information which had been called for by a resolution of the Convention; that information had been obtained, and he now moved to take up the section from the table.

The motion was not agreed to.

On motion by Mr. CLARK of Tippecanoe, The Convention adjourned.

AFTERNOON SESSION.

Mr. BASCOM. On looking over the printed articles that have been laid upon our tables, I find that there is one section missing, which is very important. I have not the section here, but the purport of it is, that bills shall contain but one subject, which shall be expressed in the title.

Mr. GORDON moved to re-consider the vote referring the section to the committee on the legislative department.

Mr. GIBSON demanded the yeas and nays.

The yeas and nays were not ordered.

Mr. GIBSON moved to lay the section on the table.

The yeas and nays were demanded, and ordered, and, being taken, resulted as follows :

YEAS.—Messrs. Blythe, Bourne, Bright, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Davis of Madison, Dick, Dunn of Jefferson, Gibson, Gootee, Hitt, Holman, Howe, Logan, Morrison of Marion, Pepper of Crawford, Pettit, Spann, Tannehill, and Wiley—22.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Bascom, Beard, Beeson, Berry, Borden, Bowers, Bracken, Bryant, Butler, Carter, Chenowith, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Harbott, Hardin, Hawkins, Helm, Helmer, Hogin, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Maguire, March,

Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morgan, Morrison of Washington, Mowrer, Murray, Nave, Pepper of Ohio, Prather, Read of Clark, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Thornton, Trimble, Todd, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—99.

So the section was not laid upon the table.

Mr. BRIGHT. An amendment was offered to this section by the gentleman from Jefferson, (Mr. Dunn,) which I think would not be productive of any benefit. The section itself is one which I think ought to be adopted. I move, therefore, to lay the amendment upon the table. The section was read, as follows:

"SEC. 16. Bills may originate in either House, but may be altered, amended, or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives."

The pending amendment to the section was to the effect that every bill should embrace but one subject only, which should be expressed in the title: *Provided*, that if any subject should be embraced in the bill which was not expressed in the title, such law should only be void in regard to so much of it as was not thus expressed.

Mr. DOBSON moved to amend the amendment by striking out the word "expressed" and substituting the word "indicated."

Mr. WALPOLE was of opinion that the language of the section was right as it stood, and that this was a matter which should be left entirely to the Legislature; that the Legislature should decide what the law was, and not leave it to be "indicated" by judges on the bench. If it were thus left, one man would "indicate" it one way and another another; and they might have as many "indications" of the law as there were judicial tribunals where the law was to be enforced.

Mr. SPANN thought there was but little difference between the two expressions; they were both of them indefinite and equivocal, and such as, in his opinion, could never be effectually carried out. And, indeed, such was the character of the whole article. People would differ about the title, differ about every little thing contained in a bill or law; and if this provision were adopted the result of it would be endless and vexatious litigation. The whole matter appeared to him to be entirely demagogical, and he trusted that neither the section nor the amendment would be incorporated in the Constitution. Gentlemen might just as well say that every man should agree upon a given form of words, or that every man should agree as to what was the state of public sentiment, or what the proper notions to entertain

upon subjects of religion, as to say that every bill should be clearly expressed or indicated by its title. The one notion was, to his mind, as absurd as the other. He hoped the whole matter would be summarily disposed of.

Mr. KELSO. It seems to me that if we are going to pass this section, it would be better without the amendment of the gentleman from Owen (Mr. Dobson). I have my serious doubts whether it is not crippling the Legislature to pass it at all; but if gentlemen want the thing more definite than it is now, it appears to me that the only way to effect it is to re-write the whole bill in the title. That is the strongest language you can use, and there is some question whether the Legislature might not put that construction upon the language of the section as it now stands, and thus make the title of every bill a duplicate of the bill itself. At any rate I think the section is better without the amendment of the gentleman from Owen.

Mr. DOBSON. I offered the amendment with the view of obviating the very difficulties suggested by the gentleman from Switzerland, and others before him. The whole object of the provision is to inform the members of the General Assembly what a bill contains, so that its purpose may be plainly indicated by its title. All that we want with the title of a bill is, that the Legislature may understand what its object is, and that it may be readily hunted up by the people at home. I think the word I have suggested is the better word, and would obviate all difficulties.

Mr. KELSO. Now, sir, that is the very objection which I take to the section. We have been legislating for the State, in years gone by, by merely reading bills by their title, and many frauds have thus been committed upon the people. And as we have now provided that every bill shall be read entirely through on three separate days, and that on the third reading, under no circumstances, shall the reading be dispensed with, we cannot want any further provision of the kind or any further security against bills being improperly mixed up. I am satisfied that there is already sufficient in the Constitution to protect the people from unjust legislation, and if those provisions are not amply sufficient to protect the people against legislative imposition, then to pass the section would only make the matter worse. There is no necessity that I can see for writing a whole bill twice over, which, beyond all question, might be the effect of the adoption of this section. I move to strike out so much of the section as requires the contents of a bill to be expressed in its title.

The PRESIDENT. The Chair would inform the gentleman from Switzerland that there is an amendment to an amendment already pending.

Mr. PETTIT. I am satisfied, Mr. President, that it is not necessary to incorporate any por-

tion of this section in our Constitution. I shall not undertake the labor again of showing the impropriety of any provision requiring that the substance of a bill should be expressed in its title. When this subject was under consideration on a former occasion, I said that it would be productive of more litigation, if adopted, than all the other provisions of the Constitution put together. You say that a law shall only contain one subject, and that that subject shall be expressed in its title. Now what will be the result? The Legislature will go on and pass laws over and over which contain more than one subject, and which subjects are not expressed in the title; and if an injury is done, and a man goes into one of your courts asking for redress, he is met by his opponent with the taunt, "Oh, you have no remedy; the law is unconstitutional, because it embraces more than one subject, and the subjects are not expressed in the title!" Who does not see the injustice and absurdity of such a plea? Besides, sir, you will constantly have your courts construing two questions; first, as to whether a bill contains two subjects, and secondly, whether these subjects are expressed in the title of the bill. And in either case they will declare the whole law to be unconstitutional; and thus all rights afforded by such a law, no matter how great they may be, must fall to the ground, because the Legislature, either by accident or from inability to do so, have not complied with this absurd provision of your Constitution.

Now, as to the origin of bills, I ask gentlemen what is the difference between bills originating in the Senate and in the House of Representatives? Not one single bit. The Senator is as directly the representative of the people as the Representative himself. They may be brothers; they may come from the same county, from the same house, from the same log cabin. Sir, this is a principle which we have derived from the British Constitution. In that country it was well enough, but there is no necessity for it here. Who will say that our Senate is to be compared to the British House of Lords, temporal and spiritual? And unless there be some similarity there is no need for such a provision. In England it was well enough, because the Lords were an estate of themselves, and had no sympathies in common with the people; and as the revenues were to come from the masses, they decided that those who represented their condition in life should hold the purse strings. But that is not the case here. Our Senators and Representatives are all of the same kind of people. In England the Lord has no constituency at all. He is born a ruler. Not so with the House of Commons; they have to look to the people from whom the money has to be raised.

Now let us not travel right along, step by step, without meaning, following in the wake

of Great Britain. What they have that is good I am willing we should copy; but for what reason should we adopt their provisions and institutions which are not at all adapted to the nature of our government? Do you suppose that if England were revolutionized, and they should establish a government like ours, they would elect Senators from the masses of the people? Would they put into their Constitution any such absurdity as this? No, sir; they would say, the Senator is as responsible to us as the Representative, and will not be any more likely to oppress us with taxation than he would be. Sir, they never would disgrace themselves by adhering to this principle where the reason for it did not exist.

Sir, I hope the section will be indefinitely postponed. There is no reason for its passage, and I will move its indefinite postponement.

Mr. WALPOLE. I will not consent to the indefinite postponement of the section. A portion of it, I will readily admit, should be laid upon the table; but to part with that principle of government which makes us immediately responsible to our constituents, I will never consent to. Your Senators are elected for four years and your Representatives for only two; and when you give to the Senator power to present a tax bill, who is four years remote from the people, and to press before the House of Representatives his notions about taxation, it would be arbitrary, as every form of government has always conferred upon the immediate representatives of the people the power to originate revenue measures. There is not a government in the United States that has adopted a contrary principle. It is right and proper that all revenue measures should originate with the representatives of the people, and that the influence of the Senate should not be brought to bear upon the Representatives in this respect. I hope that the section will not be indefinitely postponed, but that it may be amended by striking out what is objectionable.

Mr. SPANN. Will it be in order to move to amend the section before the question is taken on the indefinite postponement?

The PRESIDENT. No, sir.

Mr. PETTIT. I will withdraw the motion to indefinitely postpone if the gentleman wishes to amend the section.

The motion to postpone the section indefinitely was withdrawn.

Mr. SPANN. There is one principle in the section which I think should be preserved. I do not believe that the Senate is a body in which revenue bills ought to originate, but that all bills imposing taxes should originate with the immediate representatives of the people. If it will be in order I will move to amend by striking out all after the word "representatives."

The PRESIDENT. There is an amendment to an amendment already pending.

Mr. DOBSON. I will withdraw my amendment. I have no disposition to prolong debate on the matter.

The amendment was withdrawn.

Mr. SPANN. I now move to amend by striking out all after the word "representatives."

Mr. STEVENSON. If that motion prevails it will strike out a principle which I look upon as being of the greatest importance—one which has been regarded of so much importance as to be incorporated in the new Constitutions of several of the States. Now, I have seen the power that a few individuals have in passing bills that are worthless and injurious, by tacking them upon other bills, even upon revenue bills. This is an evil which should be remedied. We are here to reform it—and ought to reform it. Gentlemen say that this provision will result in injury. For my part, I cannot see what injury is likely to result from it. In my mind they are all imaginary.

Mr. BRACKEN. It appears to me that this matter has been debated long enough and I will therefore, call the previous question.

The call for the previous question was sustained, and the main question was ordered to be now put.

The question was first taken on the amendment of Mr. Spann, to strike out all after the word "representatives."

The yeas and nays were demanded and ordered, and being taken, they resulted as follows.

YEAS.—Messrs. Beach, Berry, Blythe, Bourne, Bowers, Bright, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Cookerly, Davis of M., Davis of V., Dunn of Jeff., Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Helmer, Hovey, Howe, Jones, Kelso, Maguire, McLean, Morgan, Morrison of Marion, Morrison of Washington, Nave, Pepper of Crawford, Pettit, Rariden, Spann, Tannehill, Thornton, Walpole, Watts, Wiley, and Zenor—42.

NAYS.—Messrs. Alexander, Anthony, Badger, Ballingall, Barbour, Bascom, Beard, Beeson, Bracken, Bryant, Butler, Carter, Chenoweth, Coats, Cole, Colfax, Crawford, Davis of Parke, Dick, Dobson, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Garvin, Hall, Hamilton, Harbott, Hawkins, Helm, Hitt, Hogin, Huff, Johnson of Dearborn, Johnson of Orange, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Murray, Niles, Pepper of Ohio, Prather, Read of Clark, Robinson, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Thomas, Todd, Trimby, Wolfe, Wunderlich, Yocum, and Mr. President—78.

So the motion to strike out did not prevail.

The question then recurred on ordering the

section to be engrossed for a third reading, and the yeas and nays being demanded and ordered, they were taken, with the following result:

YEAS.—Messrs. Alexander, Badger, Bascom, Beeson, Bowers, Bracken, Bryant, Butler, Carter, Chenowith, Coats, Cole, Colfax, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Hawkins, Helm, Hitt, Hogin, Huff, Johnson of Dearborn, Johnson of Orange, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, March Mathis, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Mowrer, Prather, Read of Clark, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—78.

NAYS.—Messrs. Beach, Berry, Blythe, Bourne, Bright, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Davis of Madison, Dunn of Jefferson, Elliott, Fisher, Gregg, Helmer, Hovey, Howe, Jones, Kelso, Maguire, Morgan, Morrison of Marion, Morrison of Washington, Nave, Pepper of Crawford, Pettit, Rariden, Spann, Thornton, Walpole, and Watts—31.

So the section as amended, was ordered to be engrossed for a third reading.

INCREASING A COMMITTEE.

Mr. KELSO. There was referred to a select committee of three, report No. 65, on a subject of taking corporation stock, and no two of the three can agree as to making a report. [Laughter.] I ask that the committee may be increased.

Mr. WALPOLE moved that the gentleman from Jefferson (Mr. Dunn) be discharged from further service on the committee.

Mr. MORRISON of Marion, said that that was rather a discourtesy to the gentleman from Jefferson, and he would move that the whole committee be discharged and another one appointed.

Mr. WALPOLE accepted the proposition as a substitute for his.

Mr. WATTS hoped the committee would not be discharged, but that one or two individuals friendly to the proposition would be added to the committee. It was certainly treating the committee unfavorably to discharge them without their having had an opportunity to make a report.

Mr. WALPOLE. I would suggest that Mr. Cookerly and Mr. Pettit be added to the committee.

Mr. WATTS. I will accept that as an amendment to my proposition.

Mr. COOKERLY. I will not serve upon the committee. You do not need to name me.

WOMEN'S RIGHTS.

Mr. GREGG. I believe that a great deal of dissatisfaction prevails in regard to the section which was passed this morning in relation to the rights of married women. I move to reconsider the vote taken this morning, on the passage of the section.

The motion to re-consider was agreed to.

Mr. SMITH of Ripley, moved a call of the House.

Mr. KENT demanded the yeas and nays on the call, and they were ordered.

Mr. KELSO (amid considerable confusion.) I rise to a point of order, Mr. President. I would like to know what became of the motion in relation to the select committee. There certainly was no action upon it?

The noise continuing, the yeas and nays were taken on the motion for a call of the Convention, and they resulted as follows:

YEAS.—Messrs. Alexander, Beach, Berry, Borden, Bracken, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Colfax, Cookerly, Davis of Madison, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Edmonston, Elliott, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Warrick, Gregg, Haddon, Hall, Hamilton, Hawkins, Howe, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Mathis, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Pepper of Ohio, Prather, Robinson, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Trimby, and Wolfe—61.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beeson, Blythe, Bourne, Bowers, Bright, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Crawford, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Graham of Miami, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Kelso, Logan, Maguire, March, May, Milligan, Morrison of Washington, Nave, Niles, Pepper of Crawford, Pettit, Rariden, Read of Clark, Schoonover, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Walpole, Watts, Wiley, Wunderlich, Yocum, Zenor, and Mr. President—55.

So the motion for a call was decided in the affirmative.

The roll having been called,

Mr. GREGG moved to dispense with further proceedings under the call.

The motion was agreed to.

Mr. GREGG. I now move to postpone the further consideration of the subject till to-morrow morning at ten o'clock.

The PRESIDENT. The Chair understands that the motion to reconsider, is under the operation of the previous question, and in that case the motion to postpone will not be in order.

Mr. GREGG. Then a motion to adjourn will be in order.

The PRESIDENT. Certainly.

Mr. GREGG. I move then that the Convention adjourn.

A division being called for, there were—yeas 55, nays 47.

So the Convention adjourned.

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WEDNESDAY, FEBRUARY 5, 1851

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. CRARY.

The Journal of yesterday was read and approved.

The PRESIDENT said he had been requested to call the attention of the Convention to a resolution which had been adopted on a former day, in relation to the binding of the Journal. The resolution did not specify by whom it was to be done.

Mr. DOBSON remarked that there was another omission in the resolution. It had been provided that each member should be furnished with a copy of the debates, but the manner of their distribution had not been pointed out. There would be two volumes, one of which could be obtained before the day of adjournment. I think we ought to make some provisions for their distribution.

Mr. KELSO. They may be distributed when the laws are to be distributed.

The PRESIDENT. The object of making the inquiry was to learn whose duty it should be to see to getting them bound.

Mr. GORDON. I have a resolution drawn up that I think will remedy the difficulty suggested by the gentleman from Owen. It is, that the Secretary of State be requested to distribute the debates at the same time that the laws are distributed.

The PRESIDENT. It will require a suspension of the rules to enable the gentleman to introduce his resolution. The only object at present is to ascertain whose duty it shall be to see to getting them bound.

Mr. GORDON. I give notice then, that I will offer the resolution on some other day.

The PRESIDENT. It is not necessary that the gentleman should give notice.

At the suggestion of several members, it was directed by unanimous consent that the Secretary should superintend the binding.

#### WOMAN'S RIGHTS.

The PRESIDENT. The first thing in order is the motion to re-consider the vote upon the passage of the section in relation to the rights of married women.

Mr. OWEN. I desire to make an explanation in regard to a point of veracity. I understand, sir, it has been industriously circulated this morning, that there was some unfairness in my action yesterday, in regard to the proposi-

tion which I offered as a substitute for the original section relative to woman's rights, inasmuch as I had shown to several delegates some days previously, a resolution in which the words "better security," were embodied, and that when the instructions were offered, the word "better" was omitted. And, sir, it has been intimated that I desired to obtain the passage of the section in an under hand way without its containing that word, while delegates believed it was still retained. Now, I ask the gentleman from Rush (Mr. Bracken) who is known to be an opponent of my proposition, and who made a speech against it, to say whether he did not come to my seat yesterday and tell me that he could not possibly vote for it with that word in it—that it made the proposition too strong—but that if I struck it out, he and some others would vote for it. So far as I was concerned, I would not have taken the trouble to cross the room for the sake of a choice whether the word should be in the section or out of it. But I struck the word out to satisfy the gentleman, and for no other reason whatever. All that I wish on this occasion is to exonerate myself from the imputation of having acted unfairly.

Mr. BRACKEN. The statement of the gentleman from Posey, is correct, so far as my action in regard to this matter is concerned. I requested the gentleman to strike out the word, and he complied with my request.

The question being on re-considering the vote on the passage of the section,

The yeas and nays were ordered and taken, and there were—yeas 65, nays 61:

YEAS.—Messrs. Badger, Ballingall, Barbour, Beach, Bowers, Bright, Brookbank, Butler, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Davis of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Garvin, Goo-tee, Gordon, Gregg, Haddon, Helm, Helmer, Hogin, Howe, Huff, Johnson of Dearborn, Jones, Logan, Maguire, March, Mather, Mathis, May, Miller of Fulton, Morgan, Morrison of Washington, Nave, Niles, Nofsinger, Pepper of Crawford, Pettit, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Stevenson, Tagne, Todd, Trimble, Walpole, Watts, Wolfe, and Zenor—65.

NAYS.—Messrs. Alexander, Bascom, Beeson, Berry, Blythe, Borden, Bracken, Bryant, Carr, Chapman, Chenoweth, Cole, Cookerly, Davis of Vermillion, Dick, Duzan, Edmonston, Elliott, Foster, Frisbie, Gibson, Graham of Miami, Hall, Hamilton, Hawkins, Hitt, Holman, Hovey, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kilgore, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Newman, Owen, Pepper of Ohio, Prather, Read of Monroe, Sherrod, Shoup, Sims, Smiley, Smith of

Scott, Steele, Tannehill, Thomas, Thornton, Wiley, and Mr. President—61.

So the vote was re-considered.

The question being, "shall the section pass?"

Mr. SHERROD moved that the Convention adjourn.

Mr. OWEN demanded the yeas and nays, and they were ordered and being taken, were—yeas 3, nays 116—as follows:

YEAS.—Messrs. Frisbie, McLean, and Murray—3.

NAYS.—Messrs. Alexander, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Berry, Borden, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Carter, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Cole, Colfax, Cookerly, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Edmonston, Elliott, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Hardin, Hawkins, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kilgore, Kinley, Logan, Maguire, March, Mathis, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wiley, Wolfe, Wunderlich, Zenor, and Mr. President—116.

So the Convention refused to adjourn.

The question recurred on the passage of the section,

The yeas and nays were taken under the rule, and resulted as follows—yeas 63, nays 68:

YEAS.—Messrs. Alexander, Anthony, Bascom, Beeson, Berry, Blythe, Borden, Bourne, Bryant, Carr, Chapman, Chenoweth, Cole, Cookerly, Crumbacker, Davis of Vermillion, Dick, Duzan, Edmonston, Elliott, Foster, Frisbie, Gibson, Graham of Miami, Hall, Hamilton, Hawkins, Hitt, Holman, Hovey, Johnson of Orange, Kelso, Kent, Kendall of Wabash, Kendall of White, Kilgore, Kinley, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Owen, Pepper of Ohio, Read of Monroe, Sherrod, Shoup, Sims, Smiley, Steele, Tannehill, Thomas, Thornton, Wiley, and Mr. President—63.

NAYS.—Messrs. Badger, Ballingall, Barbour, Beach, Beard, Bowers, Bright, Brookbank, Butler, Carter, Clark of Hamilton, Clark of Tippecanoe, Clements, Coats, Colfax, Crawford, Davis

of Madison, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Garvin, Gootee, Gordon, Gregg, Haddon, Hardin, Helm, Helmer, Hogin, Howe, Huff, Jones, Logan, Maguire, March, Mather, Mathis, May, Morgan, Morrison of Washington, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Pettit, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Wunderlich, and Zenor—68.

So the section was not adopted.

Mr. SHOUP moved to suspend the rules, in order to enable him to introduce a resolution to the effect that the Secretary be directed to prepare suitable sheets of parchment upon which each member might sign the Constitution in the order in which their names were called.

The rules were suspended.

Mr. KELSO moved to amend the resolution by inserting after the word "Constitution," the words "by way of attestation."

A MEMBER. There is the same thing in a resolution which was passed yesterday.

The amendment was on a division, yeas 48, nays 70—rejected.

The resolution was then adopted.

#### INCREASE OF A COMMITTEE.

On motion by Mr. KELSO,

The gentleman from Tippecanoe (Mr. Pettit) and the gentleman from Hancock (Mr. Walpole) were added to the select committee to whom was referred the article relative to taxing corporate stock.

Mr. PRATHER moved that the rules be suspended in order to enable him to introduce a resolution tendering the thanks of the Convention to the Hon. GEORGE W. CARR, for the efficient and impartial manner in which he had discharged the duties of the President of the Convention.

The rules were suspended by unanimous consent.

Mr. PETTIT. I shall not detain the Convention further than to say that no resolution has been offered since our meeting that I would vote for with more cordiality and good will than for this.

The resolution was unanimously adopted.

Committees were then called upon for

#### REPORTS.

Mr. OWEN from the committee on revision made a report setting forth certain alterations in phraseology that had been made by that committee.

The report was concurred in.

#### THANKS.

On motion by Mr. BASCOM, the rules were suspended and a resolution of thanks to the Secretary and Assistant Secretaries for the faithful discharge of their duties, was adopted.



On motion by Mr. COOKERLY, the thanks of the Convention were tendered to the Clergy of Indianapolis for their kind offices in attending each morning, and opening the Convention with prayer.

Several resolutions of a similar character were adopted.

After which the gentleman from Switzerland (Mr. KELSO) offered the following resolution, which was NOT adopted:

*Resolved*, That the thanks of this Convention be tendered to the members thereof, some for their able lucid and instructive speeches, and others for their consummate impudence, and others for being quiet and doing nothing at all."

Mr. OWEN from the committee on revision made another report,

The report having been read,

The question was on concurrence,

Mr. MILLER of Gibson suggested that there was one point which required a slight alteration. The article now reported from the committee on revision contained the provision for biennial sessions, and that the first session of the Legislature should be held in 1852. But there had been no provision making the election of Governor conform in point of time with the meeting of the Legislature; so that their would be a difficulty in regard to his inauguration.

Mr. OWEN. The attention of the committee was called to that fact but, they did not consider themselves at liberty to make any change. They supposed it likely that some provision would be reported by the committee on the schedule in reference to it.

Mr. WALPOLE stated that it was in the contemplation of the committee on miscellaneous provisions to report a section in reference to this matter.

Mr. MILLER of Gibson. Then in order that we may have that report made before we act on this matter, I move that the report of the committee on revision be laid upon the table.

The PRESIDENT. A motion to lay on the table will carry the whole report.

Mr. MILLER of Gibson. It was my intention that the whole should be laid on the table.

The motion was agreed to.

So the report was laid on the table.

#### BILLS.

The section providing that bills may originate in either House except revenue bills, and shall embrace but one subject to be expressed in the title, &c., was read a third time.

The question being, Shall the section pass?

Mr. DUNN of Jefferson moved that the rule requiring the yeas and nays to be taken on the passage of a section, be suspended.

The Convention refused to suspend the rule.

The yeas and nays were then taken with the following result—yeas 93, nays 34:

YEAS.—Messrs. Alexander, Anthony, Badger, Bailingall, Bascom, Beach, Beard, Beeson, Borden, Bowers, Bracken, Brookbank, Bryant, Butler, Carter, Chenowith, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Hitt, Hogin, Huff, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kendall of Wabash, Kendall of White, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mowrer, Murray, Nofsinger, Pepper of Ohio, Prather, Read of Clark, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Todd, Trimble, Wallace, Wolfe, Wunderlich, Zenor, and Mr. President—93.

NAYS.—Messrs. Berry, Blythe, Bourne, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Clements, Davis of Madison, Dunn of Jefferson, Elliott, Gibson, Gregg, Helmer, Holman, Hovey, Howe, Kelso, Kilgore, Maguire, Mather, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Newman, Pepper of Crawford, Pettit, Robinson, Watts, and Wiley—34.

So the section passed, and was referred to the committee on revision, &c.

The section reported from the committee on miscellaneous provisions, fixing the time for submitting the new Constitution to a vote of the people, was taken up on its third reading.

Mr. PETTIT. If the Convention will indulge me, I should be glad to make a very few remarks in relation to this matter. I am inclined to think that we had better not do this. In fact, to use a common phrase, "we had better let it alone." We were sent here, sir, for a specific purpose; we were brought together by a law enacted by the Legislature; we are acting under the authority of that law, and it provides that we shall deposit the journal of our proceedings, together with a draft of the Constitution we may form, in the office of Secretary of State. And the act provides further, that the Legislature shall pass the necessary laws for the submission of the Constitution to the people.

I believe, sir, that we had better confine ourselves to our legitimate business. It may be said by some gentlemen that the Legislature will not attend to this matter. Sir, let us not distrust our fellow-citizens. Let us do our own duty, and be not apprehensive that others will

fail to do theirs. It will be their solemn—their bounden duty to submit the Constitution to the people at such time as they may deem proper.

Mr. READ of Clark. I would inquire what would be our situation should they repeal that portion of the law of last winter? And, sir, there is a bill to that effect now ordered to be engrossed in the Senate.

Mr. PETTIT. I do not think they will do any such thing. Gentlemen may as well ask me whether the heavens will not fall. It is not to be supposed that men who are sent up here by a common constituency, and who have taken an oath to discharge their duty faithfully, will so far forget what is due to that constituency as to allow any temporary and ill-founded prejudice which may have arisen in their minds towards each other, to lead them into an abandonment of their duty. I am unwilling to admit such a supposition for a moment. I doubt not that they will properly, and in good faith, submit our work; but whether they do or not, is a matter for which they alone will be responsible. If they fail to do it, the fault will be theirs and not ours. We shall have performed the work for which we were sent here, without transgressing the law in any manner. I think we had better complete our work, pass it over to their hands, and let them discharge their duty.

Cries of "Consent. That is right."

Mr. DOBSON. If no gentleman wishes to make further remarks, I will move that the section be laid upon the table.

Mr. SMITH of Ripley. Will the gentleman withdraw his motion for a moment?

Mr. DOBSON. Certainly; with pleasure.

Mr. SMITH of Ripley. I remark, in reply to the gentleman from Tippecanoe, that as I understand the position of this matter, it is the intention of the Legislature to repeal that part of the law, under the supposition that the Convention itself will make provision for submitting the Constitution to the people.

Mr. PETTIT. I am told by a gentleman who has just been across the way to the State House, that the Legislature will do no such thing.

Mr. SMITH of Ripley remarked that, in his opinion it was more appropriate the Convention should settle this question than that it should be left to the Legislature.

Mr. FOSTER said it appeared to him that the Convention ought to fix the time when the Constitution was to be submitted to the people, and in doing so they would be only acting in accordance with their duty. I do not recollect a solitary instance (said Mr. F.) in which any State convention has failed to designate the time when the constitution formed by such convention should be submitted to the people. I do not think it will be a work of supererogation on our part to follow the example. Whether the Legislature repeal the law or not, I consider

it is our bounden duty to fix the time when the new Constitution shall be submitted to the people. For my own part, I do not know a better time than the first Monday in June. I hope the section will be adopted.

Mr. PETTIT. I wish to ask the gentleman from Monroe one question before he concludes.

Suppose we say that it shall be the duty of all inspectors of elections to hold an election on the first Monday in June, will that be law? Would they be subject to any penalty for disobeying our injunction? as they would be if they were to disobey an act passed by the law-making power.

Mr. FOSTER. The gentleman is entirely correct as to that, but it is for the Convention to fix the time for the submission of the Constitution, leaving it to the Legislature to enact the law necessary to carry out the intention of the Convention, and to regulate the necessary details as to the manner in which the instrument shall be submitted.

Mr. DOBSON. I do not believe that we ought to adopt this section at this time. What we ought to do is to place the Constitution in the hands of the Secretary of State, and go home then. I move that the section be laid on the table.

The question being put upon the motion of the gentleman from Owen,

It was decided in the affirmative.

So the section was laid on the table.

Article sixty-nine, which relates to the subject of taxation, was taken up on its second reading.

Mr. PEPPER of Ohio proposed to amend, by providing for the establishment of a central board of equalization.

Mr. PEPPER remarked that he thought it was a matter of very great importance, that there should be an equal and uniform mode of taxation, and he did not think there was any possibility of arriving at such equitable and uniform mode, by any other process than that of having a central board of equalization. The counties of the State were not all governed by the same rules in regard to the valuation of property. He hoped the Convention would see the importance of adopting a provision of this kind.

Mr. DAVIS of Parke moved that the amendment be laid on the table.

The motion was agreed to.

The section was then ordered to be engrossed for a third reading.

On motion by Mr. CLARK of Tippecanoe, the rules were suspended and the section was passed, and referred to the committee on revision.

The section which provides that all acts of incorporation granted for municipal purposes shall remain in force until repealed by the Legislature, was taken up on its second reading.



On motion,

The rules were suspended, and the section was read a second and third time and passed, and was referred to the committee on revision.

The PRESIDENT laid before the Convention a communication from the Marshal of the State, which was read.

On motion by Mr. MILROY, the rules were suspended and a resolution was adopted tendering the thanks of the Convention to the Hon. S. Meredith, Marshal of the State.

Mr. SMITH of Ripley. I suppose that the Convention should take some action in regard to this communication. I should be inclined to move that it be printed, but for the reason that I suppose we would not be able to obtain the printed copies before our adjournment. But as it contains information which it is highly necessary the people should possess, I move that it be spread upon the journal of the Convention.

The motion was agreed to.

The PRESIDENT. The Convention has got through with all the business on the orders of the day.

On motion by Mr. MILROY,

The rules were suspended and a resolution was adopted directing the Secretary to have the bill of rights enrolled.

Mr. BRYANT moved to take from the table the additional section, offered on Saturday last by the gentleman from Laporte (Mr. Niles), in relation to the consolidation of the school funds.

A VOICE. It has been rejected a dozen times.

The question was put on the motion to take up the section,

And it was decided in the negative.

On motion by Mr. SMITH of Ripley,

The Convention adjourned.

#### AFTERNOON SESSION.

Mr. PETTIT said, he believed the report made by the committee of revision this morning had been temporarily laid upon the table. He would now move that it be taken up.

The motion was agreed to.

Mr. PETTIT then moved that the report be concurred in.

Mr. MILLER of Gibson said, that before concurring in the report, there were some slight alterations that ought to be made. Upon examining the report, it would be found that the Legislature would meet in 1852; the Governor's term of office, however, would not expire until 1853. In order that no delay might take place in regard to the inauguration of the Governor elect, he thought it would be highly proper that the first meeting of the Legislature should be in 1853. If the motion to concur did not prevail, he would move to re-commit the report, with instructions to strike out "two," and insert "three."

Mr. WALPOLE said, he could see no neces-

sity for referring back this report. The chief object of the gentleman from Gibson, he supposed, was to accommodate the time of the meeting of the Legislature, to that of the selection of United States Senators. That was not an object with him, however. Pennsylvania and other States elected their representatives in Congress a year in advance of the vacancy. There was no difficulty in electing Senators or Representatives to Congress, in anticipation of the vacancy. If the gentleman's proposition should prevail, it would have the effect of postponing the adoption of this Constitution for one year longer. He hoped the amendment would not prevail, but that the first election under the new Constitution would take place in June, 1852.

Mr. PETTIT. It seems to me there can be no necessity for re-committing this report. We have had a long debate on the very point suggested by the gentleman, and the matter has been well considered. The committee on the legislative department, I recollect, reported that the first session of the Legislature should be in 1853, but the Convention, after mature consideration and debate, struck out three and inserted two. To be sure it is a matter of no great importance one way or the other; but I see no necessity for reversing what has already been determined upon. This Constitution, if it is to be submitted to the vote of the people, ought to be submitted this coming year. It ought to be submitted as early as June. The Legislature, I have no doubt, will determine upon an early day for its submission. They will, unquestionably, I think, submit it before August, for this reason, that unless they do, the people will have to go on and elect their officers under the old Constitution, and you will have to bring on another election, in two months after. Decidedly the better way will be to submit it before August. Then, sir, let your Legislature be elected, all of them, Senators and Representatives, on the second Tuesday in October. They will come up here and will draw for the longer or shorter term of service, and you will put your machinery of government in operation, without difficulty. And, sir, there is no difficulty about electing a United States Senator. In regard to the time at which he is to be elected; when is it to be? (turning towards the gentleman from Gibson)—for I want to inform the gentleman that I shall be a candidate when this time arrives.

Mr. MILLER of Gibson. It will be in 1855.

Mr. PETTIT. I am sorry the time is so far off [a laugh]. But the gentleman from Hancock has well remarked that there is no difficulty about electing a Senator before the vacancy occurs. Indeed it is better, in many respects, that he should be elected before hand. The people will know their Senator—he will have an opportunity to put his business in order, and what is of more importance, he will have an op-

portunity to inform himself of the public wants, and to acquaint himself with the nature of his public duties—a thing, I regret to say, that is too much neglected. There is too much avidity to obtain office without any solicitude as to fitness for office.

It seems to me, there is no other way than to concur in the report of the committee, unless there is something in that report which is positively wrong—unless there has been some variance made in a matter of substance in one of the sections.

**A VOICE.** How about the Governor?

**Mr. PETTIT.** It seems to me there is no difficulty about the Governor holding over. I would as soon have the Governor elected a year previous to the commencement of his term of office, as otherwise. Let the present incumbent remain in office if you please, until the time for the first election for Governor under the new Constitution.

**Mr. MILLER of Gibson.** The gentleman misunderstands everything I said. I only say that you place this Constitution before the people in June, and the first session of the Legislature will be holden the following year; and in 1853, when the term of office of your Governor is to commence, there will be no session. How, then, is he to be inaugurated? Are you to have a called session for that purpose?

**Mr. SMITH of Ripley.** I believe we have adopted, in the Constitution, somewhere, a provision of this character; that all officers elected by the people, shall continue in office, under the new Constitution, for the term for which they were elected. If that provision remain without an exception being made, in relation to the Governor, the present incumbent will remain in office for a year after the adoption of the new Constitution; and I agree with my friend who has just taken his seat, that there will be a necessity for a called session, for the inauguration of the Governor. I believe it was not the intention of the Convention to make any provision respecting the election of Senators. I think, however, that we ought now to take this matter into consideration.

**Mr. EDMONSTON.** I, sir, for one, have no reflections to cast upon the committee, and I do not consider, as the gentleman from Tippecanoe seems to do, that there is any reflection cast upon them by the gentleman from Gibson. The committee have adhered strictly to the language of the section as it was sent to them by the Convention. This provision was reported to the Convention by the committee on the legislative department, of which I was a member; and it directed that the first biennial session should be held in 1853. We reported this provision with a view exclusively to the inauguration of the Governor; but the Convention thought proper to change it. And we have adopted a resolution that no new proposition shall be introduced. Now the Convention will

see at once the condition in which we are placed. Are we, whenever a Governor is elected, to have a called session for the purpose of his inauguration? We might as well have provided for annual sessions at once. I was satisfied, sir, when the motion was made to amend the report of the committee, by striking out "three," and inserting "two," that we would find ourselves in a difficulty. The committee on revision have done their duty. There is no reflection cast upon them.

**The PRESIDENT.** The motion is to concur in the report.

**Mr. EDMONSTON.** Well, sir, in this view of the question, I hope the Convention will not concur in the report at present. If you adopt the report as it is, you cannot introduce any new proposition so as to cut off one year of the Governor's time; you will necessarily be obliged to have a called session. As for the time of electing United States Senators, that, I think, is a matter of no consequence.

The five minutes allotted for remarks, under the rule, here expired.

**Mr. BASCOM.** I hope the report will be concurred in. We are making reforms, and there are gentlemen who are for postponing those reforms for a year. I think it would be better to shorten the Governor's time a year, than that the Legislature hereafter should be obliged to meet in special session. The more few and far between their meetings are, the better for the public interest, for I contend that they are, this year, doing more injury than good.

**The PRESIDENT.** The gentleman has no right to call in question the motives of members of the Legislature.

**Mr. BASCOM.** I am speaking now particularly of their course in regard to local legislation.

**The PRESIDENT.** That is a part of their legislative action which the gentleman has no right to comment upon.

**Mr. BASCOM.** I will speak, then, of the course pursued by the Legislature generally, and I say it has been productive of more injury than good. I see no harm in shortening the Governor's term for one year, so as, hereafter, to make it harmonize with the time of the meeting of the Legislature.

**Mr. FOSTER.** It appears to me there is a very easy way of settling all this. I have voted for a section to retain State and county officers in their respective offices for the period for which they were originally elected; but I am willing that that provision should be reconsidered, and let them all go out. If we do this, our way is clear. Members of the Legislature complain that they are legislated out of office, while county officers are not. They say they are entitled to designate the time when the Constitution shall be submitted to the people, and they declare that they will not submit it



until August. I prefer that all shall go out—that is the true Democratic doctrine.

Mr. STEVENSON. I wish to inquire of the Chair whether we did not adopt a provision the other day providing for the continuance in office of all State officers.

The PRESIDENT. Those elected by the people only.

The question was then taken on concurring in the report of the committee, and it was, on a division—ayes 40, noes 39—decided in the affirmative.

So the report was concurred in.

Mr. PETTIT. As there is no other report from the committee on revision, to be considered by the Convention, I think we had better adjourn.

The PRESIDENT remarked that the calendar of business was entirely clear.

Mr. WALPOLE moved a suspension of the rules in order to enable him to introduce a section to the effect that the Governor, members of the General Assembly, and other officers elected under the old Constitution, shall continue in office until superseded under the authority of the new.

The PRESIDENT. The Chair would remark that under a resolution which has been adopted by the Convention after the Tuesday of this week no new matter can be introduced, unless agreed to by three-fourths of the members.

Mr. WALPOLE. I am aware of that, sir.

The question was taken on the motion to suspend the rules, and it was agreed to.

Mr. WOLFE. I wish to call the attention of the Convention to one fact. We have now provided that the Constitution shall be submitted to the people at the next August election. We should also make provision that the officers then elected may hold over, and be sworn in under the new Constitution.

Mr. WALPOLE. We have passed a provision that all officers elected by the people shall continue to hold their respective offices until their successors are elected and qualified under the new Constitution, so that no void or vacancy can occur.

Mr. MILLER of Gibson. It appears to me that if the Constitution be not adopted until the August election, the officers elected at that election must necessarily be elected under the old Constitution, for the election under the new Constitution does not come on until October.

Mr. WALPOLE. My proposition is, that the Governor, members of the General Assembly, and other officers elected under the old Constitution, shall continue in office until superseded under the authority of the new.

Mr. MILLER of Gibson. That is exactly as I understand it; and if the Constitution be adopted by the people at the August election, the officers, Senators, and Representatives, elected at that election, will hold their offices

until they are superseded by the elections to be held in October under the new Constitution, so that your election in August will be a nullity and you will hold two elections in the course of the next summer.

Mr. SMITH of Ripley. We will have to rely a little, I suppose, upon the good sense of the Legislature. They will, no doubt, submit the Constitution long enough before the August elections to enable the Governor to issue his proclamation dispensing with that election, and then we will have but one election, and that under the new Constitution. But there should be some care exercised in regard to this matter. I think this proposition should not be hastily, and without due consideration, adopted. It should be referred to a select committee, and be examined and reported upon. We ought not hastily to adopt a proposition that we may afterwards be ashamed of; I therefore move that the section be referred to a select committee of nine, and that the gentleman who offered it be the chairman of that committee.

A VOICE. Five are enough.

Mr. READ of Monroe. I most heartily agree with the views of the gentleman last on the floor. It seems to me, especially in regard to the election of Congressmen, there would be a difficulty. If members of Congress are to be elected on the second Tuesday in October, their term of service would very soon commence, and they would hardly have time to make preparations.

A VOICE. Plenty of time.

Mr. READ of Monroe. There is still another difficulty. Here will be an interval from the second Tuesday in March up to October, in those years when we have no called session.

Cries of "All right! Take it back!"

Mr. OWEN. One thing is quite clear to me; and that is, that if this Constitution is submitted as late as the first Monday in August, it will not do to leave this provision in it, that the first session of the Legislature shall be in eighteen hundred and fifty-two, for you require of the people to elect Senators and Representatives on the first Monday in August, with the possibility, at least, before them, that a new election will take place in October. It appears to me that it will not do to hold these elections with this uncertainty hanging over them.

Mr. COLFAX. Every one knows that the Legislature, at its session after the adoption of the Constitution, will have a great deal to do in order to make the laws conform to the new Constitution. If, then, we have one special session and afterwards biennial sessions, it will obviate all difficulty. I concur heartily in the suggestion made by the gentleman from Ripley, to refer this section to a select committee, and I was in hopes that the gentleman would propose that the committee should consist of one from each congressional district. [Cries of "Consent! Consent!"] It is a very important

matter, and I desire that our Constitution shall be symmetrical.

**Mr. BORDEN.** Allow me to make another suggestion. This Constitution fixes the time when Congressmen shall be elected; now the Constitution of the United States says that the Legislature of the State shall regulate that matter. A gentleman near me says that this Constitution does not provide when members of Congress shall be elected. I think he will find that the sixth section of report number sixty-six, prescribes the time when they shall be elected.

**A VOICE.** That was laid on the table.

**Mr. SMITH** of Ripley. I will change my motion so that the committee shall consist of ten members.

The question being taken on the motion of the gentleman from Ripley to refer the section to a select committee of ten,

It was decided in the affirmative.

On motion by **Mr. BORDEN**, report number sixty-six was taken from the table and referred to the same committee.

#### TAXATION OF STOCK.

**Mr. KELSO**, from the select committee to whom had been referred the section in relation to taxing the stocks of corporations, reported it back amended, as follows:

"All corporation stocks owned or held in this State by persons residing out of the State, shall be liable to a county tax equal to the tax levied for State purposes, which shall be paid into the State Treasury and distributed to the several counties in this State, for common school purposes; and corporation stocks owned or held by citizens of this State, shall be taxable for county purposes as any other property is taxed, and applied in the same manner in the counties where the same is owned or held; which shall, in either case, be in full force for all taxes for county purposes; and the General Assembly shall pass all necessary laws to carry into effect the provisions of this section."

The question being on the passage of the section,

**Mr. DUNN** of Jefferson. I would inquire of the chairman of the committee whether this section embraces State as well as county taxes?

**Mr. KELSO.** It has reference only to county taxes.

**Mr. DUNN** of Jefferson. It is rather singular that this committee, of which I am a member, should have reported without having previously consulted me on the subject. If there has been any meeting of the committee since the addition was made to our numbers, I was not notified of the meeting. But I do not wish to complain of this mode of doing business, I merely speak of it as an irregular way of proceeding; I can express my dissent to that report here. The section, among other things, provides that in lieu of a county tax on the

stock held by non-residents in incorporated companies the State tax shall be doubled on such stock, and the whole amount shall be paid into the State Treasury. This, in my judgment, is manifestly wrong. The property of railroads, plank roads, and of similar improvements, should be taxed like all other property wherever it may be situated. Let us see how the mode of taxation proposed by the committee will operate practically. There is a large brick house across the street worth, say six thousand dollars, owned, we will suppose, by a resident of the city of New York; it is taxed for State and county purposes the same as if the owner resided in this city, and the county tax is paid into the treasury of the county of Marion. The Madison and Indianapolis Railroad Company has a depot in this city worth, we will suppose, as much as the house referred to—six thousand dollars. We will suppose that the same resident of the city of New York who owns the house across the street holds six thousand dollars of the stock of the Madison and Indianapolis Railroad Company, and as his certificate of stock is merely evidence that he owns that amount of the property of the Company, and is entitled to receive a corresponding amount of its net earnings, we may suppose that his stock is represented by the depot. Now can the chairman of the committee explain why the house should pay a tax into the treasury of this county and the depot should not? If an incendiary should be prosecuted for setting fire to either of these buildings he must be prosecuted in the county of Marion, and the people of the county of Marion must pay the expenses of the prosecution. Both the properties are equally under the protection of the laws in this county. Why should the one be taxed for county purposes and the other not?

But there is another objectionable feature in the section reported by the committee. It requires that the stock of non-residents shall be taxed as other property for State purposes, and an equal amount for the benefit of common schools throughout the State, thus making the whole tax twice the amount of the State tax. As this may be more or less than the aggregate of the State and county tax on property similarly situated and of equal value, it violates the section we have adopted which requires that all property shall be equally taxed according to its value.

I know, sir, that the county of Jefferson has had the lion's share of the taxes collected for county purposes on the road between here and Madison; and that has resulted from a provision in the code of eighteen hundred and forty-three, which requires that the stock incorporations shall be taxed for county purposes in the county where such corporation may have its principal office of business. The principal office for doing the business of that road being in Madison, gives the county of Jefferson the tax on a large



amount of the stock. I know this gives to our county an undue advantage over the other counties on the line, and I am perfectly willing that the tax should be distributed to all the counties through which the road passes, on equitable terms. The fixing of these terms, and proper provisions for estimating the value of the property of the road, would lead us into more detail than is proper to be inserted in the Constitution. Having declared that all property shall be equally taxed according to value, we may safely and properly leave the mode of assessing and distributing the taxes on corporation property to be provided by law.

Mr. KELSO. There is no part or parcel of the property of any community so hard to be got at, and respecting the collection of revenue, from which it is so difficult to have even-handed justice administered, as the property of corporations. They make it their purpose, first, to steal all they can, and next, to hide all they steal. There is no other instance where the same difficulty exists. While the gentleman from Jefferson is repudiating the county tax over the whole line of the road, there will be in the system he suggests, a necessity for legislating on the subject.

Mr. DUNN of Jefferson. I have just stated very differently.

Mr. KELSO. The gentleman complained that he was not consulted in regard to this report before it was brought in; however, in regard to that I have only this to say: that I had shown the gentleman a proposition by which even-handed justice could be meted out, and he repudiated it. He said he would not consent to its being reported; but I obtained the consent of a majority of the committee to report it, for I wanted to get it off my hands, as I did not desire to bring it home with me. The gentleman is desirous that the tax shall be levied in proportion to the cost of the property within each county. But, sir, you may take twenty miles of the road in Johnson county, and the whole of it did not cost so much as the ascent of the hill at Madison. How then are you to determine the value of the road? Why he says "you must tax the property where you find it." But there is the iniquity of it. The county of Jefferson, from the fact of the principal depot of the road being located therein, will claim all the cars; which, together with other apparatus, will perhaps be equal to one-half the entire amount of property to be taxed. Now I ask you if there is anything like justice in such a proposition, when the funds that have contributed to the procuring of this property have been derived, in various proportions, from all the counties through which the road passes?

Mr. GORDON. I think this whole matter can be very safely left to the Legislature; I therefore move that the section be laid upon the table.

The question was then put, and, upon a di-

vision—ayes 36, noes 43—it was decided in the negative.

So the section was not laid upon the table.

Mr. KILGORE. The section as reported—I do not know whether it is from a design to embarrass the matter about which we differed yesterday, but it must inevitably have that effect—proposes, or rather has in view, the taxation of the stock owned by non-residents. Gentlemen of the Convention must be aware that we cannot assess a tax here upon non-residents that we are compelled to assess upon our resident citizens. We are expressly prohibited by the Constitution of the United States. The citizens of other States cannot be held liable to be taxed as residents are. This question has been agitated over and over again. If we assess a tax upon the property of non-residents, we are compelled to impose the same amount on resident stock holders. I supposed it was understood that the tax upon the property of the road must be distributed in each county in which it is assessed. But gentlemen insist that the tax must be distributed throughout the State. By a parity of reasoning you might make the person who comes into Marion county, and erects machinery, &c., pay a tax to be distributed in other counties where the same spirit of enterprise does not exist.

Mr. CLEMENTS moved to re-commit with instructions to strike out and insert, that "all corporation stock shall be taxed for State and county purposes the same as other property, and shall be assessed and collected as shall be prescribed by law."

Mr. GIBSON inquired if the section was now on its second reading.

The PRESIDENT replied in the affirmative.

Mr. GIBSON. There is no necessity then for re-committing it.

The PRESIDENT remarked that although there was no necessity for it, the gentleman had a right to make such a motion if he thought proper.

Mr. CLEMENTS. I supposed the article was upon its third reading.

The PRESIDENT. It is on its second reading.

Mr. CLEMENTS. Then, sir, I move to amend in accordance with the instructions that I have offered.

The PRESIDENT. The question will first be on concurring in the report of the committee.

Mr. KELSO. Now let me say to the Convention that this is just precisely the law as it at present stands. All corporate property is now liable to be taxed in the same manner as other property is, whether it be owned by residents or non-residents; and the mode in which it is to be collected is prescribed by law. And what is that mode? It is that any line of the

public works shall pay the whole tax to the county where the principal station is located.

**Mr. KILGORE.** Let me set the gentleman right. The gentleman from Hancock seemed to fall into the same error yesterday. The law is, that the tax shall be levied in proportion to the distance which the road passes through each county.

**Mr. KELSO.** I am not mistaken as to the Madison and Indianapolis road; the course pursued in regard to it is such as I have mentioned, and the proposition of the gentleman will leave the matter point blank where it is; it will leave the Legislature to do precisely what they have heretofore done. If you want to make "confusion worse confounded" then adopt the proposition of the gentleman from Daviess. But if the Convention desire to make a special distribution of the taxes to the counties through which the road runs, or if they wish to devote them to common school purposes, now is the time to make the necessary provision on that subject. But if they do not desire this, then the gentleman's amendment is a proper one enough.

**Mr. SHOUP** moved that the amendment be laid upon the table.

The **PRESIDENT.** It is a motion to re-commit with instructions.

**Mr. EDMONSTON.** Is the question susceptible of division?

The **PRESIDENT.** Certainly it is.

**Mr. MORRISON** of Marion. I am willing that the section should be re-committed, for the reason that I desire a great deal of care shall be exercised in forming the section. The gentleman is right in some of his positions in regard to the mode of collecting the tax; heretofore it has been collected at the principal office of the Madison and Indianapolis Railroad Company at Madison, and consequently the county of Jefferson has received all the tax on the property of the road. It is for the purpose of having a proper system matured by which the proportion of tax belonging to a county may be secured to such county, that I desire the section shall be re-committed.

**Mr. SMITH** of Ripley. I am of the opinion that the Legislature under the new Constitution will exercise a sound discretion, and their attention being especially directed to the matter by this provision, they will fix upon a different mode of collecting this tax, so as to do justice to the counties along the line of the road. I think no evil can grow out of the adoption of the provision in its present form.

**Mr. SPANN.** As this is a matter which is perhaps somewhat difficult to be understood in all its bearings, I think it will be proper to refer it to a committee. One proposition made by the gentleman from Switzerland, appeared to me to be deserving of consideration. We all know that heretofore the counties in which this property lies have received no benefit from

the taxes derived from it, and any measure by which we may levy a tax that will benefit each county in proportion to its interest in the work, will receive my cordial support. But there is one feature in the proposition that I do not like, and that is, that the taxes shall be devoted to the use of common schools. Much as I would do for them in the proper way, I am opposed to taking the taxes which belong to Jennings county, for instance, and devoting them to common schools in other counties.

**Mr. KELSO.** That has reference to the stock owned by non-residents.

**Mr. SPANN.** It is no matter. If the tax belonging to one county be applied to the uses of another, it is a manifest injustice. No matter from what source the tax may be derived. There is no good reason why it should be taken from one county and given to another. If I vote for the reference of this section, I do it with the expectation and understanding that this part of the proposition will be rejected.

**Mr. DOBSON.** When this section was first presented here, I was in favor of it, and I might be so yet; I do not say that I am not; but it does seem to me that we are undertaking to do more than we ought to do, and that our action will produce confusion. In the first place I would call attention to a section we have already adopted in relation to uniformity of taxation. From that, it would seem the Legislature will have no right to make special laws in reference to taxation. And we have passed another section which says that the Legislature shall not pass any local or special laws in regard to several matters enumerated; neither should there be any special laws in regard to this. In one section we have declared that there will be no special legislation; and in another section we have provided that taxation shall be equal and uniform all over the State; and in a third we are about to declare that the Legislature shall pass a special law in relation to taxing a particular species of property. I doubt very much whether the Legislature will know what power they have under these conflicting provisions. I am not in favor of making any provision in regard to this matter. If I were a member of the Legislature I should vote for taxing all property equally, and I would have the property belonging to each county taxed within that county. It does appear to me the matter should be more thoroughly examined before we adopt the section, otherwise, a man, when he swears to support the Constitution, would have to "go it blind."

**Mr. STEVENSON.** There is no question about which I have more clearly made up my mind, than that no such tax as is here proposed should be levied. Now look at it: here is one part of the Convention in favor of one plan, another in favor of a different plan, and a third part doubtful as to what they ought to do. Which of them is in the right? If we adopt a



plan which is wrong, it must remain as long as the Constitution stands. It is true, the Legislature may not adopt the proper principle, but if they go wrong, they can retrace their steps. I think we should not provide for levying a particular tax. I do trust the Convention will leave the whole subject of taxation to the Legislature. I do not know but that the proposition may be right; but inasmuch as there is a diversity of opinion on the subject, I think the safer plan will be to leave the matter for legislative action.

Mr. KENT. I think this subject has been discussed long enough; I move the previous question.

Mr. KILGORE. I ask the gentleman to withdraw the demand for the previous question in order to enable me to offer a compromise section.

Mr. KENT withdrew the call for the previous question.

The PRESIDENT. The question is on the motion to re-commit.

Mr. MILLER of Gibson opposed the re-commitment, and argued in favor of the proposition. He contended that the taxes should be paid in the county in which the stock was owned. If this were not provided for, the result would be that a few individuals would come up to the Legislature from where the stocks were owned, and defeat every proposition for distributing the taxes that might arise from them.

Mr. WALPOLE was in favor of the section. The taxes should be assessed in the county through which the road passed. But (said Mr. W.) it is argued by the gentleman from Owen (Mr. Dobson) that your Constitution will be inconsistent with itself if you adopt this proposition, and that you have passed a section declaring that taxation shall be uniform. But, sir, the section proposed by the gentleman from Switzerland does not contravene that provision. We only contend that the tax shall be applied to the benefit of the several counties. The gentleman also contends that no special law should be passed in reference to this subject. How is it, under the law as it stands on your statute book at present, in regard to State taxes? How is it in regard to the taxes levied on the stock of insurance companies? The taxes go to the counties in which the office is located. I think it is due to the interior counties of the State that at least a portion of the profits on the investment made by them should be thrown back to the people of those counties.

Mr. BARBOUR. I think this question ought to be left to the Legislature; I think it is one which peculiarly belongs to the Legislature. They will be able to adjust it upon equitable principles, whereas it would be impossible for us to adjust it upon principles that would be satisfactory to all.

Mr. COLFAX. It seems to me, that in the middle of the last week of the session, we should

not attempt to settle a question concerning which there exists such a diversity of opinion, and one, too, which may be safely left to the Legislature. I therefore move that the section be laid on the table.

The motion was, upon a division—ayes 53, noes 38—agreed to.

And the section was accordingly laid upon the table.

On motion by Mr. MILLER of Gibson,  
The Convention adjourned.

THURSDAY, FEB. 6, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. FARROW.

The Journal of yesterday was read and approved.

The PRESIDENT submitted to the Convention a communication from the Secretary in relation to the binding of the Journals, setting forth the comparative expense of binding according to different modes.

The communication having been read,

It was ordered, by unanimous consent, that the Journals should be bound in a substantial and durable form, in accordance with the specification submitted.

On motion by Mr. SHOUP, under a suspension of the rules, a resolution was adopted to the effect that each member of the General Assembly be furnished with a copy of the Journal of Debates.

On motion by Mr. SHOUP,

The Secretary was directed to prepare the sheets of parchment—previously ordered—for the signature of members, by Saturday, at 10 o'clock A. M.

Mr. READ of Monroe. I will state to the Convention that I am informed by the printer who is doing the work of the Convention, that the final report of the committee on revision cannot be printed before Saturday morning.

SEVERAL MEMBERS. Well, then, get it done somewhere else.

Mr. CARTER (the rules being suspended) proposed the following:

*“Resolved, That the committee on revision be authorized to get their printing done at any office where it can be done with the most dispatch.”*

The resolution was adopted.

On motion by Mr. HAMILTON,

The rules were suspended for the purpose of enabling him to introduce the following resolution:

*“Resolved, That thirty thousand copies of the Constitution be printed in the English, and five thousand copies in the German language.”*

Mr. KILGORE moved to amend by striking out the word “thirty” and inserting the word “fifty.”

Mr. DICK moved to add, "three thousand in French."

The latter amendment was rejected.

Mr. HOLMAN. I propose to strike out the five thousand to be printed in the German language and insert "ten." I simply wish to make this remark, that the facilities for distributing the Constitution in the German language are of course not so great as in the English language, because there are but very few newspapers published in the German language.

The PRESIDENT. The question will be first on the amendment of the gentleman from Delaware.

Mr. KENT remarked, that it would cost but little more expense to strike off twenty thousand copies more. He thought fifty thousand, at least, ought to be printed in the English language.

The question was taken on the amendment of the gentleman from Delaware, and it was, on a division—ayes 35, noes 34—decided in the affirmative.

Mr. HOLMAN then renewed his amendment, viz.: to strike out "five" and insert "ten," and it was, on a division—ayes 32, noes 46—not agreed to.

Mr. BASCOM offered the following amendment: "And that the copies be equally distributed among the members of the Convention."

Mr. GRAHAM of Warrick moved to amend the amendment by substituting the following: "And that the Secretary of State is hereby requested to distribute the same among the counties in proportion to the inhabitants in each."

Mr. GRAHAM of Warrick remarked, that he did not know there was any use in having the Constitution printed unless the people could get hold of it. The proper way, he thought, to distribute the printed copies, would be to send them to the county clerks, in proportion to the number of polls in each county.

Mr. BASCOM contended that they would be more equally and properly distributed by the Delegates.

Mr. GRAHAM of Warrick withdrew his amendment.

Mr. BADGER. There is another reason why the amendment of the gentleman from Warrick should not be adopted—

The PRESIDENT. It has been withdrawn.

Mr. BADGER. I was going to remark, that in some counties there are not, perhaps, half a dozen German voters, and Delegates here best know the situation of their own constituencies.

Mr. WATTS. It appears to me this whole thing is wrong. We are proposing to make a very liberal distribution, but we forget that we cannot command the necessary funds. I think that when we have completed our work we should hand it over to the Legislature, and let them make the distribution—let them say how many copies shall be printed, and by whom

they shall be distributed, and provide for the payment of the expenses. That duty, it appears to me, belongs to them and not to us.

Mr. HAMILTON. I differ very much with the view taken by the gentleman from Dearborn, and I am sorry to have to differ with him. It appears, from the whole course of the transactions of the Legislature, that their sole object has been to make attacks upon this body; they have traveled out of the line of their duty for that purpose, and I am opposed to putting anything into their hands that we can do ourselves; because it is putting a weapon in the hands of our enemies to do us harm, if harm can be done. I say, let us place the Constitution that we have formed in the hands of the people, so that we may show them what we have done. Let it be distributed by the Delegates themselves. We owe it to ourselves and to the people to take this Constitution in our hands, and to go before the people and explain it to them.

[Cries of "that is the doctrine."]

Mr. GIBSON. Is the resolution open to amendment?

The PRESIDENT. There is an amendment already pending.

Mr. GIBSON. I wish to offer an amendment, and it is, that the Address which has been prepared by the committee be printed with the Constitution.

Mr. WOLFE. I would like to see the Address before I give my consent to the proposition of the gentleman from Clark; it may contain something that I would not approve of.

A VOICE. That is right.

Mr. NILES. Mr. President, I hope the motion to publish an Address with the Constitution will not prevail. I desire to see the instrument, simple and unvarnished, submitted to the people for their deliberate action, without any one-sided argument embodying the views of any one man in its favor, whoever he may be. The publication of such an address would, in my judgment, be an undignified proceeding, indicating a want of confidence on our part, either in the Constitution which we have formed or in the people who are to decide upon it. [Applause.]

For myself, I will say, that I believe it will be adopted by a large majority. I have had my misgivings during the entire session, and have suffered no little anxiety lest we should do more harm than good. Several things are not as I wish they were, but on looking over the whole ground, I am compelled to regard it as a marvel that so large a body has been able to agree upon an instrument combining so much of progress and conservatism. [Applause.] It destroys comparatively little that was useful, and in many respects, is an improvement on our old Constitution. Its merits and demerits will be discussed by the press. The principle of trusting the people has been advocated during the entire session. Let us not, then, show



our distrust by the last act of the session. The Constitution will read for itself. When it is prepared and submitted to the people our work is done. The people will be just as competent to decide upon its merits as we ourselves.

Mr. GIBSON. The argument of the gentleman from Laporte would have more applicability to the resolution that was passed the other day, by which the Address was ordered to be drafted, than it has to this amendment. We have determined that we will prepare and send forth to the people of the State an Address; and the only question now is, whether or not we will couple that Address with the Constitution. I think if we send out the Address at all, we ought unquestionably to send it with the instrument that it is designed to explain.

With regard to the remarks of the gentleman from Sullivan, I have this to say, that before the Address goes forth, this body will have to pass upon it. If the Address be not adopted, of course it will not be appended to the Constitution. If it be adopted, it is not the Address of an individual, however distinguished he may be, but of this body.

A VOICE. It is not the Address of this body yet.

Mr. GIBSON. When adopted it will be if adopted by only a majority of one. And if we send out the Constitution at all, the Address should accompany it, not only in English but in German, or whatever language in which it may be published.

Mr. COOKERLY (in his seat). Oh, pshaw!

Mr. GIBSON. Then lay aside your demagogical votes for printing in German. Sir, if there is any portion of our citizens for whom we should order the printing of the Constitution, it is for those who have just come into the country, and do not understand our laws and system of government. And if you send out the Address at all, send it as well with those copies of the Constitution that you print in the German language as with those you print in the English.

Mr. STEVENSON. I concur in every sentiment that has been uttered by the gentleman from Laporte (Mr. Niles). This Constitution I believe will be one of the best that has been formed lately in any one of the States of this Union. And, sir, it is an expression of our doubts regarding its merits when we couple an address with it. I want it to go to the people alone, without a remark from us, without any evidence that we are afraid it will not be well received. I believe that the people will adopt it; and we will only endanger it by attaching to it anything that does not legitimately belong to it.

Mr. HOVEY (in his seat). If it cannot stand on its own merits, let it fall.

Mr. STEVENSON. If it cannot stand on its own merits, as the gentleman suggests, let it fall. In a paper published in the county in

which I live, I have observed it is charged upon the Convention that we are afraid to let the Constitution go forth alone. It is a paper which, though professedly neutral in politics, is published by a Democrat.

A MEMBER. It must be of the neuter gender.

ANOTHER MEMBER (*sotto voce*). Or perhaps the *epicene*. [Much laughter.]

Mr. STEVENSON. Well, it only shows the feeling of the country; and I for one say that when we publish and lay the Constitution before the people, no arguments of ours should accompany it.

Mr. FOSTER. When the resolution authorizing the preparation of an Address was introduced by the gentleman from Posey, I thought it was right and proper; but at the same time, the gentleman noticed emphatically that it would be attended with no expense, inasmuch as it would be published by all the newspapers in the State. With that understanding I supported the resolution. I certainly supposed that an address emanating from a committee of this Convention might very properly be attached to the Constitution, although I have great confidence in the intelligence of the people, particularly in the American portion. But if we are to incur the expense of having this Address published, as proposed, in connection with the Constitution, I am entirely opposed to the proposition.

For my own part, I am for having it published in the newspapers; and there may be as long and elaborate arguments for and against the Constitution as they may please to publish, and the more of them we have the better. I am willing that the Constitution shall be submitted to the people without any adventitious aids to assist in its adoption; and I venture to say, it will be adopted by fifty thousand of a majority. I have sometimes found that men of established reputation have become convinced that they were in error; yes, sir, and after reflection I have frequently changed my own views—[cries of "consent"]—yes, sir; and none but a fool would refuse to set himself right when he became convinced that he was wrong. But, sir, I am convinced that nineteen-twentieths of my constituents will approve our work; besides, sir, I intend to explain myself on the stump. [Applause.]

Mr. READ of Clark. I am in favor of the adoption of this resolution. The expense will be nothing in comparison with the advantage our constituents will derive from having, in an official form, the exposition that may be drawn up of the benefits that will flow from the changes which have been made in the Constitution. But, sir, whether this resolution be adopted or not, I am for the Constitution that we have made. ["Consent," "consent."] Much, sir, has been said about the complaints made by our constituents in regard to the time

that has been occupied in making this Constitution. Sir, all the complaint that I have heard from my constituents is, that they are afraid we will not take sufficient time to do our work as it should be done. Their constant appeal is, to exercise patience and deliberation. I have not heard a murmur from old Clark about a waste of time. [Applause.] They want a good Constitution; and I, sir, as a representative in this Convention, if I did not believe that we had made a good Constitution—if I did not believe that we had made one of the best constitutions on earth—I would ashamed to present myself before my constituents. As to the adoption of the Constitution by the people, as my friend on my right has said, if there be not a majority of fifty thousand dollars in its favor [laughter]—I mean voters [loud applause], I would consider that our time had been spent in vain.

Much has been said about the labors of this Convention. Now permit me to say to you, and through you to the people of Indiana, that I never knew a deliberative body labor harder or closer than the Constitutional Convention of Indiana. ["Consent."] I never knew of an instance, sir. I have served all my life, occasionally, in the councils of the State and Nation, and I declare to you that I never was so closely engaged—that I never lost so little time, in any deliberative body. Why, even, sir, on Christmas day, and on New Year's day, this Convention was in session, and it was the first time in my life that I ever sat in a legislative body, or in a body assembled for deliberative purposes, on either of those holidays. This Convention, sir, in point of labor, has exceeded, far exceeded, any body of the kind that I have ever known or heard of. And, sir, let the people grumble, let them murmur if they will, but we may justly feel a consciousness about our hearts that we have labored long and hard, and we now present to them a Constitution for their approval or rejection. And, sir, whatever their decision may be, whether it be of approval or condemnation of our conduct, I for one am willing to abide the result. Look around at our sister States, in which conventions have been held for a similar purpose, and compare the time that has been consumed by them with that consumed by us; compare the result of their labors with the result of ours, and I will venture to say that before a discriminating constituency we shall be applauded. And, sir, the wonder will be, that a hundred and fifty men have been able to close their labors so satisfactorily, and in such a short space of time.

Mr. COLFAX. As this appears to be a kind of conventional class meeting, and as gentlemen on both sides of the House have expressed their opinion as to the work which we have now about completed, I may be pardoned for adding a few words.

For four months the members of this body

have been actively engaged in the performance of the duties they were commissioned to execute; and although for at least two months of that time, they have been the target of attack, of ridicule, and of sneers, I can bear testimony that the great bulk of the delegates here have faithfully and assiduously labored for the good of the whole State—not looking to partizan advantages—not intriguing for personal advancement—not stooping to petty tricks—but aiming to make a Constitution for the whole people now, and for future generations hereafter. And, though it may have been an expensive Convention, the State will bear us witness that it was not ourselves who called together the large number of members now sitting in this Hall, and that we had no agency either in fixing the number who should be elected, nor the compensation they should receive.

Our labors are now virtually at an end, and we can look back at the instrument which, day by day, by the votes of this body, has grown into a Whole. And, in thus looking back at it, surveying the whole ground and recollecting the diverse opinions and interests which had to be adjusted in its formation, I do not hesitate to say now, as I shall hereafter, that it is the most liberal of all the new Constitutions which have been recently framed, and that the whole work, thus cemented together, forms a building of which its workmen need not be ashamed. [Applause.]

I do not say that I agree with every decision that has been made—every section that has passed. Probably no one member can say that every desire and opinion of his has been gratified or adopted. Not even the wise and patriotic men who framed our National Charter, could say that. But they did say, as to their work, as we can say of ours, that it was agreed upon, section by section, in good faith—the voice of the majority ruling, as in a republican Nation State it ever should rule. And, as a Whole—considered all together—believing that this Convention has steered judiciously between Scylla and Charybdis—has avoided the extreme of ultra Radicalism on the one hand and ultra Conservatism on the other—and has been planted on progressive ground, where it looked forward to and acted for the future as well as was benefited by the wisdom and experience of the past—I shall give it my signature and vote without faltering or hesitating. [Applause.]

It is well known, Mr. President, that I have been disappointed with others, in not securing the incorporation of the Homestead Exemption in this Instrument—but I am gratified to add that its principle has been at least faintly recognized—that no prohibition against it is here inserted, and that its friends can still appeal to each succeeding Legislature for its adoption. The persevering friends of Woman's Rights have failed also in securing the insertion of their proposition in the Constitution, but neither



was any prohibition against it adopted, and they, with us, have still the power left to appeal to the General Assembly. And more gratifying than all things else, has been the spirit of compromise which has prevailed here, which has governed us in so many of our decisions, and by which, without sacrifice of principle on either side, some of the most difficult questions were adjusted.

We all remember the Grand Jury question, and the debate upon it, when its friends and opponents warred together in the encounter of arguments, and the scale was so nicely balanced, that none could tell which would triumph. And we remember too, that finally, fully three-fourths of the Convention agreed to a compromise—that fairest of all compromises—placing the whole question of its continuance, abolition, or modification with the people themselves.

For weeks we debated the difficult question of the Currency—and the conflicting views of the various portions of the State seemed to forbid its amicable settlement. And yet the spirit of compromise, which has abided constantly with a majority of the members of this body, finally calmed the agitation and adopted a proposition which, subsequently, four-fifths of this body refused to re-consider or impair.

The details of our Judicial System—the jurisdiction of the Circuit Courts—the transaction of the Probate business, &c.—formed another vexed question of debate. And that, like the Grand Jury question, was finally referred to the arbitrament, and placed entirely within the control of the Legislature.

There was still another question—one that seemed impossible to be compromised—which involved, in the minds of many members, a grave question of humanity. I allude to Negro Exclusion. And yet, even there, the final result was to submit it separately to the people, that its positive insertion in the Constitution, might not prevent those from supporting the instrument, who otherwise would have felt themselves prevented from so doing.

In what other Convention has this respect for the feelings, opinions, views of delegates been so strikingly manifested? And, does not this prove that its members have been laboring, not so much to secure the triumph of their own peculiar sentiments, as to adopt harmoniously, faithfully, honorably, such an Instrument as its framers could all approve, and as the people could all endorse? [Applause.]

Thus far, our constituents—the people of the State—whose approval is to breathe the breath of life into this instrument, or whose disapproval is to consign it to oblivion—know comparatively but little of what has been the result of our labors. In a few days they will see it as a symmetrical Whole. They will examine its details, section by section, carefully. They will find its spirit republican. They will find its provisions in regard to our great works, free

from any illiberal or antagonistical features. They will find it generally both progressive and liberal. And though each one of them may discover some minor point in which he would have preferred a different decision, I have no doubt but that, taken altogether, they will cheerfully ratify it. And, if not submitted too soon—if time is allowed for the prejudice which has been industriously engendered against the members of this body for its long session, to pass away—if the new Constitution is tested upon its own merits—though other gentleman may attempt to fix the majority it will receive, I can say that I do not believe five counties out of the ninety in the State will cast a majority of their votes against it. [Applause.]

Mr. PETTIT. Gentlemen seem to feel rather sensitive as to what may be said about them in consequence of the length of time that has been spent in performing the work for which they were sent here. I can say for myself, sir, that I have no fear of being blamed for any delay that may have occurred, for any protraction of our work, in fact for anything I have done here; for, sir, I feel a perfect consciousness that I have labored from the commencement of our session to the end, with a purity of motive and intention that has not been surpassed by any other man in this or any other place. Whether the result of our labors may be satisfactory to the people of the State or not, I, more modest than the gentleman from Clark, am not prepared to say. But I have not risen to detain the Convention long. It has been said here, that the proceedings of this Convention have been commented upon, and that we have been traduced in the newspapers for occupying so much time in the performance of a work which seems to be supposed to be a work which can be accomplished in a few days. I scarcely ever take notice of anything that appears in a newspaper, but I wish to show to the Convention that there are two sensible editors in Indiana.

Cries of "Consent! Read it! Read it!"

Mr. PETTIT proceeded to read extracts from comments made by the editors alluded to, in reference to the action of the Convention.

[The reporter was not furnished with the extracts.]

Mr. WOLFE. I am opposed to the amendment of the gentleman from Clark, but I do not oppose it upon any other ground than this: that it appears to me it would not be quite becoming in us to vaunt the praise of our own work. Before voting upon the proposition I will say one word in reference to the manner in which the business of the Convention has been conducted. I will not undertake to speak so much for others as for myself, but I can say, so far as I am concerned, that during the four months we have been here I have missed but one vote, and there has never been a call of the Convention that I have not been present. It is true that some gentlemen have been called

home by unavoidable circumstances, and others have been occasionally absent from the Convention; but taking the whole session together, I presume there is no body of a similar character the members of which have been more faithful in the discharge of their duties than the members of this Convention. And, sir, I will undertake to say that when the Constitution that we have formed comes to be submitted to the people it will recommend itself, and in recommending itself it will recommend the delegates by whose labor it was constructed. I have no fears on that head. Gentlemen may talk about the indignation of the people being directed against us for a waste of time. In regard to that I have only this to say: that there is no instance within my knowledge, where so much work has been accomplished in the same length of time. If my constituents complain at all, my only apprehension is that they will complain either that our work has been hastily and imperfectly done, or that we have attempted to accomplish too much. But whatever may be the popular sentiment at the moment, I feel an abiding confidence that after an opportunity shall have been afforded for a due appreciation of the merits of the Constitution we have formed, we shall receive that commendation which is the meed of faithful servants. And although temporarily the work of our hands may not be appreciated, yet ultimately it will, like the rose referred to by the French poet, be recognized in all its purity and perfection. I may as well give you the poet's own lines, and with the permission of the Convention I will do so, as more completely illustrating the comparison which I have instituted: "*Une roseau que la tempete couche par terre; se releve desque le vent ne souffle pas.*" [Applause.]

Mr. DOBSON. I do not know whether this debate may be considered a class meeting or a love feast or not; it certainly appears so, if we may judge from the evidence we have had of the gift of tongues. I doubt very much whether anything of the kind has occurred since the days of the Apostles. If any really doubt whether the people of Indiana will ratify or adopt this Constitution, he need only attend the lectures which are being delivered nightly in the legislative Hall by Fanny Lee Townsend, to be convinced. I undertake to say that after all we have heard to-day, that this Constitution will be ratified by so large a majority that the minority will be "no where." As to our remaining in session so long, I have only to say that a large portion, at all events, of the people of the State, and that portion the reflecting portion, expected us to remain here until we had made a good Constitution. It was not expected by them that we would have been able to complete such a work as that in which we have been engaged, within a shorter period than we have occupied. I told my people at the very first, that I had no expectation of being

home before the middle of January. When you set about reforming and re-constructing your government from the very foundation, it is to be expected that it will require a considerable time if you intend to do it in a proper manner. And in regard to Constitution-making, or anything else, this way of slighting the work, finishing it up in a hasty manner, is not what the people meant. They do not want it constructed in such a manner that it will fall to pieces by its own weight. They want it made strong and durable. I will say that there are some provisions in it that I would rather not have there, but I have sufficient confidence in the intelligence of this Convention to believe that the judgment of a majority is more to be relied upon than my own, and I am willing to take the Constitution as they have determined it shall be. As to what has been said or done by the Legislature in reference to the length of time that has been occupied by the Convention in its labors, if they can make any capital out of it I am willing they shall do so. Perhaps they have need of some. No doubt they need it more than we do. As to this being a "slaughter house" of politicians, I am of the opinion that more butchery has been committed, or rather self-immolation, in the Hall over the way, when attempting to throw discredit upon the course pursued by this body, than has occurred through any action of ours. I came here with the intention and expectation of remaining and making a Constitution that would be acceptable to the people; and, so far as I am concerned, I am entirely unassailable by any shafts from that quarter. It would have been as well if the representatives of the people, the *ai pollos*, who were sent here to legislate, had attended to the business of legislation without traveling out of their way to suggest, without any reason, causes of complaint against those who were delegated for a purpose which was altogether beyond their sphere.

Now as to publishing this address in connection with the Constitution, I think the gentleman from Sullivan is right. We do not yet know what the address will be, and I for one am not willing to vote in the dark. I want to examine the address before I vote for its publication. To ask me to vote for it in advance, is asking too much. It appears to me there is no necessity for our pointing out the merits of the Constitution we have made. I do not think we need describe the Constitution. Let it speak for itself.

A VOICE. Move to lay the resolution on the table.

Mr. DOBSON. I shall not make any motion about it, for it is a matter of indifference to me whether it be adopted or not. There is one thing, however, about which I have not a doubt; and that is, that if we submit our Constitution to-morrow, the people will ratify it.

Mr. GIBSON. At the suggestion of my



friends, as there seems to be some opposition manifested and some weight in the arguments thrown out, I will withdraw my motion. ["Consent."] While up, as this seems to be a political class meeting, in which all are giving their experience, I will take occasion to say that I fully agree with the sentiments of the gentleman last up. I believe this is the best Constitution that has been formed on this continent. It is true that there is no one member who is entirely satisfied. Each one of us has, perhaps, been called upon to sacrifice some favorite idea or object, for the good of the whole; but, taking the Constitution in the aggregate, it is perhaps as unexceptionable as it could well be made.

**MR. GORDON.** Having spent a couple of hours in glorifying ourselves, I think we may very safely omit the balance of the puffing. If we deserve applause, let it be bestowed by our constituents. I therefore move the previous question.

**MR. STEELE** rose and addressed the Chair.

**SEVERAL MEMBERS.** Withdraw the previous question.

Cries of "Steele! Steele! Hear him! Hear him!"

**MR. GORDON** withdrew the demand for the previous question.

**MR. STEELE.** Mr. President, I desire to say to this Convention that my being here among you, is perhaps an incident more extraordinary than that of the presence of any other member of this Convention. I will say further, that I drew up my own platform and presented it to the people, and I have the satisfaction of knowing that of the propositions that I submitted as being proper for adoption by the Convention, the greater part of them have been fully and amply confirmed by this body. [Applause.] And among them the one that I considered of the most importance, that future amendments to the Constitution should be left in the hands of the people without calling another Convention, has received your approbation. That section alone has merit enough to save the Constitution and to insure its adoption, if there were nothing else in it that would recommend it. I have had a desire for the last eight days, and a strong desire, gentlemen, to leave you.

Cries of "No consent."

**MR. STEELE** (continuing). As a faithful servant of the people, I have been with you during the whole session of the Convention. I had no other object in view than the welfare and advancement of the whole interest of the people of Indiana. [Applause.]

**A VOICE.** Go it Steele! Them's the licks!

**MR. STEELE.** I believe in allowing every man to think and act for himself.

**A MEMBER.** That is the doctrine.

**MR. STEELE.** I say, let every voter of the State examine the Constitution for themselves,

and I pledge myself to-day that the voters of Indiana will adopt the Constitution.

Gentlemen, with these remarks I bid you farewell; but God knows that when I leave you my heart is still with you. I have been associated with you in the best of feelings from the commencement. My wish is that you shall enjoy all the blessings of life, and I am confident that you will not fail to be found always, as you have proved yourselves to be here, devoted to the best interests of the country.

Cries of "Kelso! Kelso! Gregg! Gregg!"

**MR. MILROY** proposed to amend, so that every newspaper in the State should be authorized to publish the Constitution.

**MR. KELSO.** I have no doubt but that every newspaper in the State will publish the new Constitution, and I have no doubt that it will be read by every voter in the State, without the necessity for our publishing it in a separate form. I cannot agree with gentlemen who say that this Constitution is so very excellent. If there is anything in it that will save it from utter condemnation, it is the clause spoken of by the gentleman from Wabash, which puts it in the power of the people to make amendments to it without calling another Convention for that purpose; without that clause I would have serious doubts of its being adopted. I deny the position of the gentleman from St. Joseph, that it is the most liberal Constitution that has been adopted within the last six or eight years. I say that it contains a greater amount of stringent provisions, provisions that entrench more on the rights of the people, upon the general liberties and privileges of the people, than any Constitution which has been adopted during the last fifteen years.

**A VOICE.** That is your opinion.

**MR. KELSO.** It is an opinion, at all events, that is fearlessly expressed, and I ask no favor of any man who differs with me. It is my privilege to express my opinion here and elsewhere, although I may differ with the greater lights of the Convention. Whether my opinions meet the approval of other members of the Convention or not, I have the satisfaction of knowing that I have not acted in a spirit of hostility towards any man, and where there is an honest difference of opinion there is no occasion for offense. But let me say to you, that if this Constitution goes out to the people containing a clause which prohibits the people themselves through the Legislature from making contracts, borrowing money, &c., when they may deem it proper to do so, my word for it it will meet with opposition.

**A VOICE.** That provision is the very glory of the instrument.

**MR. KELSO.** Gentlemen may think it will save it, but I can assure them it will not. Another thing is, the people are prohibited from even arranging or managing their country funds to suit themselves—they are not permitted to

transact the smallest matter that has connection with the management of their own money. Such provisions are extremely illiberal, and indeed such is the general character of the instrument—it is illiberal in the extreme. But as to this being the slaughter house of members of this body, it is all a mistake. It is natural enough for men to do what has been done here; it is for them to endeavor to make themselves popular. I would not want a better hobby than this, if I desired to secure for myself a seat in the Legislature permanently. If I had no higher aspirations, I should wish for nothing better than to go before the people with the amendments that have been made to the Constitution.

Mr. BORDEN. What is the proposition before the Convention?

A VOICE. Oh, nothing at all.

[Calls for "GREGG, GREGG."]

Mr. GREGG. I do not know, Mr. President, what is the particular subject now before the Convention. But as this appears to be a kind of general class meeting, in which members are expected to relate their experience, and give in their adhesion to the forthcoming Constitution in advance, it may be expected that Jefferson county should respond on this occasion. I have been waiting to hear from my colleagues on this subject, but as they appear to remain silent, I feel as though I ought to say something. And I feel this necessity the more, as it was intimated to me on yesterday, by a very respected friend of mine in this body, that I was understood to be opposed to the adoption of the new Constitution by the people, and that I was going home to take the stump against it. I take this occasion to say to you, sir, and to this Convention, that the intimation is wholly gratuitous and without the least foundation, as I have never entertained any such intention. It is true there are some provisions that do not entirely meet my approbation, but taking the instrument as a whole, I am satisfied with it, and so I believe are my colleagues, as well as my constituents.

Something has been said about the assiduity with which the members of this Convention have devoted themselves to their public labors during our long protracted session. Now, this is all well enough. To be sure I have heard it intimated that Jefferson county was not always at her post, and that she was not always fully represented upon this floor. But no one here, I apprehend, will give ear to such an unjust and unmerited imputation.

[Cries of "No! no! Certainly not."]

And again, I have heard it more than insinuated, that in regard to certain leading questions, the members from Jefferson—

"Have wired in and wirel out,  
And left a body still in doubt,  
Whether the snake that made the track,  
Was going South, or coming back."

But this I regard as a slander upon myself and colleagues, as we claim to have been not only industrious and vigilant, but as uniformly consistent in all things.

Much has been said, too, about the intelligence and patriotism of the body, all which I am willing to endorse. But as has been remarked by others, heretofore, I am not one of those who believe that all intelligence, patriotism and public virtue will evaporate and expire with the dissolution of this body. I believe there will still be found among this people enough of general intelligence already salted away for future use, without making any very extensive drafts upon this body. I believe there will still be found among the people a little germ of patriotism and public virtue, that shall live and flourish in perennial verdure, long after the principal actors in this Convention shall have gone down politically to the tomb of the Capulets, and been forgotten. With these remarks, I will detain the Convention no longer.

Mr. BORDEN. I hope the Convention will consent to have the new Constitution printed in all the papers of the State, and I think we could not adopt a better course to disseminate a knowledge of its provisions among the people of the State. And, I think that we ought to allow to those newspapers a reasonable compensation. I will state that in Michigan, the Convention there passed a resolution requesting each newspaper in the State to print the amended Constitution, and to publish it in successive issues of their paper, and for doing so, they were allowed twenty dollars each.

In regard to the number of copies which should be printed in the German language, I trust the largest number proposed will be agreed on. There is a large number of Germans in the section of the State in which I reside. I think that at least fifteen thousand copies should be printed in that language. It appears to me that this is due to those persons who have been admitted to the rights of citizenship, and who cannot write or speak the English language. But it is also due to those who by this Convention, may be admitted to the rights of voters.

The question was taken on the amendment to the amendment, and it was decided in the negative.

The question being on the adoption of the amendment, it was concurred in.

The question then being on the adoption of the resolution as amended,

Mr. DOBSON. It does seem to me that the amendment which has been adopted requiring the Debates to be distributed equally among the members, ought to have included a provision directing the distribution to be made at the same time that the laws and journals of the Legislature are distributed.

Mr. WALPOLE. I move to amend the resolution so as to direct the Secretary of State,



immediately on the publication of the Constitution, to cause them to be disturbed.

Mr. PEPPER of Crawford. I will state that there is a way by which we can get these documents earlier than the time when the laws are distributed. In the month of March, the Treasurers of the several counties have to come up here to make their reports, and it will be an easy matter for them to convey to each county the number of copies that belong to each and distribute them there.

Mr. WALPOLE modified his amendment so as to direct the Secretary of State to forward to each member of the Convention copies of the Constitution, by such facilities as he may see fit to adopt.

The amendment as modified, was adopted.

Mr. LOCKHART moved to strike out five thousand in German, and insert fifteen thousand. Sir, five thousand will do but little good; there are at least six thousand reading Germans in the judicial circuit in which I reside, but few of whom can read English. I desire to lay the Constitution before them in a language which they fully understand.

Mr. BRIGHT. We are not doing much just now, and there is business to be done by a select committee; therefore, I move that the Convention adjourn. But first, I will say in reference to the printing of the new Constitution in pamphlet form, or otherwise, I think it is a thing that can be provided for at a less expense by the Legislature. It may be provided, no doubt, that the Constitution shall be printed in the three principal newspapers in Indianapolis, and through them be communicated to all parts of the State.

Mr. HAMILTON. I hope it will be printed in a separate form. I am somewhat surprised to hear the suggestions of the gentleman from Jefferson, that he would be in favor of leaving it to be provided for by the Legislature. It is perfectly obvious, I think, that we ought not to leave to them any thing that we can do ourselves. They have kept up a constant series of attacks upon us ever since their session commenced. I have no hesitation in saying that if we do not provide for the publication and distribution of the Constitution ourselves we have not done our duty. We owe it to ourselves to take care that this matter be not neglected, as it certainly will be if left to the Legislature.

Mr. KENT. I will state for the information of the Convention that this very question of printing has been before the Legislature, and they decided to leave it in the hands of the Convention. We would, at all events, unquestionably have the power to authorize the printing and distribution; and it is right that we should direct this matter ourselves.

Mr. WATTS. I am sorry to see my friend from Allen so sensitive on the subject of the action of the Legislature. When he comes to reflect that some members of that body have

offered petitions, and moved that they be read a second time now, it should be a sufficient apology for them, and the gentleman should let them pass without further notice, unless we say in the language of Scripture—"Oh Lord forgive them, they know not what they do."

Mr. WALPOLE. I hope the Convention will adjourn so that the select committee will have an opportunity to perform their work.

A MEMBER. The resolution is not yet adopted.

The PRESIDENT. The Secretary informs the Chair that there is nothing more on the files.

Mr. WALPOLE. I was about remarking that there is a committee of ten appointed to report in reference to the time and manner in which the Constitution shall be submitted. I hope that committee will act to-day.

Mr. SMITH of Ripley. In reference to the printing and distribution of the Constitution it is a matter that is going to be attended with a great deal of expense, and it will require some consideration. I think the Convention had better let the resolution lie over until to-morrow.

The question being taken on the adoption of the amendment to the amendment, it was decided in the affirmative.

The question was then taken on the adoption of the amendment as amended, and it was decided in the negative.

The question recurring on the adoption of the resolution as amended,

Mr. CLEMENTS moved to amend by adding the words—

"In proportion to the number of voters in each county."

The reason (said Mr. C.) why I propose the amendment is this: I contend that the people are not equally represented here. I represent two thousand voters, whilst some gentlemen here represent but a thousand or eight hundred. If the copies of the Constitution are to be distributed in proportion to the representation on this floor, my people will not get their share.

A DELEGATE. I will give you some of mine.

Mr. CLEMENTS. We do n't want yours, we want our own. All that I ask is that there may be something like an equal distribution, so that all the voters of each county may be supplied.

Mr. KENT demanded the previous question.

The demand for the previous question was seconded by the Convention, and the main question was ordered to be now put.

The question being on the amendment proposed by the gentleman from Davies,

It was decided in the negative.

The question being on the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

Mr. WATTS, by unanimous consent, introduced the following resolution:

*Resolved*, That each surviving member of the Convention of 1816, be tendered a copy of the Debates and of the Journal of the Convention."

The resolution was unanimously adopted.

Mr. BRIGHT moved that the Convention adjourn.

The Convention refused to adjourn.

Mr. HITT. I have been extremely anxious to have one copy of the Debates and Proceedings of the Convention deposited in the library of each county; and, with the permission of the Convention, I will offer the following:

*Resolved*, That one of the three copies of the Debates, &c., directed to be deposited in the office of the clerk of each county, be sent to the county libraries of such counties."

Mr. PETTIT. I want the attention of the Convention for one moment. We are not doing any good here, but are merely wasting our time with these resolutions, and there are three or four important matters yet to be attended to by committees, beside what has to be done by the committee on revision. A committee has been announced this morning that is to take an important subject under consideration. We ought to adjourn and allow those committees to meet, for they will not meet unless the Convention adjourn. I move, therefore, that the Convention adjourn.

The motion was agreed to, and,

The Convention adjourned.

#### AFTERNOON SESSION.

Mr. MORRISON of Washington asked leave to introduce the following resolution:

*Resolved*, That the State University, New Albany College, Vincennes University, the University of Notre Dame Du Lac, Asbury University, Wabash College, Hanover College, Franklin College, and the North Western University, are each hereby presented through the Secretary of State, on the requisition of their President, with three copies of the Debates, and three copies of the Journal of this Convention, one copy of each for the use of the libraries of said institutions; and one copy of each for the use of the libraries of the literary societies connected therewith; and one copy to each of the States of the Union.

The order of business was suspended and the resolution having been read,

Mr. SHOUP moved to amend so as to distribute one copy to each of the States of the Union.

Mr. MORRISON accepted the amendment.

Mr. KENT moved to amend by inserting "New Albany College."

Mr. MORRISON of Washington. I will accept the amendment of the gentleman from Floyd.

Mr. COLFAX. I wish to draw the attention

of the gentleman to the fact that there is a college in St. Joseph county, at South Bend.

Mr. LOCKHART moved to include "Vincennes University."

Mr. HAWKINS. I move to insert "Fort Wayne College."

Mr. PETTIT. I am afraid we are attempting to imitate Satan, when he took our Savior to the Mount and promised that he would give him all the kingdoms of the world, which lay spread out before him, if he would fall down and worship him. But he was replied to, I believe, that it was none of his to give—that he did not own a foot of it. [Much laughter.]

[Cries of "Try it again."]

[Prolonged laughter.]

Mr. PETTIT. Let the storm calm a little, then I will try it again. [Applause.]

I am afraid, sir, to speak a little more seriously, that we are occupying time in attempting to give that which does not belong to us—we are proposing to give away to those institutions things that are not ours—things over which we have no rightful control. Upon the completion of our work here, we are directed by law, to deposit the result of that work, with a copy of the proceedings of this body, in the office of the Secretary of State. We have nothing more to do with them—it is for those who come after us to say what disposition shall be made of them. I believe that the distribution of our proceedings is a thing we ought not to undertake. We have incurred large expenses, it is true—more, perhaps, than was absolutely necessary, although I am not disposed to cavil about a small expenditure, if we make the proper return by framing a good Constitution. But, I think, we ought not to go to such an extent as it is proposed we shall, in printing, binding, publishing, distributing these documents—it appears to my mind that it would be wrong. Let these institutions come up to the Legislature and ask for a copy, if they want one; or let the Legislature voluntarily distribute them in such a manner as they may see fit. Unless some gentleman desires to make further remarks, I will move that the resolution be laid upon the table.

Mr. NEWMAN. A single word, if you please. This resolution may succeed indeed I think it very probable that it will; and for the purpose of making it a little larger, I will move to add the words "the White Water Female College."

Mr. MORRISON of Washington. It was not the design of the mover of the resolution to embrace the female colleges. The object of this resolution was to place the book within the reach of the young men of the State. It is known to every gentleman who understands anything of the organization of colleges, that the young men connected with them, are divided into two literary societies; and they must know, also, that those young men will draw largely from these Debates for subjects of dis-



cussion in their societies. And, in order to enlist their sympathies, I think we could not do better than to give the small donations here proposed, to these institutions.

Mr. SPANN. If we have to go the whole figure, and have the means, I would entertain no objection that all these institutions should be included. But while I have no desire to prevent the journals of our proceedings and debates from being laid before the people everywhere, yet I must say to the gentleman that I have no inclination to make a bid for the sympathies of the students of any institution. As the gentleman from Tippecanoe says, I think we are about to give away that which is not ours to give, and what our Secretary tells us to-day, we actually have not; for there will not be a sufficient number to supply all these requisitions. I really cannot see the propriety of our being so very liberal in offering them to literary institutions—they may purchase copies if they want them.

Mr. SHOUP. I think the Clerk announced this morning, that there were about two hundred copies yet undisposed of. I would prefer that the disposition now proposed, should be made of them, than any other that can be suggested.

The PRESIDENT (Mr. McFarland temporarily occupying the Chair). The Chair would state that since the announcement, that there were two hundred copies remaining, one copy has been voted to each member of the Legislature, and one to each of the survivors of the Constitution of 1816.

The SECRETARY. There are yet about a hundred copies remaining.

Mr. KENT. I move to strike out the copies proposed to be given to the several States of the Union.

Mr. BASCOM. I have an amendment that I wish to offer. If this resolution is going to pass, I desire that my county shall not be overlooked. Although we have not gotten a college, yet we have a high school; and I am opposed to this system that seeks to prevail on all occasions, of fostering colleges at the expense of the smaller institutes of learning.

Mr. MORRISON of Marion moved that the amendments be laid upon the table.

Mr. WATTS. I move to amend the motion by including the resolution.

A division of the question was asked for, and, the question being first upon laying the amendments on the table, it was decided in the affirmative.

The question then being upon laying the original resolution on the table, it was decided in the affirmative.

So the resolution and amendments were laid upon the table.

Mr. OWEN, from the committee on revision, made a report: He explained the verbal alterations that had been made by the committee, and,

On motion by Mr. PETTIT,  
The report was concurred in.

Mr. KILGORE moved that the rules be suspended in order to enable him to introduce the following resolution:

“Resolved, That any member of this Convention, who may have on hand a written speech, or who may desire to prepare one, shall have the privilege of publishing the same in the book of Debates.

[Cries of “No, no, no.”]

A single remark (said Mr. Kilgore). I have no written speech on hand; and, sir—

Mr. PETTIT (without rising from his seat). The question upon suspending the rules, is not debatable.

Mr. KILGORE. The gentleman cannot object without addressing the Chair. [Laughter.]

Mr. PETTIT (rising). I hope the gentleman will permit me to explain.

Mr. KILGORE. It is not debatable. [Renewed laughter.]

The question was taken on the motion to suspend the rules, and it was decided in the negative.

So the rules were not suspended.

Mr. MOORE moved a suspension of the rules in order to enable him to introduce a resolution.

The Convention refused to suspend the rules.

Mr. PETTIT. I am satisfied that no good can result from our remaining here. I believe that there is no report to be made from any committee. I think then we had better adjourn.

Mr. COLFAX. I have a request to make of the Convention. I was appointed on the committee of one from each Congressional district, to prepare an address to the people of the State, relative to the Constitution; but circumstances of an imperative character require that I should leave town to-morrow; I, therefore, ask leave to be excused from serving on that committee.

The gentleman was excused.

Mr. PETTIT. There are two committees that have important business before them, neither of which is prepared to report. There is one committee now out—or they ought to be—attending to their committee business in reference to submitting this Constitution to a vote of the people, and regulating the time when the Governor, and other officers, shall be elected. And, sir, there is another committee which has had an important subject submitted to it—and it must be apparent that this Convention can do no profitable business this afternoon—and as it may be reasonably expected that at the next meeting of the Convention, these committees will be prepared to report, I move you, therefore, that the Convention adjourn.

The PRESIDENT. Before the question on the motion of the gentleman from Tippecanoe is put, the Chair would appoint the gentleman from Laporte (Mr. Niles) to act as a member of

the committee, which has been appointed to prepare an address to the people relative to the new Constitution, in the place of the gentleman from St. Joseph (Mr. Colfax) who has been excused from attendance.

The question being put on the motion of the gentleman from Tippecanoe, it was decided in the affirmative;

And then the Convention adjourned.

#### FRIDAY, FEBRUARY 7, 1851.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

Mr. OWEN made a report from the committee on revision.

The report having been read, and the changes in the phraseology pointed out and explained by the chairman of the committee, (Mr. Owen,) it was concurred in.

Mr. KELSO. I am about to ask a favor of the Convention, viz.: to be permitted to introduce a resolution.

[Cries of "Read it! Read it!"]

I will do so. It is merely to supply a mistake or an omission in a resolution adopted yesterday. We passed a resolution on yesterday, allowing each member of the General Assembly, a copy of the Debates and Proceedings. That was very right and proper. The custom has been, however, in such cases, that the officers of the legislative body should also be complimented in the same manner. I now take occasion to say that there are some four or five door-keepers to the Convention, and I will venture to say that they have been as faithful in the discharge of their duties, as have been the members of the General Assembly, or of this Convention, and it is due to them that they should each have a copy.

Mr. PETTIT (without rising from his seat). Certainly, there is no objection to it.

The order of business was suspended, and the resolution having been read,

Mr. MORRISON of Washington moved to amend by adding "and that one copy of the Debates and of the Journal of the Convention, be presented by the Secretary of State, to each of the colleges in the State."

This, he remarked, would only require about seven or eight copies.

Mr. KELSO. I am very much inclined to think that it is a good amendment. The students in these institutions will take a great deal of interest in reading the debates.

The question being taken on the adoption of the amendment, it was decided in the affirmative.

So the amendment was adopted.

Mr. BASCOM moved to amend by adding "one copy to the Bluffton High School."

Mr. GORDON moved that the amendment be laid upon the table.

The motion was agreed to, and the amendment was accordingly laid upon the table,

The question being on the adoption of the resolution.

Mr. MOORE inquired whether the door-keepers of the Legislature were included.

Mr. KELSO. Certainly; that is the intention.

Mr. MOORE. Then I move to strike out that part of the resolution.

Mr. GORDON. I would like to know whether the proposition of the gentleman from Switzerland includes the Stenographer?

Mr. KELSO. Certainly; he is an officer of the Convention.

Mr. PETTIT. The Stenographer ought, of course, to be included; although I maintain he is not an officer of the Convention.

Mr. HOLMAN moved to amend the resolution by inserting the words "Lawrenceburg Literary Institution."

It will be observed (said Mr. H.) that the resolution in its present shape, has reference to incorporated colleges. I wish to state to the Convention, that Lawrenceburg Literary Institution is not incorporated, yet it is as creditable a literary institution as the State of Indiana can boast of; and there are as many young men there receiving a course of instruction as in any educational institution in Indiana. I hope that gentlemen remembering that a very large section of the State of Indiana is immediately identified with the members of that Institution, will not object to this amendment. I understand that the number of the students in that institution exceeds the number in any other institution in the State, by at least fifty.

Mr. EDMONSTON. Sir, it seems to me that if we undertake to give to all the literary institutions of the State, we shall be obliged to give to all the common schools; and we shall not have a sufficient number of copies for that purpose. Then I say, if we give to any, give to those which are incorporated. If the others want them, let them purchase copies. They have the same opportunity to buy the book that the common schools have. I trust the amendment will not prevail.

Mr. WALPOLE. Before we make these donations, we ought to understand what will be the cost of these Debates and Journals. The other day I took up a newspaper published in Madison, in which I saw an article stating that there would be two volumes of Debates, costing fifteen dollars a set. If this be the case, it will cost rather too much, if we undertake to make so large a distribution; and this is not a time when we should be liberal in expenditures. It appears that there is not enough of money even to pay the per diem of members. As to that



part of the proposition which proposes to give copies to the officers and door-keepers of the General Assembly, I move to strike it out.

Mr. FOSTER. Will a further amendment be in order?

The PRESIDENT. It is in order to amend the amendment.

Mr. FOSTER. I propose to furnish one copy to the "Bloomington Female Academy," and as the gentleman from Washington objects to giving copies to institutions not incorporated, I will inform him that this institution is incorporated.

A VOICE. But it is not a college.

Mr. FOSTER (without noticing the interruption). I will further remark, while I am up, that I cannot coincide with the gentleman from Switzerland. It does appear to me that we are going beyond our depth.

And, sir, I think that when we have given copies to the members of the Legislature—and bye the bye we are not under much obligation to them—I think we have gone far enough without giving copies to their door-keepers, some fourteen or fifteen, perhaps, in number.

Voting copies of the work to the member of the Legislature is one thing, and voting copies to the door-keepers of that body and of this, is quite a different thing. The position which the members of the legislative body, and of this, occupy is entirely different from that which the subordinate officers of those bodies occupy. I think, as I said before, that we have gone quite far enough already.

The PRESIDENT. The Chair is requested to remark that if the resolution be not extended, the number of copies which have been ordered will supply the requisition of the resolution.

Mr. MILLIGAN. With the permission of the House, and particularly of the gentleman from Monroe, (Mr. Foster,) I will move that one copy be presented to Fanny Lee Townsend. ["Consent! consent!"]

Mr. KELSO. I have a word to say in reply to the very sensitive gentleman from Monroe, who is very much alarmed about giving a copy of the Debates to the assistant door-keepers. He seems to apprehend that it will put them on a par with ourselves—he seems to think it will be a letting down of our dignity. Now, I undertake to say these men who have bestowed their labor, who have devoted their attention to the wants of members of this Convention, are as good as we are—the gentleman from Monroe not excepted. They have been very attentive, and have discharged their duties as faithfully as have the members of the Convention discharged theirs. And, sir, is it possible that the poor fact of our having a certificate of election as delegates to this Convention, should place us so far above those by whom we were elected. The gentleman from Monroe would

place us so high in the scale of dignity that we cannot see those by whom we are surrounded.

[Cries of "Let him have it! Let him have it!"]

Mr. KELSO. He fancies himself so far in the ascending scale that he does not remember the level from which he rose.

A VOICE. Hit him again.

Mr. KELSO. I have made no speech that I am unwilling that the doorkeepers should read. I have made no speech that I am not willing that my constituents shall read, and their wives, and their neighbors' wives shall read. If the gentleman can prevail on a majority of this body to refuse this small acknowledgment of our appreciation of the value of the attention of those who have labored faithfully in our service, let him do so. If he fears that his dignity will suffer let him withhold this expression of his acknowledgment of these services. For myself, I have no hesitation in saying that I feel under an obligation to those who have attended to our wishes, and administered to our wants, during the whole course of the sitting of this Convention. I think it would be pitiful economy on our part to withhold so slight a token of our good wishes towards those who have served us faithfully.

Mr. MAGUIRE. I rise to a point of order. The gentleman has spoken so loud that my ears are pained. (A laugh.)

Mr. FOSTER. We all know that it is characteristic of the gentleman from Switzerland to speak in very emphatic language to the last. I am much obliged to him. He has treated me much better than I expected from him. Now I made the remark most distinctly, and I do it with pleasure at all times, that I recognize all my fellow-citizens as being on a par with myself. I esteem no man worse than myself; but I do say and I reiterate that there is a difference in the official stations that individuals hold. And, while I have no objection whatever that the regular officers of the Convention shall have a copy of the Debates, I do object to distributing them among the inferior officers of the Legislature. And, sir, I object also to the distribution of the Debates, &c., among the appointees of our Doorkeeper. I believe he had about nine assistants at the start; how many he has now God only knows; and while we have refused to give copies to the literary institutions of the State, when those copies would have been read by hundreds, we at the same time propose to give a copy to each of the assistant doorkeepers of the Convention and the Legislature, without inquiring even how many there may be who may claim a copy, under the designation of "assistant doorkeeper". Sir, we are all on an equality, politically speaking. As the gentleman intimates, we shall be before the people next August: I wish to God we were before the people now. I am willing to meet him before the people, and I shall show where that gentleman stands. But aside from all this, while we

are giving to all the Assistant Doorkeepers of the Convention, and of the General Assembly, why is it that we are refusing to the Secretary and Assistant Secretaries of this Convention. If it be refused to them, certainly we have no apology for giving to the others. I want to make no invidious distinctions. I say again, and in saying it I do not assume to myself any dignity or superiority, but I do say that when an individual is elected to office, as, for instance, the Governor of the State, or a Judge, or a Representative of the people in the Legislature or in this Convention, they are officially, and I do not hesitate to proclaim it, above those who merely wait upon them.

Mr. PRATHER. I have an amendment to offer.

Mr. PRESIDENT. There is an amendment to an amendment already pending.

Mr. WOLFE demanded the previous question.

The demand for the previous question was seconded.

The main question was ordered to be now put.

The question being taken on the amendment of the gentleman from Jay,

It was decided in the negative.

The question recurred on the amendment of the gentleman from Dearborn, (Mr. Holman.)

It was decided in the negative.

The question being on the adoption of the resolution, it was, on a division—ayes 41, noes 38—decided in the affirmative.

So the resolution was adopted.

Mr. McCLELLAND. It is for the first time—or, perhaps, it may be for the second time—that I have had occasion to ask the indulgence of this body since its session commenced. I should like to have the order of business suspended for the purpose of enabling me to offer a resolution. I should not offer this resolution, were it not from the fact that I was precluded by the previous question from offering an amendment containing the same in substance. My resolution provides that certain clerks, and other officers, shall have copies of the Debates and Journal of the Constitution. Now, sir, I want the Debates and Journal to be distributed as widely as possible; and I believe it is false economy to restrict the number of copies. Although I am in favor of keeping our expenditures within reasonable bounds, yet I think there is no necessity for economizing in a matter where the people will derive more advantage from the expenditure of a small sum of money, than can accrue to them in other instances from the expenditure of a large amount. I move, sir, to suspend the rules for the purpose of enabling me to introduce the resolution to which I have adverted.

The question being taken on suspending the rules,

It was decided in the negative.

So the rules were not suspended.

Mr. OWEN from the committee on revision made a report.

The report was read, and the changes which had been made by the committee in the phraseology of the sections were pointed out and explained by the Chairman.

The question being,

"Shall the report be concurred in?"

Mr. DOBSON suggested an amendment for the sake of uniformity so as to make the provision relating to the continuance in office of all officers until their successors were elected and qualified.

Mr. PETTIT. That will be provided for in a general section in the schedule.

Mr. NAVE. I move that the report of the committee be concurred in, with the following amendment in the section which relates to the appointment of commissioners to revise, abridge, and simplify the rules, practice, pleadings, and forms of the courts of the State, to strike out "shall" and insert "may."

The section is as follows:

"SECTION 19. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, abridge, and simplify the rules, practice, pleadings, and forms of the Courts of this State. And they shall provide for abolishing the distinct forms of action at law now in use; and that justice shall be administered in a uniform mode of pleading without any distinction between law and equity. And the General Assembly may also make it the duty of said Commissioners to reduce into a systematic code, the general statute law of this State; and said Commissioners shall, from time to time, report the result of their labors to the General Assembly, with such recommendations and suggestions as to abridgement and amendment as to said Commissioners may seem necessary. Provision shall be made by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners.

I wish to make one remark in reference to this section. If it be necessary that such a provision should be made at all, I think it should be imperative. Such men as the Legislature will select for the purpose of doing this business—if they are, as it is presumed they will be, sensible men—should be permitted to exercise a discretion as to how far it is necessary to go, and how far they may go without doing injustice to the country; and they should be at liberty to omit doing anything, if, in their judgment, it should appear to be unnecessary. But, if you declare that it shall be done, they must necessarily make the change whether it be right or wrong.

Mr. OWEN. I will merely say that when the Convention was full, it was decided by a deliberate vote that this provision should be im-



perative, and I think it would be wrong to reverse that decision now.

Mr. GIBSON. I rise to a question of order. I wish to know whether we can make the change proposed by the gentleman from Hendricks—whether we can change a matter of substance at this stage of our proceedings?

Mr. PETTIT. It is the very gist of the thing; it is a matter of substance.

The PRESIDENT. The Chair is of opinion that the only way in which it can be done is to go back and re-consider the vote by which the section was passed, and that, by a resolution which has been adopted, will require a vote of three-fourths.

The question being put upon concurring in the report of the committee,

It was decided in the affirmative.

So the report was concurred in.

Mr. OWEN. I will state to the Convention that the committee on revision will be prepared to make another report at 2 o'clock P. M. to-day.

Mr. BRIGHT. It is important that we should prepare for our transition from the old to the new government. I do not know whether the committee, of which the gentleman from Hancock (Mr. Walpole) is chairman,—and, by the way, I do not now see him in his place—have prepared a schedule; and as no report has been made from that committee, I ask leave to offer the following.

The PRESIDENT. It will not be in order for the gentleman to introduce his proposition unless the Convention rescind the resolution that has been adopted relative to the introduction of new matter.

Mr. CLARK of Tippecanoe. I move that the rules be rescinded.

Mr. PETTIT. We shall necessarily have to do this work. We cannot put the Constitution in operation without it. I do not see why we may not suspend the rules, and act upon the proposition of the gentleman from Jefferson.

The PRESIDENT. The Chair would remark that it is not a suspension of the rules, but the rescinding of a resolution, that is requisite; and that may be done by a bare majority.

The question was put upon rescinding the resolution, and it was decided in the affirmative.

Mr. BRIGHT sent up his proposition, and it was read by the Secretary.

That no inconvenience may arise from the changes in the Constitution of this State, it is hereby declared and ordained:

*First.* The laws in force at the time of the adoption of this Constitution, and not repugnant thereto, shall remain in full force until they expire by their own limitation, or are altered or repealed. And all suits, prosecutions, claims, and rights, now pending or existing, shall continue, and may be proceeded upon as if no change had taken place. The several

courts, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this Constitution had not been adopted.

*Second.* The first election for Governor and Lieutenant Governor, Judges of the Supreme and Circuit Courts, Clerk of the Supreme Court, and Prosecuting Attorneys, Secretary, Treasurer, and Auditor of State, and State Superintendent of public institutions, under this Constitution, shall be held on the second Monday of October, 1852; and such of said officers as are or may be in office when this Constitution goes into effect, shall continue in their places until said second Monday in October, 1852, and until their successors are elected and qualified, unless superseded by law.

*Third.* This Constitution, if adopted, shall go into effect on the first day of November, 1851.

*Fourth.* Senators now in office, and holding over under existing organization, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the second Monday in October, 1852.

*Fifth.* There shall be a session of the General Assembly commencing on the first Monday in December, 1851.

*Sixth.* The first general election under this Constitution shall be held on the first Tuesday of October, 1852; and the first regular biennial session of the General Assembly shall be held in 1853, commencing after the first Monday of January of said year.

*Seventh.* Vacancies that may occur in offices now existing, prior to the first general election, shall be filled in the same manner as is now prescribed by law.

*Eighth.* On the taking effect of the Constitution all officers then in office shall, before proceeding in the further discharge of their duties, take an oath to support the Constitution.

*Ninth.* No article or sections of this Constitution shall be submitted separately to a vote of the people otherwise than in this Constitution provided.

Mr. BRIGHT moved that the sections be read a second time now.

The motion was agreed to, and the sections were accordingly read a second time.

The question being on their engrossment, Mr. BRIGHT moved that the sections be referred to a select committee of three.

Mr. MILLER of Gibson. I move that they be referred to the same select committee which already had the subject in charge.

The PRESIDENT. There is no such committee.

Mr. MILLER of Gibson. I would like to make a few remarks, then, on the motion of the gentleman.

The PRESIDENT. The gentleman has a right to do so.

Mr. MILLER of Gibson. There was a committee appointed yesterday to whom this matter was referred; that committee met and deliberated, and are about to present a report. In the mean time the gentleman from Jefferson, who is a member of that committee, in advance of the report brings in a proposition, which is designed to supersede the report of the committee. Now, sir, before acting upon the gentleman's proposition, I should like to have the report of the committee brought in; and in order that we may have the report of the committee laid before us in the first instance, I move that the proposition be laid on the table. [Cries of "no, no."] I ask for the yeas and nays on the motion.

The yeas and nays were ordered, and, being taken, there were, yeas 27, nays 82 :

YEAS.—Messrs. Alexander, Badger, Beard, Clements, Cole, Cookerly, Davis of Parke, Dick, Foster, Frisbie, Gootee, Hall, Hawkins, Hitt, Holman, Huff, Johnson of Dearborn, Kilgore, Maguire, Miller of Gibson, Milligan, Moore, Nave, Newman, Thomas, Todd, and Watts—27.

NAYS.—Messrs. Allen, Bascom, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Butler, Carr, Carter, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Crawford, Davis of Madison, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Helmer, Hogin, Hovey, Johnson of Orange, Jones, Kent, Kinley, Lockhart, Logan, Mathis, May, McClelland, McLean, Miller of Fulton, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Niles, Nofsinger, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Thornton, Wallace, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—82.

So the section was not laid on the table.

The question then being on referring the sections to a select committee of three,

Mr. FOSTER. I move that these sections be referred, with instructions.

The PRESIDENT. There is a motion to commit already pending.

Mr. FOSTER. But I wish to amend that motion.

The PRESIDENT. The gentleman cannot make that motion to amend.

Mr. FOSTER. Well, I suppose I can talk awhile?

The PRESIDENT. The gentleman can speak for five minutes.

Mr. FOSTER. Very well, sir. It appears that the gentleman from Jefferson has introduced this proposition on his own responsibility.

I understand that a select committee has been appointed, and that they have deliberated and directed their chairman to make a report, but he has not as yet made it. And it appears there is considerable incongruity, I understand, between the report that has been agreed upon by the committee, and the proposition that is here introduced. It appears, from intimations which have heretofore been thrown out, that the Constitution is to be submitted to the people in August; and that those officers who shall be then elected, shall retain their offices until the following year. And although this Constitution is to go into operation next October, yet those individuals thus elected to office, members of the General Assembly and others, while they shall have been elected under the provisions of the old Constitution are nevertheless to serve under the new.

A VOICE. That is right.

Mr. FOSTER. Well, it does appear to me that we are making an invidious distinction between different classes of officers. Now, sir, I believe the Convention has the power to declare when the Constitution shall be submitted to the people. There has been no instance, that I have been aware of, where a State Convention, assembled for the purpose of forming a Constitution, has not prescribed the time when that Constitution so formed, shall be submitted to the people; and I find that the law itself, under which we are assembled, gives us this power. I do not know that the Legislature has the authority or power, even according to their own enactment, to designate the time when the Constitution shall be submitted, although they are entitled to prescribe the manner in which it shall be submitted. We have the power to fix the time, and we ought to exert it; and it is a usurpation on the part of the Legislature to undertake to dictate to us in regard to this matter. We are the representatives of the people of this State. We reflect, or should do so, the will of the people, as does the Legislature, and we have been elected for this express purpose. I repeat, sir, we have the power, and we ought to exercise it.

There seems to be considerable incongruity in this respect; this Constitution is to go into effect in October, and the Senators will hold over until 1853. Why, sir, when the people determined to call this Convention, did they suppose that a portion of the officers of the State would remain in office two years after the adoption of the new Constitution? No, sir; and here let me remark, that the Constitution of Kentucky was submitted to the people within four months after it was formed, and it was ratified by a majority of more than fifty thousand votes. And, I do not hesitate to say—without instituting any invidious comparison—that ours is not only equal, but I think superior, to the Constitution of Kentucky. I will say further, sir, that the people of Indiana are



not only as intelligent, but as far as my observation extends, they are far in advance of their neighbors in point of intelligence.

Mr. PETTIT. I certainly desire to be correct at the conclusion, if I have not been during the former part of our session. Every one must admit that this is a work which cannot be rejected. We must observe some order and propriety, it is true, in our proceedings, and if there were a question of principle involved in it, I would not yield for a moment to depart from a rule of established usage; but this is a mere question of expediency and accommodation. The gentleman from Jefferson has had leave granted him, almost by unanimous consent, to introduce his proposition. And now let me say, for there is no use in disguising it, and if there was any attempt at disguise I would have no part in it, there has been a free conference between members of the Convention and members of the Legislature in relation to the time at which the Constitution shall be submitted, and they have, in a spirit of accommodation, by concessions on both sides, arrived at a determination which I think will be perfectly satisfactory to all parties. The plan determined upon receives the almost unanimous approbation of all the members of the Legislature who are in favor of the new Constitution. It is, that the Constitution shall be submitted to a vote of the people at the August election, with the condition that those Senators who have one year more to serve, shall not be displaced until the expiration of their term of office. And, sir, I would further remark, that this schedule was drawn up to suit the wishes of a majority of the Legislature. A motion is made to refer it to a select committee. In the mean time the other report can come in and be printed; but the proposition it contains to submit the Constitution in June next, will not, in my opinion, meet the approbation of the Legislature. And let me say that it would be highly injurious to have a misunderstanding with them, and that we should go home with feelings embittered against each other, representing us we do the same constituency. Let us lay aside little differences, while no principle is surrendered, so as to meet them in a spirit of accommodation, and everything may be satisfactorily adjusted.

I do not think there is any necessity for referring this matter to a committee. It appears to me that there ought to be no hesitation in adopting the proposition at once.

Mr. DOBSON. There seems to be a slight misapprehension in regard to this matter. The taking effect of the Constitution will be the same at whatever time it will be submitted. The next Legislature will meet after the Constitution shall have gone into effect. Now, sir, one word in regard to the feeling which exists amongst the members of the Legislature towards this body. If there is any one thing that I am

proud of, it is that the Convention has pursued "the even tenor of its way," without showing a disposition to have a quarrel with the Legislature. We have gone on in good faith and have nearly completed our labors, and now it is for the Legislature to pass the necessary laws to carry into effect the Constitution that we have formed. If they are desirous of postponing its submission to the people, let them postpone it in their own good time; and if they do not take that course which is best calculated to advance the interests of the country, let them be responsible.

Pending the question to refer the subject to a select committee,

On motion by Mr. PETTIT,  
The Convention adjourned.

#### AFTERNOON SESSION.

Mr. BRIGHT, from the select committee to whom was referred the schedule, reported back the sections in relation to the time the new Constitution is to go into effect; the provisions in relation to the election of Governor, Lieutenant Governor, and other State officers being substantially the same as introduced by him in the forenoon; which was concurred in.

Mr. CLEMENTS. It is not from any capricious motives that I oppose this report. It is true that on yesterday evening a majority of the select committee to whom was referred this matter, agreed upon such a section as I would have been willing to accept; but that report, from some reason or other, has not been made. Here we have a different one, in regard to which I must say, that before we adopt it we must make many changes.

Mr. PETTIT. All the change necessary to be made will consist of three words; and when that is made everything will go on as regular as clock-work.

Mr. CLEMENTS. I find, sir, that there are certain individuals here who appear desirous of governing and directing this whole matter. Sir, we are now asked, after adopting a stringent rule that no new measure should be adopted; and after a large number of members have left for home on the strength of that declaration, to adopt entirely new measures, in order to accommodate the wishes of a caucus which was held last evening of the members of the Legislature. I rose merely for the purpose of calling the attention of members to the change proposed to be made in this schedule—a change made in departure from the provisions on the same subject already adopted by the Constitution.

Mr. PETTIT. It has been found, Mr. President, in order to put the provisions just reported in operation, that there will be necessary to make but three changes in the Constitution as it now stands.

First, I would refer the Convention to page 17 of the reports of the committee on revision,

arrangement, and phraseology, section third and line three, and I propose to strike out "first" and insert "second." It will be recollected by the Convention that the first provision now under consideration requires that the first session of the Legislature shall be held in December next—that will be a long session, but will not be the biennial session. It is provided that the first biennial session shall be held on the 1st of January, 1853, so that we will have two successive sessions, one next winter and one the winter following. Indeed this will be absolutely necessary.

On page 19 of the same report, there is another alteration necessary. In the third line of the sixth section, where it says that the first biennial session shall commence on the first Monday in January, strike out "two" and insert "three," so that the first biennial session will be held in 1853.

On page 27, section thirty-one, there is another alteration necessary in the first line. "The General Assembly, at its first meeting after the adoption of this Constitution," &c.; strike out "first" and insert "second."

Thus, in the adoption of this schedule only three alterations will be needed in the Constitution. And, sir, do the changes proposed involve any change of principle? Can those who have gone away and abandoned their duty, as I think they have, have any just cause of complaint? We introduce no new principle; we merely propose to make these alterations so that we may carry out the provisions of the schedule in harmonious connection with the Constitution. We must not allow ourselves to be laughed at, sir, for inconsistency. There is an absolute necessity for passing this schedule; and its adoption requires that these alterations should be made.

Mr. SMITH of Ripley. The gist of the matter is, Mr. President, by this schedule we are providing for an entire new session not contemplated in the provisions of the Constitution already passed. I would merely remark, that I regret that we were not able to carry out the provisions of the Constitution, and that there should exist any necessity for change in its provisions; however, for the purpose of harmony on this occasion, I am dumb. [Cries of "good," "good," "consent."]

Mr. WALPOLE. Mr. President, what is the question before the Convention?

The PRESIDENT. The question is upon engrossing the article reported by the gentleman from Jefferson (Mr. Bright).

Mr. WALPOLE. Any one can tell from the ear-marks of this report that it came from the gentleman from Jefferson. Upon yesterday this Convention appointed ten persons to take into consideration the subject matter reported upon in that report. All the members of this committee agreed, without any exception, that the present Governor and Senators elect

should be superceded under the new Constitution. The Convention previously had adopted a rule requiring three-fourths of the members of this body to suspend the rules in order to receive an additional section; but this report of the select committee was received without a single dissenting voice. The section provided that the present Governor and State Senators should cease their offices from and after the second Tuesday of October next. The committee agreed to that section without a dissenting voice; and I was authorized to report it this morning, but upon conversation with the gentleman from Tippecanoe (Mr. Pettit) I agreed to postpone its presentation until two o'clock this afternoon. The gentleman from Jefferson, the moment the Convention was called to order this afternoon, got up and made his report.

Now, Mr. President, we are responsible for this Constitution. Although there are many things in it which I voted against, yet I feel as if my reputation was involved in it, and therefore it is that I do not desire to have it modified in the manner proposed. The gentleman from Jefferson has all along insisted that the Constitution ought not to go into force until the year 1853; now if there is anything in the present Constitution that I dislike, it is the surrender of sovereign power to corporations, and I do not want to see another session of the General Assembly in Indiana conferring sovereign power upon corporations, as they will do if this Constitution does not operate upon their action before 1853.

Mr. PETTIT. If the gentleman from Hancock will examine the articles of the schedule he will see that the next session of the General Assembly will be under the new Constitution, if it is adopted at the next August election.

Mr. WALPOLE. One of the objects for which this Convention was called, was to effect economy in the administration of our State Government. Now, sir, if we provide that a new session of the General Assembly shall be held, it will cost the State some fifty thousand dollars; and we are to incur this expense in order to accommodate the Governor and Lieutenant Governor, and some thirty-three Senators holding over. I cannot consent to it. Where there is a revolution in government, as the change of Constitution undoubtedly is, all officers go out with that revolution. This is the doctrine contended for by the gentleman from Tippecanoe, (Mr. Pettit,) as it is also advocated by some of the wisest and best legislators in the land. And yet, here, sir, you propose to retain men in power who, by force of revolution, go out of office. This is anti-republican.

I hope, sir, that we will, at the earliest possible hour, place this Constitution before the people for their action in regard to it.

The section which I am to report from the select committee provides that on the 1st Mon-



day in June the Constitution shall be submitted to the people for their adoption or rejection, and if adopted, within thirty days after its adoption it shall be the Constitution of the land; that the Governor, on the second Monday in January, shall go out of office, and his successor be elected at the first election under this Constitution; and that all judges and officers of State shall be elected on the second Tuesday in October. I trust, sir, that what was done last night in caucus will not affect the members of this Convention. We are responsible to the people for our action, and no arrangements made out of this Hall should influence our action here.

Mr. DOBSON. There was nothing agreed upon out of this Hall.

Mr. WALPOLE. Well I have only to say there was a general expression of opinion a short time since in this body, in favor of fixing the time for the submission of the new Constitution to the people on the first Monday in June. I should like to know what has changed the opinion of gentlemen so suddenly, within a few hours, and whether that change has not resulted from some concerted plan of action?

Mr. OWEN. It strikes me that the gentleman from Daviess (Mr. Clements) and the gentleman from Hancock (Mr. Walpole) seem both to have forgotten what we can, and what we cannot do. We cannot declare when this Constitution shall be submitted to the people, for if the Legislature fixes upon a different day from ours, that day of the Legislature over-rides ours. Here is the law on the subject:

"It shall be the duty of the said General Assembly to pass all laws necessary and proper for submitting the same to the qualified voters for their approval or rejection, and also for organizing the government under the amended Constitution, in case it should be adopted and ratified by such voters."

The first part of the section from which I have read, proposes that the new Constitution shall be submitted to the General Assembly at its next session. This provision was made on the supposition that we would conclude our labors before the commencement of the present session of the General Assembly. But any law passed by one General Assembly can be repealed by another, and the present General Assembly can repeal that law. I think, sir, myself, that those who made this Constitution should have the right to decide when it shall be submitted to the people; but the question is not what would have been best, but what really is to be done. It would be folly for us to stand up and oppose the Legislature when they have decided what is to be done, inasmuch as they have the power in their own hands and we have it not, as they took it away from us last winter.

Mr. CLEMENTS. The gentleman from Posey misapprehends the position I take. I do not deny the fact that the Legislature have

the right to fix by law the time when this Constitution shall be submitted to the people, but I would ask whether this report does not fix the time, the first Monday in August?

The PRESIDENT. There is no day fixed at all for the submission of this Constitution to the people; there is only a day fixed when it shall go into effect if adopted.

Mr. CLEMENTS. We have formed our Constitution with the view of having it submitted at some early day, previous to the August election, to the people; and we have declared that the first session after its adoption shall be a long session, because in that session it will be requisite to conform our laws to the provisions of the new Constitution, which will be a work of great labor and occupy much time. Now what will be 'the effect of changing this principle? An apportionment takes place this coming winter, and many districts the terms of whose Senatorial Representatives will expire this fall, will be united with other districts, so that during this long session many of the districts will be represented in the Senate without having a vote; and that too, when one of the most important sessions of the General Assembly that has been held for years will take place under this Constitution. In this way Senators will represent counties that they have never been elected from, during this important session. If this is not changing a vital principle with reference to the right of suffrage, I know nothing about principle. And, sir, we are called upon to make this change when a portion of this body have left for home, supposing that no new measures would be introduced here.

Mr. WALPOLE. I move to amend, by striking out all in this article that relates to the election of Governor, Lieutenant Governor, Senators, &c., and inserting a provision that the election for Governor, Lieutenant Governor, &c., shall take place on the first Tuesday of October, eighteen hundred and fifty-one.

Sir, I earnestly desire that this election should take place in fifty-one instead of fifty-two; I am opposed to any postponement whatever. By postponing, sir, the adoption of this Constitution, we are only giving full opportunity to the enemies of this Constitution to rally while its friends are slumbering, not suspecting any danger. The friends of this Constitution may go home reposing upon the integrity of this Convention, and, when it is too late, they will find themselves in the back ground. This fact should be taken into serious consideration, and also the fact that by the present article we are legislating men into office, thus taking away from the people one of their vested rights.

Mr. EDMONSTON. I regret very much, Mr. President, to hear the charge made that the members of this Convention are actuated from improper influences, having their origin outside of this Hall. I cannot envy the feel-

ings of any man who entertains such an opinion. No man who is a true representative of the people, would be influenced by any extraneous influences in his action; and the man who would suspicion others to be thus derelict to their duty, must himself be mean.

**MR. WALPOLE.** I had the information from the gentleman from Tippecanoe, that the Senators did not wish to go out of office, and it was not thought advisable to wound their feelings.

**MR. EDMONSTON.** Well, sir, we have here an article proposing to commence biennial sessions in eighteen hundred and fifty-three instead of eighteen hundred and fifty-two, and it will meet the expiration of the term of the Governor and of other officers. It is said that the State Senators have influenced the action of this body to adopt this provision. Now, sir, I hold in contempt any man who would attribute improper influences as operating upon the mind of any member of this body.

The gentleman from Hancock says that the delay in presenting this Constitution to the people will give time for a strong opposition to organize against it. I, sir, have no fears of its adoption. Let its enemies, if they choose, with the gentleman from Hancock at their head, organize themselves into an anti-Constitution party, and the friends of the Constitution will meet them on their own ground.

**MR. MOWRER.** I move the previous question.

Upon a division—ayes 45, noes 36—the previous question was seconded.

The main question was then ordered to be put.

**THE PRESIDENT.** The first question is upon the adoption of the amendment offered by the gentleman from Hancock (Mr. Walpole).

Upon this question the yeas and nays were ordered, and having been taken the Secretary reported the following result—yeas 33, nays 72:

**YEAS.**—Messrs. Allen, Badger, Ballingall, Beard, Brookbank, Clark of Hamilton, Clements, Cole, Cookerly, Davis of Madison, Davis of Parke, Farrow, Foster, Gibson, Hall, Hitt, Holman, Huff, Johnson of Dearborn, Kilgore, Maguire, Moore, Morgan, Nave, Newman, Prather, Smith of Ripley, Stevenson, Thornton, Todd, Walpole, and Zenor—33.

**NAYS.**—Messrs. Alexander, Bascom, Blythe, Borden, Bowers, Bracken, Bright, Bryant, Butler, Carr, Carter, Chapman, Clark of Tippecanoe, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Fisher, Foley, Frisbie, Gootee, Gordon, Graham of Miami, Graham of Warrick, Hamilton, Harbolt, Hawkins, Helmer, Hogin, Hovey, Johnson of Orange, Jones, Kent, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, McLean, Milligan, Milroy, Mooney, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Niles, Nofsinger, Owen, Pepper of Craw-

ford, Pettit, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Smith of Scott, Spann, Tague, Tannehill, Thomas, Wallace, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—72.

So the amendment was not adopted.

**THE PRESIDENT.** The question now is, Shall the article pass?

The yeas and nays were taken, with the following result:

**YEAS.**—Messrs. Alexander, Allen, Badger, Bascom, Blythe, Borden, Bowers, Bracken, Bright, Bryant, Butler, Carr, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Cookerly, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Elliott, Farrow, Fisher, Foley, Frisbie, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Helmer, Hogin, Hovey, Johnson of Dearborn, Johnson of Orange, Jones, Kent, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, McLean, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Ritchey, Schoonover, Sherrod, Shoup, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Wallace, Watts, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—83.

**NAYS.**—Messrs. Ballingall, Brookbank, Clements, Davis of Madison, Dick, Foster, Gibson, Hall, Hawkins, Hitt, Holman, Kilgore, Maguire, Milligan, Moore, Morgan, Nave, Newman, Rariden, Read of Clark, Stevenson, Thomas, Thornton, Todd, and Walpole—25.

So the article passed.

**MR. WALPOLE,** from the select committee to whom was referred article sixty-six, reported the same back, with sundry modifications.

**MR. PETTIT** said that as the provisions of this article had been superseded by the article already adopted, he would move to lay it on the table.

**MR. MORRISON** of Marion offered a section providing that the official terms of Governor and Lieutenant Governor shall commence on Monday next succeeding the first Thursday in January, eighteen hundred and fifty-three, and every four years thereafter.

Which was read three times, and passed.

Three reports from the committee on revision, arrangement, and phraseology, were then read, and concurred in by consent.

On motion,

The Convention adjourned.

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SATURDAY, FEB. 8, 1851.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. ISENSEE.

The Journal of yesterday was read and approved.

ADDRESS TO THE ELECTORS.

MR. OWEN, from the select committee appointed to prepare an address to the electors of the State, explanatory of the provisions of the new Constitution, reported an Address, which had been unanimously adopted by the committee. On making this report,

MR. OWEN remarked, that it was due to one of the members of the committee, the gentleman from Laporte (Mr. Niles), who had been appointed in the place of the gentleman from St. Joseph (Mr. Colfax), to say that he had not been present at the meeting of the committee; and therefore, when it was stated that the Address was unanimously adopted, it should be understood as having been unanimously adopted by all the members of the committee who were then present, and all, with the exception of the gentleman from Laporte, were present.

The Address was then read by the Secretary. It is as follows :

ADDRESS TO THE ELECTORS.

MR. PRESIDENT :—The select committee appointed to prepare an address to the electors of the State, embodying a brief statement of the changes proposed in the amended Constitution, and such other matters in connection therewith as may aid in securing its adoption, have had the subject under consideration, and have unanimously instructed me to report, for adoption by the Convention, the following address to the people of the State of Indiana :

Chosen by the electors of the State of Indiana for the purpose of considering the present Constitution, and of proposing, for adoption or rejection, by the people, an amended Constitution, embodying such changes as we might deem proper, we have completed the task assigned us, and now lay before you the result of our labors.

The chief amendments which we have thought useful to make, are, briefly stated, as follows:

In addition to the guaranties which find a place in the old Constitution, to secure the rights of conscience and prevent the imposition, on the citizen, of any tax to support any ministry or mode of worship against his consent, it is provided, that no person shall be rendered incompetent as a witness in consequence of his opinions in matters of religion; and that no money shall be drawn from the treasury for the benefit of any religious or theological institution. Both of these provisions are found in the Constitutions of Michigan, Wisconsin, and others of recent date.

In the old Constitution the provision as to the taking of private property for public use, is, that it shall not be taken "without just compensation being made therefor;" but is not declared whether or not this property shall be assess-

ed and paid for before it is taken. The provision in the new Constitution is, that when property is thus taken, (except in case of the State) compensation shall be "first assessed and tendered." This is an important change. As the law now stands, an incorporated company, constructing a railroad or other public improvement, may take a man's property first and pay for it afterwards. The change proposed requires that, before taking any property, a tender should first be made of its assessed value. If that tender be rejected by the owner, and he seek his remedy by appeal, the property may be taken; so that one man may not be able, by unreasonable obstinacy, to arrest, for months or years, a work of public importance.

The principle of exempting a reasonable amount of the property of the debtor from seizure or sale, is asserted, but without specifying any amount. There is no provision of this kind in the old Constitution; though the present law, usually called the "hundred and twenty-five dollar law," is based upon the principle thus proposed to be permanently established.

The Legislature is authorized to continue, modify, or abolish the Grand Jury system. Under the old Constitution, provision for retaining it was imperative.

The right of trial by Jury is secured in all cases, civil and criminal. By the old Constitution, where the amount in controversy was less than twenty dollars, and also in prosecutions for petit misdemeanors, this right was not secured.

It is provided that "the General Assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." This important provision is new.

AS TO SUFFRAGE AND ELECTION.

By the old Constitution, citizens of the United States were entitled to vote. Under the new, foreigners who have been in the United States one year, and in this State six months immediately before any election, and who shall have declared, under oath, their intention to become citizens, have the right of voting. This liberal provision will undoubtedly tend to increase the wealth and population of our State by attracting emigrants toward it.

Post Masters, if their annual compensation be ninety dollars or less, but not otherwise, may be elected members of the Legislature. In counties with less than a thousand polls, but in no others, the offices of Clerk, Recorder, and Auditor, may be conferred on the same person. Both of these are new provisions.

No one who gives or accepts a challenge, or carries to another a challenge to fight a duel, shall be eligible to any office of trust or profit. This is also new.

IN THE LEGISLATIVE DEPARTMENT.

The provision in regard to the number of

Senators and Representatives remains unchanged. It is not to exceed a hundred in the House and fifty in the Senate, but that number may be at any time reduced by law.

The regular sessions of the Legislature are to be held once only in two years; but the Governor, if he thinks the public welfare requires it, may call special sessions. No regular session is to be longer than sixty-one days; nor any special session longer than forty days.

As the entire expenses of the sessions of our General Assembly, including printing of laws and journals, have averaged, for the last ten years, upwards of forty thousand dollars annually, the saving by the change to biennial sessions may be set down at twenty thousand dollars a year. Thus, if no special session be called during five years, the saving, in that period, by this provision alone, will overpay the entire expenses of the Convention. Thus will also be afforded some opportunity to become acquainted with the laws of one session, before they are followed by the amendments of the next.

The following provisions, tending to check and regulate the legislative branch of government, are not found in the old Constitution:

First. Every bill is to be read throughout on three several days, unless two-thirds, under the ayes and noes, suspend the rule.

Second. On the final passage of a bill, it is forbidden, under any circumstances, to dispense with its reading by sections.

Third. A majority of all the members elected to either branch shall be necessary to pass a law. The present Constitution permits a majority of those present (which may be a bare majority of a quorum) to pass a law.

Fourth. No law is permitted to be revised or amended by mere reference to its title, but the law so revised or amended must be set forth at full length. Great abuses have arisen for lack of such a provision. Amendments have been made, of which the House which enacted them knew the character only by some brief verbal statement from a member interested in their passage.

Fifth. No law is to embrace more than one subject and matters properly connected therewith; and the subject is to be expressed in the title. The tendency of this rule is, to prevent what is familiarly termed "log-rolling." Two provisions having no proper connection with each other, may, under the present Constitution, be embraced in the same bill, and be carried by a combination of their respective friends, though neither, in itself, has merit or strength enough to obtain the vote of a majority, and would fail, as it ought, if voted upon singly.

Sixth. No law is allowed to pass, except under the ayes and noes, entered on the journals. This is one of the most effectual safeguards against hasty and inconsiderate legislation; and secures, under all circumstances, the responsi-

bility of members of the Legislature, to their constituents.

Seventh. All elections by the General Assembly are by a *viva voce* vote, recorded on the journals.

Eighth. The most important restriction imposed on the legislative branch, is that which provides that, in a variety of enumerated cases, (as the jurisdiction of Justices of the Peace, the mode of doing county and township business, the fees of county and township officers, road laws, common school laws, and so forth,) and in all other cases where a general law can be made applicable, no special law shall be passed. It is an estimate much within the truth, that more than two-thirds of all the laws enacted in this State since her admission into the Union, have been of the character here forbidden. More than two-thirds of our legislation, therefore,—and the most confusing and most mischievous portion of it—is cut off by this single provision. Independently of the intrinsic benefits of such a change, the saving thereby effected of expense, both as regards the time of the Legislature and the cost of printing our laws, will be great.

Ninth. By general law, provision may be made for suing the State, but no special act authorizing suit to be brought against the State, or allowing damages against the State, is permitted. This will remove to courts of justice, where they properly belong, numerous claims which cannot be urged through a legislative body without temptation to demoralizing influences.

Tenth. The Legislature is prohibited from granting divorces.

Eleventh. Representatives hold their offices two years, serving one regular session; Senators hold their offices four years, serving two regular sessions.

Twelfth. The general elections, instead of being held, as now, on the first Monday in August, are to be held on the second Tuesday in October, of each year. This latter period is one of much greater leisure to farmers than the former.

IN THE EXECUTIVE DEPARTMENT.

The changes in this department are unimportant, being chiefly these:

The Governor and Lieutenant Governor are elected for four instead of three years, to correspond to the biennial sessions of the Legislature.

Neither of these officers is eligible more than four years in any period of eight years, nor to any other office, during the term for which he has been elected. These provisions are not in the old Constitution.

There is a slight change in regard to the veto power. If a bill is presented to the Governor within three days of the close of the session and he fail to return it, it shall be a law, unless

he file the bill, together with his objections, in the office of the Secretary of State, within five days after the adjournment. By the old Constitution, he might hold it over until the next session, and then return it, with his objections.

AS TO STATE AND COUNTY OFFICERS.

The Secretary of State, Auditor of State, and Treasurer of State, who were elected, under the old Constitution, by the Legislature, are now elective by the people. The Secretary held his office for four years, and the Auditor and Treasurer theirs for three years; now, the term of office of all these officers, is two years only; and they are not eligible more than four years, in any period of six years.

In the counties, the term of service of the Clerk, Auditor, and Recorder, is put in the new Constitution, at four years; and they are not eligible more than eight years, in any period of twelve years. The Sheriff and Treasurer hold their offices for two years, and are not eligible more than four years in any term of six years.

IN THE JUDICIAL DEPARTMENT.

The Supreme and Circuit Judges, heretofore chosen, the former by appointment of the Governor, confirmed by the Senate, and the latter, by joint vote of both Houses, are, by the new Constitution, made elective by the people. There are to be no less than three nor more than five Supreme Judges; each to reside in, and be elected from, his own district; but all to be chosen by the votes of the people at large. Each Circuit Judge is chosen by the vote of the electors of the Circuit.

A Judge is rendered ineligible, during the term for which he may have been elected, to any other than a judicial office. This provision is new.

There is to be elected, by the people, a Prosecuting Attorney for each Judicial Circuit.

AS TO LAW REFORM.

The General Assembly is required, at its first session, to appoint three Commissioners, whose duty it shall be, to revise and simplify the practice and forms of the courts. They are to abolish the separate forms of action now in use; and to provide for a uniform mode of pleading, without distinction between law and equity. The Legislature may also cause these Commissioners to reduce, into a systematic code, the general Statute law.

Every person of good moral character, who is a voter, is entitled to admission to practice law in any of the Courts of this State.

These reforms are of an important character: calculated to diminish the cost, and to correct the delay of law proceedings. As the law now is, a man may prosecute a perfectly just claim, but if he commence suit on what an arbitrary

rule calls the wrong side of the court, he cannot recover. So, also, a man may have various demands for money against a neighbor, all of which could naturally and conveniently be set forth in the same declaration; but ancient practice has declared, that there are some ten or twelve different forms of action; and he may have to bring a separate suit, with its separate expenses, for each demand, though varying very slightly in their character. A remarkable example is this. If a man hold two promissory notes against another, payable in current bank paper the one being sealed and the other not sealed, he must bring a separate suit upon each. No reason but a purely arbitrary one, founded on antiquated usage, can be given for such vexatious and cost increasing distinction.

The Legislature is authorized to establish Courts of Conciliation, for the speedy decision of cases that may be voluntarily submitted to them, without the tedious and expensive process of law.

EDUCATION AND STATE INSTITUTIONS.

The principal change in this department, is the abolition of county seminaries, and the application of the funds to common schools. It is also provided, that the Legislature shall establish a uniform system of common schools, wherein tuition shall be free. The swamp lands recently granted by Congress, and which, it is supposed, may be worth half a million of dollars, are added to the common school fund.

A Superintendent of Public Instruction is to be elected by the people, his term of office being two years. The large amount of the school fund, scattered all over the State, and the important interests involved, demand the undivided attention of a competent officer.

The counties are made responsible for such portions of the common school fund as may be entrusted to them. This incorporates into the Constitution a provision for the security of that fund, which has long been the statute law of the State.

The Institution which the benevolence of Indiana has reared for the blind, the deaf and dumb, and the insane, are perpetuated by constitutional provision.

The Legislature is instructed to establish Houses of Refuge, for the correction and reformation of juvenile offenders.

PUBLIC DEBT.

The Legislature is prohibited from incurring any debt, except to meet casual deficits in the revenue, to pay the interest on the present State debt, or to repel invasion, or suppress insurrection.

Had this provision, brief and simple as it is, been inserted in the Constitution of 1816, it would have saved the State from a loss of six millions of dollars. Upon that sum we are now paying, without any return, some three hundred

thousand dollars of interest, annually; that is, about eight hundred dollars a day; more than enough to maintain, in perpetual session, year after year, with all its expenses of reporting and printing, such a Convention as that which has been engaged for the last four months, in framing a Constitution, which shuts out, for the future, all possibility of similar folly.

No county is allowed to subscribe stock to any incorporated company, unless the same be paid at the time of subscription. The State is prohibited from assuming the debt of any town or county.

AS TO BANKING AND CORPORATIONS.

The Legislature may, or may not, establish banks in his State. If they establish banks, it is to be under the following restrictions:

No bank shall be created, otherwise than by general law, except one bank, with branches.

If the Legislature decide to enact a general banking law, all banks thereby created, are to give ample collateral security, such as may be readily converted into money, for the redemption of all their notes in gold and silver; and this security is to be lodged in the hands of some officer of State. No such security has heretofore been demanded of banks in this State.

If the Legislature decide to charter a bank with branches, the branches are to be mutually responsible, as the branches of our present State Bank now are.

The State is not hereafter to be a stockholder in any bank or other corporation.

All banks are required to redeem their notes, at all times, in gold and silver; and the Legislature is prohibited from ever authorizing a suspension of specie payments.

The stockholders, in all banks, are to be held individually responsible, to an amount over and above their stock, equal to the amount of their stock.

In case of insolvency, holders of bank notes are to have preference of payment over all other creditors.

No bank is to receive a higher rate of interest, than is allowed to individuals loaning money.

Every bank is to cease banking operations within twenty years from the time it is organized, and promptly thereafter to close up its business.

These restrictions on banking, not imposed in the former Constitution, though stringent in their character, will not, it is believed, prohibit banking, under a safe system, by responsible associations. The restrictions on banking under a general law are similar to those of the New York system, as amended according to the provisions of the new Constitution of that State. Under that amended system, not a dollar has been lost to the bill-holders. As to the principle of making the branches of a bank, if estab-

lished with branches, responsible for each other's liabilities, it has worked so well in the charter of our present State Bank, that it is believed a large majority of the people approve it.

In addition to the above restrictions, applying specially to banks, it is provided, as to corporations generally, that they shall not be created by special act, but may be formed under general laws.

NEGROES AND MULATTOES.

The Article in regard to Negroes and Mulattoes is to be submitted separately to the people. It provides,

First. That no Negro or Mulatto shall come into, or settle in, this State, after the adoption of the new Constitution.

Second. That all contracts made with negroes or Mullaattoes who may come into the State, contrary to the foregoing provision, shall be void, and all persons who shall employ any such Negro or Mulatto, shall be fined in any sum not less than ten, nor more than five hundred dollars.

Third. That all fines collected for any breach of this article, shall be applied to the colonization of so many of the Negroes and Mulattoes, now in this State, as may desire to emigrate.

As to any further provision for colonization, it is left to future Legislation. A majority of the Convention were of the opinion, that the true interests alike of the white citizens of the State and of its colored inhabitants demanded the ultimate separation of the races; and that, as the Negro cannot obtain, among us, equal social and political rights, it is greatly to be desired that he should find a free home in other lands, where public opinion imposes upon color neither social disabilities nor political disfranchisement.

No additional disability, not found in the old Constitution, is imposed by the new, no Negroes or Mullaattoes or their descendants, who may be in the State at the time of the adoption of the amended Constitution.

MODE OF AMENDING THE CONSTITUTION.

Amendments to the Constitution may be proposed in the Senate or House of Representatives. If passed by a majority of all the members elected to either branch, they are referred to the next regular session of the Legislature, to be held two years thereafter. If passed by them, a second time, they are then, at the next general election, to be submitted to the People; and if they pass this final ordeal, they become a part of the Constitution.

In this way, there will always occur a general election of members of the Legislature, during the canvass for which, the amendments that they may have been proposed at the previous session, can be brought in issue: and nearly

three years must intervene, from the time an amendment is first proposed, before it can be finally adopted.

There was provided, in the old Constitution, no mode of submitting to the People separate amendments. The advantage of the provision is, that, without the expense of a Convention, the new Constitution, if found faulty or deficient in any of its parts, may be amended and perfected.

With this brief explanatory statement of the more important alterations embodied in the new Constitution, we place our work in the hands of our constituents, who alone can give it vitality.

Those who desire to examine arguments for or against the various charges that have been made, will find them spread at large, throughout the Debates of the Convention; officially reported, in accordance with the law which provided for the call of a Convention, by a corps of stenographers. Of the two volumes in which these Debates are embraced, three copies will be deposited in the Clerk's office of each county throughout the State.

It was our expectation, when we first engaged in the task of revision, to be able to complete it, at an earlier day. But the deliberations of a numerous body necessarily proceed slowly; and it would have been a culpable violation of duty, for the sake of ephemeral popularity, hastily, or without the fullest and most deliberate consideration, to pass upon great questions, involving the dearest rights and most vital interests, not of the present generation alone, but of others that are to succeed.

The question being on concurrence in the report,

Mr. DOBSON. Before the committee concur in the report, there is one subject to be noticed, and perhaps more than one, but I refer particularly to the subject of removals from office, and, I may add, the subject of contested elections. These points have been omitted, and I think they ought to be embraced in the address.

Mr. LOCKHART. There is another subject also that has been overlooked.

No motion to amend being made,

The PRESIDENT put the question, "Will the Convention concur in the report of the committee?"

The report was unanimously concurred in.

Mr. OWEN. I will state to the Convention that I have been compelled to draw up this address in a hasty manner, and I perceive that there is an inaccuracy in regard to a statement of fact, and I ask the permission of the Convention to make the necessary correction.

Mr. CLARK of Tippecanoe. I would suggest also that the omission referred to by the gentleman from Owen ought to be supplied.

Mr. HAWKINS. It appears to me that there is a sufficient amount of words in the address al-

ready. The fact is, if we instruct the committee to put everything into the address that may be said, the effect will be that the balance of us will have nothing to say when we get home. (A laugh.) For my part I should like to have the privilege of saying something to my constituents that have not been carved out for me by the committee, that when the time arrives at which I may have occasion to advocate the adoption of the Constitution we have formed—as I most assuredly will do (applause)—there may be some topic left for me to discuss which has not been already commented upon by your committee. From the moment I set my foot upon the soil of my district, I shall feel it obligatory on me to advocate the changes that have been made in our Constitution. I should like to have the honor of originating or at least to be supposed to originate something that has not been put into my mouth by a committee of this Convention. For this reason, I hope the address will go out as it has been reported to us; and then I shall have an opportunity when giving my explanation of the views by which we were actuated in making the various changes that have been made, of at least seeming to advance something original, and not be in the condition of the parrot who repeats what he has been learned to say. ("Consent," "consent.") I do not want to be placed in a condition of dependence on a committee of ten of this Convention, for the explanations that I shall give to my constituents, as to the value and importance of our labors. (Laughter and applause.)

Mr. PETTIT. Is there any question now before the Convention?

The PRESIDENT made an announcement of a notice which he had been requested to give.

SEVERAL VOICES. Let it be read "a second time now." (Prolonged laughter.)

The PRESIDENT. This being Saturday, resolutions are now in order.

Mr. PETTIT. I wish to offer a resolution.

Mr. KELSO. I rise to a question which I believe has precedence over ordinary business. The remark which I wish to make is in regard to a portion of a printed speech which I find in the paper this morning, and in which I am assailed in the most bitter manner—in a manner that has never been attempted on this floor.

A VOICE. What is it about?

Mr. KELSO. It is in a speech that was supposed to have been delivered by the honorable delegate from Floyd (Mr. Thornton). In the published report of that speech, he is made to say in regard to me things that he never dreamed of uttering here in the presence of this Convention.

Mr. PETTIT. I make a point of order, whether that is a privileged question. The gentleman is referring to a speech that was made some weeks ago.

Mr. KELSO. Although the speech was made some weeks ago, it has only been published in

the paper of this morning. And what I complain of is, not of the speech as delivered some weeks ago, but of the version of the speech that is published in the paper this morning; and in view of what is stated in the report of that speech, I claim the privilege of making an explanation, that the pretended report may not go out as the *bona fide* report that was taken of what was said here on that occasion.

The PRESIDENT. The Chair would remark that the practice has been if any gentleman finds himself misrepresented in the paper, he may correct it by application to the Stenographer, or to the publisher of the paper.

Cries of "Proceed," "proceed," "Let us know what it is."

Mr. WATTS. I rise to ask a favor of the Convention, and it is one that I had not occasion to ask before during the whole session of the Convention. It is for permission to change my vote upon the concurrence in the report made by the committee on revision this morning.

Leave was granted.

Mr. PETTIT. I offer for adoption the following resolution, in reference to the index to the manuscript copy of the journal, required to be deposited in the office of Secretary of State:

Resolved, That the Secretary of this Convention be authorized to prepare an index to the manuscript copy of the Journal of the Convention, required to be deposited in the office of the Secretary of State, and that he receive as a compensation therefor the same as may be allowed for preparing an index for the Journal of Debates.

Mr. BORDEN. It seems to me that there is no necessity for going to the expense of having an index prepared for the manuscript journal, for this reason: that the printed journal will be indexed as a matter of course.

Mr. PETTIT. It must be apparent to the gentleman, if he will consider for a moment, that the pages of the manuscript journal and the printed journal will not be precisely the same. By what means then will you be able to ascertain the contents of one from the index of the other? It is true that for ordinary purposes the printed journal will perhaps be sufficient; but suppose a member of this Convention should be charged with voting for a proposition for which he did not vote, he denies the allegation, and the proof is to be found only in the attested copy of the journal in manuscript.

Mr. HAMILTON. I should like to know what will be the expense attending the preparation of an index for this manuscript journal. If politicians want to exhibit their votes let them do so at their own expense.

Mr. MOORE. I move that the resolution be laid upon the table.

The motion was, upon a division—ayes 44, noes 35—decided in the affirmative.

Mr. GREGG. Yesterday, or the day before, there was a resolution passed ordering fifty-five

thousand copies of the new Constitution to be printed; I should like to be permitted to move a re-consideration of that vote, in order that I may offer the following:

Resolved, That the several editors of this State be requested to publish the amended Constitution in their respective papers, and that they be entitled to receive thirty dollars each as compensation therefor."

It will cost less, said Mr. Gregg, to publish the Constitution in this way, than to publish it separately, and it will obtain, if published in the newspapers, more extended circulation. I go for dividing some of the spoils among the publishers of the country, instead of confining all the patronage of the Convention to a few local presses.

Mr. BORDEN. I trust the motion of the gentleman from Jefferson will prevail; but I believe that a less sum than thirty dollars each would remunerate the publishers. There are, I believe, about ninety-six newspapers in the State. And sir, I am inclined to think that twenty dollars each would be sufficient. There are about two hundred thousand voters in the State, and if only fifty-five thousand copies are published there will not be a sufficient number to supply them so that each may have a copy.

Mr. HAMILTON. Perhaps there is some misunderstanding about this matter. I am informed that the cost of publishing fifty-five thousand copies, will not exceed eight hundred dollars. I have a resolution which I intend to offer in relation to this subject; it is, that the Secretary shall contract for the printing, at a reasonable price. And I shall offer it in case this one does not prevail.

Mr. WOLFE. I should have no objection to the mode of publishing proposed here; that is, of having the Constitution published through the medium of the newspapers: but if that be done the people will obtain it only in detached portions, and perhaps before they receive the conclusion the commencement may be lost, consequently it will be necessary to have some in pamphlet form, so that it may be fully examined and understood before being voted upon. I have no doubt the newspapers will publish it at all events, for the benefit of their readers. I do not think we ought to incur a great deal of expense in printing the Constitution, but it is necessary that there should be a sufficient number of copies to enable every voter in the State at least to have a copy.

Mr. KENT. There are between ninety and a hundred newspapers in the State, having an average circulation of about six hundred copies, and if the Constitution be published in all these newspapers they will circulate at least sixty-thousand copies, and it will cost the State something like two thousand dollars to publish it in that way. My own opinion is that we had better publish it in pamphlet form, because in that case it will be more likely to be preserved. It

is not usual to be very careful to preserve a newspaper, but a document published by itself is in a proper shape to be preserved, and it will be read by many persons. Although I am interested in a paper, yet I do not hesitate to give my decided preference for having the publication of the Constitution in a more durable form. The cost of publishing fifty or fifty-five thousand copies, cannot much exceed eight hundred dollars. I should have no hesitation to take the printing for eight hundred dollars.

Mr. CARR of Jackson. I was informed yesterday evening, by several gentlemen, that the publication of these fifty thousand copies of the Constitution would probably cost about three thousand dollars. I called this morning upon Mr. Brown, the printer to the Convention, in order to ascertain what the cost would be; and, upon making an estimate, it was ascertained that the expense would be about eight hundred and twenty dollars.

Mr. GREGG withdrew his motion to reconsider.

Mr. HAMILTON offered a resolution to the effect that the Secretary of the Convention be instructed to contract for the printing, upon the most reasonable and just terms.

Mr. BASCOM. How will that resolution accord with a former resolution of the Convention, that fifty-five thousand copies of the Constitution shall be printed?

Mr. HOLMAN moved to amend the resolution, so as to limit the price to be paid to eight hundred dollars.

The amendment was adopted.

The resolution, as amended, was then adopted.

Mr. PETTIT. I offer the following resolution, relative to the pay of our Clerk:

Resolved, That the Secretary of this Convention be paid the same per diem as the Clerks of the Senate and House of Representatives were paid at last session of the General Assembly."

Cries of "Consent! Consent!"

If gentlemen say "Consent," it will not be necessary for me to detain the Convention with any remarks.

Mr. KENT. I move the previous question, Mr. Pettit still retaining the floor.

The PRESIDENT. The gentleman from Tippecanoe has the floor.

Mr. PETTIT. A difficulty has occurred in reference to the pay of the Secretary, and I believe there is some doubt in the mind of the President of the Convention in regard to how much he shall receive; it is desirable, therefore, that it shall be distinctly declared. The language of the law is this: "Members of the Convention shall receive three dollars per day," &c., "and the Secretary and other officers in attendance, shall be paid the same compensation that is paid to the officers of the General Assembly for similar services." It does not say what is allowed by law, but what is "paid

for similar services." Well, then, what is the fact? This law, you will recollect, was passed last winter, and the provision in regard to paying this officer must, it appears to me, be construed in relation to what the same Legislature paid their officers. Then the inquiry is, how much did they pay them? The book shows that the Principal and Assistant Secretaries each received four dollars a day. This, then, is what was paid by the same Legislature by whom it was declared that our officers should receive the same as was paid to theirs; not the same as was allowed by any provision of law, but the same as was paid. I have shown you that four dollars a day was paid to their Secretaries, thereby determining what ours should have.

Sir, I understand that an objection is raised that there is, in a law passed some six years ago, a provision which declares that the Secretary of the Senate shall be paid three dollars a day for six weeks and a dollar and a half a day after that time. Now, sir, not for a single year have they abided by that law; on the contrary, they have universally paid them four dollars a day. They have not in any year since eighteen hundred and thirty-nine, paid less than four dollars a day. Sometimes it has been four and a half, and sometimes five, according as the specification has been put into the appropriation bill. And they say in express terms, that the Secretary of the Convention, its officers and attendants, shall be paid the same fees as are paid by the Legislature for similar services. They were paying four dollars a day to their Secretaries at the time they adopted the provision to which I have referred; therefore it appears to me the matter is entirely plain.

I would ask, sir, would it be an equivalent for the service of our Secretaries to pay them but one dollar and a half a day? No clerk of the Legislature ever served for that.

Mr. CHAPMAN. I would like to inquire, for information, if the resolution intends to include all the assistants who have been engaged during the session at any time?

Mr. PETTIT. Certainly.

Mr. GORDON demanded the previous question.

The demand for the previous question was seconded.

The main question was ordered to be now put.

The question being taken on the adoption of the resolution,

It was decided in the affirmative.

So the resolution was adopted.

Mr. OWEN made a report from the committee on revision.

The report was concurred in.

Mr. BORDEN. Mr. President, I desire the Convention to favor me with a suspension of the rules, to enable me to introduce a resolution that the address which was reported to us this

morning, be signed by the President of the Convention, and published with the Constitution. It is always usual, I believe, that a document of this kind be signed by the officers of the Convention. If the other part of the resolution be objectionable, let it be stricken out.

The rules were suspended, and the question being on the adoption of the resolution,

Mr. FOSTER moved to substitute the following: "That the address to the electors be printed for the use of the Convention."

Mr. BORDEN. The gentleman should add, that it be signed by the officers of the Convention.

Mr. WOLFE moved to amend the amendment, by striking out all that relates to the printing.

The question being on the amendment to the amendment,

Mr. DOBSON. When the question was up the other day in reference to ordering the address to be printed and published with the Constitution, it was determined not to make such order until we had an opportunity to see what it contained. We have had it reported and read this morning, and it appears to me we ought to order its publication. It would be something of an absurdity to direct a committee to prepare an address for the information of the electors of the State and then refuse to order it to be published. As to how many copies it is necessary to publish, that is a question for the Convention to determine. I am for publishing as many copies of the address as of the Constitution.

Mr. OWEN. I will merely say in regard to the address, the select committee had been very careful to frame it as near as possible to serve as an index to the Constitution; and, perhaps, such being its character, it will be appropriate that it go out with the Constitution.

Mr. MORRISON of Marion. I would like to know how much the printed address will make.

Mr. OWEN. It will make from a column to a column and a half.

Mr. MORRISON of Marion. It will add a mere trifle to the expense of printing, and if printed with the Constitution it will be done at a saving of almost two-thirds of the ordinary expense. It will cost not a cent more for press-work and very little more for paper; the whole cost will not exceed a hundred dollars. I am a practical printer, and understand how these things work.

Mr. HOLMAN. I certainly give my hearty approval to the address reported by the Committee. I regard it as an excellent exposition of the Constitution; but it must be recollected that this Constitution has been a great expense to the people of the State, and gentlemen may say what they please on the subject, it is manifest to my mind that the printing of this address to accompany the Constitution must be attended

with nearly as much expense as the printing of the Constitution itself. Gentlemen must recollect that every one of the newspapers in the State will publish this address; every citizen will have in his possession a paper containing it. It is a matter of interest with the publishers to publish this address, because it contains interesting information. If it be thought proper that we should publish it at all, three hundred copies will, in my opinion, be quite sufficient.

Mr. PETTIT. I am clearly of opinion that if we publish these copies of the Constitution as is proposed, we ought to send out with them this exposition, showing the difference between the old Constitution and the new. We all know that the farmer and the mechanic have but little time to spare from their labors to make themselves acquainted with those changes; but if specifically pointed out, they will be enabled to form an opinion concerning them, while, on the other hand, they would not have sufficient leisure to search for them: besides, very few are in possession of copies of the old Constitution. I hope the address and Constitution will go together, that it may be seen at once how much better or how much worse the new Constitution is than the old. I desire that the people shall be correctly informed in regard to these things, and have facilities afforded them in order to obtain information respecting those matters. It is much more important, in my opinion, that the index, or exposition, should go out than that the Constitution itself should; because, without it the people will not have before them the contrast between the old and the new. Sir, if we print the one we ought to print the other.

Mr. GORDON. Do I understand the proposition to be to publish the address with the Constitution?

The PRESIDENT. The pending question is on the motion of the gentleman from Sullivan.

Mr. GREGG. I desire to amend the amendment, by providing that the additional expense shall not exceed one hundred dollars.

The PRESIDENT. There is an amendment to an amendment already pending.

The question being put on the adoption of the amendment of the gentleman from Sullivan,

Mr. WOLFE demanded the yeas and nays, and they were ordered.

I will merely remark (said Mr. W.) that I hope the Constitution will recommend itself to the people; I do not think there is any necessity for sending out a recommendation with it. The people will derive all the necessary information from the newspapers.

Mr. OWEN. I have only to say in reply, that there are many portions of the State that are not reached by newspapers, and I am satisfied that the people of those portions would be glad to have this report.

Mr. CHAPMAN. Gentlemen are certainly

talking about what they do not understand. If they will take a practical view of the matter, it will be seen that the printing of this address with the Constitution will occasion but little additional expense.

Mr. SPANN. I would like to explain the reason why I shall vote for the amendment. I desire that the address shall be published, but I object to its being published in connection with the Constitution. If the Constitution is adopted by the people it will become the supreme law of the land, and the courts will have to decide upon it, and the Legislature will have to base its legislation upon it. Now the Constitution should not interpose any other matter, because it may lead to embarrassment. I believe that we should send out to the people the Constitution by itself. There are but few people in the State who will not be able to decide for themselves as to its meaning, and the Legislature and the courts will be left free to decide upon it as it is. I think it will rather undervalue our work if we have to give an exposition of what ought to be so plain.

Mr. OWEN. I will suggest to the gentleman, in the first place, that no address of ours, which is merely an expression of opinion, can have the slightest weight with the courts any more than an expression of opinion given in debate. If the resolution be adopted the address will merely be printed and bound in the same pamphlet, and may at any time be separated.

Mr. GORDON. It appears to me that the reporting and publishing of our speeches on the subject, will cost nearly five times as much as the publishing of the address; I therefore move the previous question.

The demand for the previous question was seconded.

The main question was ordered to be now put.

The question being on the amendment of the gentleman from Sullivan, the yeas and nays having been previously ordered, were taken, with the following result—yeas 26, nays 56:

YEAS.—Messrs. Badger, Beard, Bowers, Bracken, Clark of Hamilton, Cole, Crawford, Davis of Parke, Farrow, Foley, Haddon, Hendricks, Holman, Kelso, Kilgore, Kinley, March, Miller of Fulton, Morgan, Nave, Newman, Niles, Tague, Thomas, Watts, and Wolfe—26.

NAYS.—Messrs. Alexander, Allen, Bascom, Blythe, Borden, Bryant, Carr, Chapman, Clements, Cookerly, Davis of Madison, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Elliott, Fisher, Foster, Gibson, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hall, Helmer, Hitt, Johnson of Orange, Kent, Kendall of White, Logan, Maguire, McClelland, McLean, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Owen, Pepper of Crawford,

Pettit, Prather, Read of Clark, Schoonover, Sherrod, Smith of Scott, Spann, Tannehill, Wallace, Wiley, and Mr. President—56.

So the amendment was not adopted.

The question being then taken on the amendment of the gentleman from Monroe, it was not agreed to.

The question recurred on the adoption of the resolution, and it was, on a division—aye 43, noes 34—decided in the affirmative.

Mr. BORDEN. As the resolution is imperfect I move to fill the blank with —

The PRESIDENT. The hour allotted to resolutions has expired. The Convention will now take up the

ORDERS OF THE DAY.

Mr. PRATHER. There seems to be some misunderstanding in regard to a resolution to pay our Secretary. If the Convention will indulge me with a suspension of the order of business, I will move the following:

“Resolved, That the resolution adopted this morning in relation to the pay of the Secretary, shall be construed to include the Assistant Secretaries.”

The question being taken on suspending the rules,

It was decided in the negative.

SIGNING THE CONSTITUTION.

In accordance with a resolution making it the special order for this morning at ten o'clock to call the members alphabetically to sign the Constitution, the Secretary was proceeding with the call, when

Mr. PETTIT moved to postpone the special order until two o'clock, P. M., in order to enable the committees to prepare their reports.

The motion was, on a division—aye 46, noes 22—decided in the affirmative.

Mr. OWEN, from the committee on revision, made another report.

The report was concurred in.

Mr. NAVE. I rise to ask the Convention to suspend the rules, that I may offer a resolution. [Cries of “Read it. Read it.”] It is that the member from the county of Union, (Mr. Brookbank,) notwithstanding the absence on account of the contest for his seat, be paid his entire per diem compensation from the commencement to the close of the Convention.

The question being put upon the motion to suspend the rules,

It was decided in the negative.

Mr. ALLEN. If there is nothing now before the Convention, I will ask the privilege of signing the Constitution, as it is necessary I should leave for home this afternoon. [Cries of “Consent. Consent.”]

Mr. WATTS. I presume there is no further business on the calendar; I move, therefore, to re-consider the vote by which the special order was postponed.

The motion was agreed to, and the vote was accordingly re-considered.

The question recurring on the motion to postpone,

It was decided in the negative.

The calling of the roll and signing of the Constitution was then proceeded with, until the usual hour of taking a recess.

AFTERNOON SESSION.

Mr. PETTIT moved that the order of business be suspended in order to enable him to introduce a resolution to the effect, that the President and Secretary of the Convention be requested to remain at Indianapolis until the completion of the enrollment of the manuscript copy of the Journal, and that they receive their usual per diem compensation during that time.

The order of business was suspended, and the resolution was agreed to.

Mr. PETTIT. There is another resolution which it is due to one of the members of this Convention we should pass. It will be recollected that there was a contested election, and that both contestants went back to the people and a new election was held. It is an universal rule in every deliberative body to pay the actually incurred expenses in such cases; for instance, the expense of taking depositions, and so on; because the people are concerned in the matter; it is a thing in which they have a direct interest. I move a suspension of the order of business. [Cries of "no," "no."]

The question being put on suspending the order of business, it was decided in the negative.

So the order of business was not suspended.

Mr. BORDEN. I will state to the Convention, that several gentlemen have left town before they had an opportunity to sign the Constitution. I desire to offer a resolution to the effect that any time within a year, they may be permitted to sign it.

The order of business was suspended by consent.

The resolution having been read,

Mr. EDMONSTON. I rather doubt the propriety of adopting this proposition. I have no desire to accommodate gentlemen who may hesitate to take the responsibility of signing the Constitution now, and who, after it shall have been ratified by the people, will come forward and subscribe their names to it. If the gentleman will modify his proposition so as to give the privilege of signing the Constitution at any time before it is ratified, I shall be able to vote for it; otherwise I shall not.

Mr. BORDEN. I will say to the gentleman that the fact of signing the Constitution is no evidence of approval; it is only an attesting act. But I will alter the resolution according to the suggestion of the gentleman from Dubois (Mr. Edmonston).

Mr. EDMONSTON. I should prefer to have it in that shape. I am prepared, so far as

I am concerned, not only to sign the Constitution, but to defend it through good and ill report; and I am not willing to let gentlemen come in, after we have secured for it the favor of the people, and express their approval at that late period, after leaving it so long in doubt whether they were for or against it.

The resolution, as modified, was adopted.

Mr. OWEN, from the committee on revision, made a report.

The report was concurred in.

Mr. CHAPMAN asked a suspension of the order of business to enable him to introduce a resolution relative to the disposal of the property which had been purchased for the purpose of fitting up the Hall for the accommodation of the Convention.

The order of business was suspended, and the resolution was adopted.

Mr. BORDEN. Mr. President, I desire the Convention to favor me with a suspension of the rules, to enable me to make a motion to fill a blank in a resolution that passed this morning. The resolution was offered by me, and it provides for the publication of the address reported by the committee appointed for that purpose. It also provides that a certain number of copies shall be printed in the German language. After offering the resolution, and before I had an opportunity to move to fill the blank, the previous question was demanded and ordered on the passage of the resolution; and I was unexpectedly deprived of the opportunity to move to fill the blank. I desire, sir, to fill the blank, and for that purpose I ask the Convention to suspend the rules in order to enable me to offer a motion to that effect. I look upon the address, sir, as one worthy of publication, and desire that it shall be published in German as well as in English, for the reason that I have a good many constituents who read only in German. I move that the rules be suspended for the purpose which I have indicated.

The motion was not agreed to.

Mr. MILLER of Gibson stated that he had discovered a variance between one of the sections, as reported back by the committee on revision, and the section as it stood when it was referred to that committee, and the variance was a material one. It was in relation to the requiring of a specie basis upon the passing of any act authorizing banking. I move (said Mr. M.) that the vote by which the report was concurred in be re-considered.

Mr. BORDEN remarked, that if the committee had reported the section differently, if they had omitted a material part, he hoped the attention of the body would be directed to it.

Mr. WOLFE. All that provision in relation to the specie basis is omitted.

Mr. KELSO. It is passing strange, indeed, that the committee on revision would assume to themselves the right to make a change of this kind. It is certainly beyond precedent

that the committee should take upon itself to strike out an important provision which had been adopted by the Convention. When the provision in relation to banking was adopted, it was considered one of the most important that we had incorporated into the new Constitution. Now, however, without even an intimation of their intention, when not one in ten of the friends of the State Bank knew anything of the matter, the committee comes in and asks us to submit to a change of this description! It seems to me it is asking rather too much.

Mr. HOLMAN. It has been usual to concur in the reports of the committee on arrangement and phraseology, from the fact that the duties of that committee did not embrace the power of making substantial alterations in the sections as adopted by the Convention, and no gentleman could have anticipated any effort on the part of that committee to change the spirit of sections referred to it for revision; but in this instance I must call the attention of gentlemen to the fact that the entire spirit and meaning of the section heretofore adopted touching the right of any banking company to continue its business after twenty years, has been vitally changed by the section as reported back by the committee. I had, sir, the honor of submitting the original section, as an amendment to the section proposed by the gentleman from Jefferson (Mr. Dunn). I cannot but believe that the Convention, in its adoption, entertained the same view of its effects as those entertained by myself, and which influenced me in bringing it forward. The object was to require every banking company to close up its entire business within twenty years after its organization. If it was solvent, its peculiar franchises had existed long enough; if it was not, the sooner the people knew it the better, and this limitation would aid in preventing the exercise of too much power by the combined moneyed institutions of the State. The section, as reported back, in effect, leaves the franchises and powers of banking institutions, except as to the issue of their own paper, open to the caprice of legislation. I undertake to say, that the entire spirit of the section is changed, and I call upon that committee to say whether they intentionally assume the right to make substantial innovations upon the sections as adopted by the Convention. If not, I insist on the section as originally adopted; and, for one, I insist, that in the absence of near one-third of our number, no committee, however prominent it may be, should arrogate to itself powers not contemplated in its organization. I am satisfied that the large number of Bank men who are now here are in favor of the section as changed by the committee, and I only insist upon the original section as it was adopted by the deliberate voice of the Convention when its numbers were full; and I now deny any power on the part of the committee to make the change. The origi-

nal section was an important restriction on banking; the committee wish to destroy its restrictive character, and while, sir, I have been opposed to the ultra restrictive policy of the majority of this Convention—while I oppose every restriction which will circumscribe the free exercise of power by the people, more especially in their primary organizations—at the same time I am in favor of every limitation and restriction which may secure the people from the ruinous consequences of wild, reckless, and unprincipled banking.

Mr. OWEN. If the Convention will give me their attention for five minutes, I will explain this whole matter. Now, in the first place, these reports have always been laid on the tables of delegates, whenever it was possible, at least half a day before they were taken up and passed upon. On the left hand page every word was printed of every section that was referred to us, precisely in the shape in which it was referred. On the right hand page was printed every section as revised and arranged by the committee. I say this has been done in every instance, even to the very minutest particular. It has been the endeavor of the committee not to follow their own opinions in the slightest degree, but to report back what they believed to be the intention of a majority of the Convention.

Now it must be in the recollection of the Convention that the phraseology of this section, as it stood originally, was this: "Specie basis, actually paid in." This was passed before what was called "the compromise section" was adopted. A motion was made to re-consider it, and it was voted down. It will be recollected, also, that the gentleman from Putnam (Mr. Stevenson) made a motion that the wording of the section should be changed to this effect; "that their notes shall be at all times redeemable in gold and silver." His motion was ruled out of order, because a motion to re-consider had previously been made and failed, and his object could not be reached in that way; and it was said by some gentlemen that the matter might be left to the committee on revision.

Now, after the most deliberate consideration, a majority of the committee—indeed I believe that every member of the committee who was then present—concurred in the opinion that the intention of the Convention, after the compromise section passed, was, that a specie basis should be construed to mean that the notes of the Bank should at all times be redeemable in gold and silver. The committee reported back this provision in accordance with what they conceived to be the true meaning of the Convention in regard to the specie basis. It was again and again stated on this floor, that if the specie basis, according to the original idea of that basis, were exacted, there could be no banking in Indiana; that it would amount to an effectual prohibition. The committee came to the delib-

erate conclusion that what we ought to report was substantially this provision, namely: that the notes put into circulation as money shall be redeemable in specie.

Mr. WALLACE. This is a very important amendment; one altogether too important to be made by the committee on revision; it is putting the cart before the horse completely. The gentleman says they have changed the section so as to require the notes to be redeemable in gold and silver; but the proposition originally was, to secure a specie basis actually paid in. That was the true intention, but where the committee now place it, they take away the foundation of banking. What security shall we have that the basis upon which their paper is to be issued will be such a basis as to secure its redemption in gold and silver? Well, sir, it is not proper that we should undertake to argue this question over again. The committee have undertaken to reverse the action of this Convention, and the gentleman says the object is to make the paper redeemable in gold and silver. I might go on and show you that this is an entire fallacy—that you can have no security for its redemption in gold and silver unless you require a specie basis actually paid in.

Mr. OWEN. Will the gentleman allow me to ask him a question?

Mr. WALLACE. Certainly.

Mr. OWEN. Inasmuch as this is a matter of mere interpretation, I would ask the gentleman what he understands this to mean: "that there shall be specie basis actually paid in?" Is there anything positive or definite about such a provision as that?

Mr. WALLACE. I will answer the gentleman by referring him to the explanation given by the delegate from Tippecanoe when the question was debated, viz.: "that is a matter which must necessarily be within the power of the Legislature when they proceed to act upon the general directions contained in the Constitution."

Mr. OWEN. And if the Legislature should omit?

Mr. WALLACE. The gentleman is only endeavoring to rid himself of a stumbling block. Now I am free to acknowledge that I care not what additional securities you throw around the banks, if you in the first instance make the foundation right; if you make it substantial. I care not how many guards there be about it, but if it stand upon a slight foundation, your guards will never protect it.

Mr. OWEN. If it is to be left to the Legislature to decide as to the amount of the specie basis—whether it shall be an hundred cents to the dollars, or ten cents, or five cents, I appeal to the common sense of the Convention, if the whole matter is not left to them, and whether your provision, under such circumstances, would not be a mere piece of waste paper? If the Convention had determined that a dollar should

be paid in for every dollar issued, the committee would have inserted it. But having left it out and having decided in regard to one class of banks at least, the security should be of a particular character, the committee thought they were bound to deduce the meaning of the Convention from the separate provisions.

Mr. HAMILTON. This question has unfortunately come up at a bad time. The question in itself is a simple one; but we are foolishly attempting to carry out too many details, and to leave nothing to the Legislature. I think there can be no difficulty about the matter. Private banking is to be predicated upon stocks; they will be compelled to have a sufficient and secure basis. The friends of the bank will be secure enough. Then, sir, as to the State bank, the next question is, what will be the "ample security" there? Now the gentleman from Marion, (Mr. Wallace,) to use a familiar expression, is afraid of their "bursting up."

Mr. WALLACE. Allow me to say to the gentleman this: there is a provision that there may be a State bank chartered: and what kind of security is required from the State bank? There should be the same in the one case as in the other: and I would ask is not the best kind of security that which is based upon gold and silver?

Mr. CHAPMAN. How much?

Mr. WALLACE. Dollar for dollar.

Mr. HAMILTON. This, however, must be left to future legislation. It seems to me to be a singularly inappropriate time at which to bring up this subject for re-discussion.

Mr. MILLER of Gibson. If you leave it to the Legislature and they say that nothing but stocks shall be the basis of banking, how are you to secure a safe basis? Under the provisions of the section as reported by the committee, they can commence banking without a dollar; so with free banks. Such a provision could never have passed this body, and I ask how it is that it has made its appearance now? I had the fullest confidence in the committee on revision, and still have; but, sir, I want to know why it is that while we are putting confidence in this committee to report back matters just as they were sent to them, they report them to us in a very different form. Sir, I for one cannot avoid expressing my entire disapprobation of such a course.

Mr. EDMONSTON. Sir, as a State bank man I must confess that I am with my friend from Gibson. I had such implicit confidence in the committee that I did not consider it necessary to examine the reports carefully; and had not my attention been called to this matter last night, it would have escaped my notice altogether. Now I ask any gentleman whether banking operations, to afford the necessary security to the community which is desired, must not necessarily be formed on a sufficient specie basis, so as to be able at any time to redeem

their paper? Sir, such was the intention of the Convention. If I mistake not a motion was made to strike out that provision, and it was voted down by a large majority. Sir, it was the will and the wish of a majority of this Convention that all banks should be required to conduct their business on a sufficient specie basis: that was the ground taken by the majority. Now, sir, what has been done by the committee? The gentleman from Posey says the words stricken out were words of no meaning—that they would have no practical operation. If that be the case why so much eagerness to strike them out? They had been deliberately inserted by the Convention, and I believe they were in accordance with the wishes of the people of the country. But, as the provision has been reported back to us, we shall have banks created, doing business on one promise to pay, based on another promise to pay.

Mr. CHAPMAN. Let me suggest to the gentleman that there is a section which declares that specie payments shall never be suspended.

Mr. EDMONSTON. Oh, yes, you may declare that specie payments shall never be suspended, and that all bills shall be redeemable in gold and silver; but how are you to know that the gold and silver are forth-coming? how are you to know that it is provided for the redemption of all the bills put in circulation? Bills may come in for redemption, and there may be nothing but State bonds in the possession of the bank; what sort of security is this to the bill-holders? Sir, the people in calling this Convention were impressed with the idea that suitable provision was to be made for future banking operations, so that they would not be subjected to any risk of loss by means of the banks. They had an entire belief that we would make such provision for their security, that they would be saved from even the apprehension of loss, and as I regard it, such provision was made. I know what the feeling of the people I represent is in regard to this subject. They scorn and detest such a system of banking as has prevailed in many parts of the Union, and under which system frauds have been perpetuated from day to day. I say that the committee on revision have taken a step which is beyond their legitimate duty: they have assumed a responsibility which this Convention never conferred upon them. I trust that the Convention will deliberately consider the propriety of reversing the action of the committee, and that the proposition which was adopted by the Convention be inserted in its proper place.

Mr. KELSO. I have very little to say on this subject. But this I do say, that all banking operations, whether by a State bank or any other, should be conducted upon a specie basis. I voted in favor of that proposition, and I think the affirmative vote upon it was one hundred and nine. After that had been adopted, I felt at liberty to accord with the compromise section

offered by the gentleman from St. Joseph; but without that I never would have given my vote in favor of the compromise section. With the requirement of a specie basis, we had every reason to presume that the Legislature would adopt such a course as would compel the banks to redeem their issues dollar for dollar in specie. With that provision I would have been satisfied that the Legislature should be authorized to establish free banks; and that they should, if they saw proper, establish a State bank with branches. The gentleman from Posey came forward with a proposition that the security for free banks should be State stocks: with that, a majority of the Convention were content; and I believe the people would be content. But the committee, and that too without any instructions from the Convention—without even a hint from this body in any shape—take the responsibility of striking out the very foundation we have laid for our banking system. Now I say that is taking rather too much liberty; it is exercising a power which does not belong to them; it is making a radical change that nobody ever dreamed of being made. And we are told that it is all right. Yes, sir, it is “all right” with those who want it so, but with those who do not, it is not “all right.”

Mr. NILES. If the committee had changed the substance of this provision at all, I should deem it worthy of spending sometime about it. But it does seem to me that the report of the committee is quite as strong as anything the Convention have adopted. It will be found, if practically considered, that the clause about the specie basis being paid in, is only a guide for the Legislature. The whole object was to secure the redemption of the bills in specie; it was merely to give a direction to the Legislature in passing a law authorizing banking, to make provision for the security of the bill-holders, by requiring a sufficient amount of capital upon which the business of banking could be conducted.

Mr. BORDEN. Sir, I desire to call the attention of the Convention to an article in the old Constitution, regulating the subject of banking. Gentlemen will see by turning to it, that no bank shall go into operation in this State, unless upon a specie capital actually paid in.

SECTION 1. There shall not be established or incorporated, in this State, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer: *Provided*, That nothing herein contained shall be so construed as to prevent the General Assembly from establishing a State Bank, and branches, not exceeding one branch for any three counties, to be established at such place, within such counties, as the directors of the State Bank may select; provided there be subscribed, and paid, in specie, on the part of individuals, a sum equal to thirty

thousand dollars: *Provided, also,* That the bank at Vincennes, and the Farmers' and Mechanics' bank of Indiana, at Madison, shall be considered as incorporated banks, according to the true tenor of the charters granted to said banks by the Legislature of the Indiana territory: *Provided,* That nothing herein contained shall be so construed as to prevent the General Assembly from adopting either of the aforesaid banks as the State Bank: And in case either of them shall be adopted as the State Bank, the other may become a branch, under the rules and regulations hereinbefore prescribed.

It is said by those who sustain the committee in the alteration which they have made in the article on the subject of banking, "that the banks are required to redeem their notes in specie." But, sir, the gentleman from Marion, (Mr. Wallace,) has well replied to this when he said that there is a vast difference between requiring them to have a specie capital actually paid in and requiring them to redeem their notes in specie. I think that it is essentially necessary that they should be required to have the specie in the first instance that they may be prepared to redeem their notes. It is true as we all know, that the specie may be drawn out soon after it is put there; yet it is, to a certain extent, a security against persons going into banking without any specie whatever.

Sir, I am surprised that the committee should have made this change, and I am well satisfied that the provision in the old Constitution, so far as this matter is concerned, is preferable to the new one. And I hope that the vote will be reconsidered, and the clause which has been left by the committee, will be reinstated. It is well known that I am not very favorable to that portion of the new Constitution, which relates to the subject of banking. I look upon the system there authorized, as a mongrel system, and I fear that it will finally prove not very favorable to the best interests of the people of the State. It was bad enough with this clause which the committee have left out, and without it, it is still worse.

Mr. WATTS. As I introduced this provision, I feel disposed to say a word or two in reference to it. It will be recollected that a great deal of the capital on which our banking operations are conducted—that, especially, which furnishes a specie basis for the redemption of our bank notes—is owned by foreigners. Whenever they find it to their interest to withdraw their capital, of course they will do so, and then the bill holders will have nothing to rely upon more than their mere confidence in the honesty of the managers of the bank. It was for this reason I desired that a specie basis should be secured which would not be liable to be removed.

Mr. FOSTER. I beg leave to remark that it seems to me to be a work of supererogation to attempt to revive the discussion on the bank

question. The only question for us to determine at present, it seems to me, is whether the committee have violated the confidence reposed in them by the Convention, and have left out what they ought to have inserted. I say it seems to me that is the only question; and there is nothing to be done but to take a direct vote, and say whether or not what has been omitted, shall be restored. I do not impugn the motives of the committee—I only say let the words that have been left out by them, be restored. I move that the words that have been left out by the committee, be re-inserted.

Mr. PETTIT. So far as regards violating the confidence of the Convention, it is a thing that does not reach me. I have not acted with the committee. It is known that all the revisions have been made by the assiduous labors—the very arduous labors of the gentleman from Posey, (Mr. Owen,) the gentleman from Monroe (Mr. Reed,) and the gentleman from Wayne (Mr. Newman). And I undertake to say in their behalf, that they have most faithfully performed their duties, and that in no instance has the substance of a section been changed, except it may be in this; and it has been clearly owing to a misapprehension of what was the precise meaning of the Convention. And, in this very case, I am inclined to the opinion that no harm whatever has been done, for the section referred to by the gentleman from Laporte (Mr. Niles) makes it more imperative on the Legislature to place the proper guards on banking, than the idle and unmeaning words here employed. You may put in one "fip" if you choose, and that would serve as a basis upon which to issue one hundred dollars of paper. By such a provision as this requiring a specie basis, the Legislature is not bound to require a specie basis equal to the amount of the issue. Now, look at the seventh section; it more effectually guards the bill holders than that which has been omitted by the committee. What is it? [Mr. Pettit read the section.] Now, sir, if all bills issued as money, are at all times to be redeemable in gold and silver—as provided by this section—what better basis for banking do you want? Your Legislature cannot establish or charter any bank upon any other basis, than that its bills shall, at all times, be redeemable in specie. Sir, if there be any advantage in this matter, it will accrue to the public, for it requires that the banks shall pile up and keep on hand a sufficient amount of capital to redeem their issues. The clause is a stronger one than the specie basis clause. But as to the censure on the committee, which the gentlemen have thrown out, they had better censure themselves and the balance of the Convention for not attending to this matter. The report of the committee of revision was laid upon our tables, and it was our business to examine it. Will any gentleman say that he has stultified himself by being ignorant of what the committee

reported? Did the gentleman from Monroe (Mr. Foster) not know? Did not every member of the Convention know what was reported? Let any gentleman say that he did not know what he voted upon, and he proclaims to the whole people of Indiana, his own ignorance and inattention to his duty.

Mr. KELSO. Does not the gentleman know that the practice has been to allow the reports from the committee on revision to remain sometime on the tables of members, before being acted upon, but in this instance, the question of concurrence was immediately put.

Mr. PETTIT. I do not know how that may be, but even if it was as the gentleman states, members have the same privilege of examining the reports. But, sir, it was read at the clerk's table and was approved of. And, sir, it is infinitely improved in language. The section as referred to the committee, meant nothing. "A specie basis," indeed! Leave it to the Legislature to say what the basis shall be! Nothing can be more absurd. But now it declares that all the issues of the bank shall be redeemable in gold and silver; this is infinitely better.

Mr. HOLMAN said: Gentlemen have become all at once, extremely sensitive on the subject of substantial changes being made by the committee on "revision, arrangement, and phraseology." On yesterday, when this same report was before the Convention for its concurrence—and I opposed that concurrence on the ground that a vital change had been made in the section limiting banking operations to the period of twenty years—gentlemen were then riotous for the adoption of the report, because the change though substantial, met their approval. Now, after more than twenty-four hours have elapsed, for the first time they discover that one of their favorite banking features has been slightly modified in the same report, and they all at once become astonishingly excited at the assumption of such power by the committee; and although but eleven men voted against concurring in the report on yesterday, after full opportunity to examine the report today, many who voted to concur are most vehement in their expressions of astonishment that the report is not in exact conformity with the sections as referred. One hundred and eight members voted on yesterday: scarcely a quorum is present on to-day. If an improper act has been done, let those who on yesterday voted to concur, bear the blame.

Mr. WOLFE. I can say for one, that when the report was read, I had it not on my table.

Mr. BRACKEN demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on re-considering the report by which the report of the committee was concurred in.

It was, upon a division—yeas 34, nays 46—decided in the negative.

So the vote was not re-considered.

Mr. BRACKEN. I believe there is no business at present to be done. I move that the Convention take a recess.

The motion was not agreed to.

Mr. OWEN. If the Convention is not afraid to receive a report from the committee on revision, five minutes after the printed copies have been laid upon their tables, a report will be ready within that time.

QUESTION OF PRIVILEGE.

Mr. KELSO. I believe it is about time for me to call the attention of the Convention to a celebrated speech that made its appearance this morning. It is scarcely necessary for me to say that I refer to the pretended speech of the gentleman from Floyd (Mr. Thornton).

A VOICE. He is not here.

Mr. KELSO. I cannot help that. I cannot consent to lose the opportunity to notice that speech, containing as it does, what was never uttered on this floor, and the report of which has been kept back since the 21st of January, evidently for the purpose, as it seems to me, of inserting what was not spoken in debate, and of preventing me by the lateness of its publication, from replying to that part which relates to myself. The speech was directed chiefly against me; but it also contained attacks upon the gentlemen from Laporte, (Mr. Niles,) the gentleman from Vanderbug, (Mr. Blythe,) the gentleman from Crawford, (Mr. Pepper,) and the gentleman from Owen, (Mr. Dobson). On the part of these gentlemen, as well as on my own behalf, I think it necessary at all events, to state the fact that no such language as it contains was delivered here. And, sir, I trust the Convention will see the propriety of directing that it be kept out of the Book of Debates. At all events it shall not pass without a printed reply, and I intend that the reply shall be about as bitter as the speech itself. I will ask the Convention to order that the speech be not put into the book.

Mr. WALLACE. What is the objection to it?

Mr. KELSO. That it contains language which was never uttered here; that is the objection.

A VOICE. Read it.

Mr. KELSO. I will read that part which was never spoken.

A VOICE. Read it all. Let us have the whole of it.

Mr. KELSO. Here, then, are a few specimens of the manner in which the delegate, in his fabricated speech, has chosen to treat his fellow members of this Convention:

"In reference to the manner in which the measure has been assailed by those who have thought proper to oppose it, I cannot but admire the address and tact exhibited by them in the

conduct of it. When the attack was about to be made, we could see them putting forward, as a van-guard, the very respectable, good looking, and able gentleman from Vanderburg, (Mr. Blythe,) to commence. His fair, plausible, and imposing manner, was well calculated for effect, and to carry alarm into the ranks of its friends. Fortunately, however, for our cause, although in making his onslaught there was a pretty loud roar of small arms, the shots fell short of the mark, and no injury was sustained by any one. Soon after this, however, you could see the beligerents industriously mustering and arraying their forces. You might see them rising, like so many genii, in every part of the Hall. Even the gentleman from Crawford, whom I had hoped to see in the ranks of our friends, took sides with the enemy, and was not the last forward in the fray; when I saw this, I must confess, it gave me sincere pain, and I felt almost disposed to cry out, in the language of *Julius Cæsar* when receiving the parricidal stab from the hand of Brutus, *et tu Brute*. It was a just cause for the anxious friends of this measure to congratulate themselves that the formidable demonstration of the gentleman did not terminate in its total annihilation. I must confess, when I saw the young man fire off his little pop-gun, with a look of such self-complacency as if he had effected something prodigiously great, I was strongly reminded of the case of one of the African negro kings who once took it into his head to declare war against the king of Great Britain, and in the prosecution of hostilities fired his shot-gun across the ocean at him, and after the smoke of his piece had dissipated inquired of his astonished attendants if he had not killed him!"

Another precious *morceau*:

"And now a few words as to the learned gentleman from Laporte, (Mr. Niles,) who is one to whom I ever listen with great gratification and deference, whenever he undertakes to address the Convention on any subject of interest. He, it seems, has seen fit to throw his weight into the scale against this great beneficent measure. From the high moral tone of this gentleman's arguments generally, they had justly acquired a most enviable influence over the opinions of the members of this Convention for being orthodox. I can assure you, Mr. President, I was truly disappointed when I found him raising his voice against it. I must confess, too, my disappointment was converted into alarm when I saw him rise with such a solemn look and in such a hollow, oracular tone, depict the evils which would inevitably flow from its adoption. I felt myself involuntarily assuming a position to brace myself against the advent of some direful, overwhelming calamity. The manner of the learned gentleman was sufficient to inspire one with the most awful forebodings, and to cause him to come to the conclusion that he ought at once prepare himself

for his exit from this world. After having had time, however, to recover from the effect of these astounding announcements, made in such strong and glowing terms by the gentleman, I cannot but come to the conclusion that my learned, and I must be permitted to say, esteemed friend, has, in making his remarks, drawn more upon the stores of his imagination than his usually sound judgment and discrimination. I entertain no apprehensions of the evil results flowing from the adoption of the measure which he has, in such strong language, predicted."

The gentleman is extremely facetious! Hear him:

"I have said I expected to meet with opposition from gentlemen of the bar, and I regret to say that my apprehensions and predictions have been but too fully verified. I had no expectation, however, of encountering hostility from any other quarter, and more especially from the members of another learned profession, whose sympathies and countenance I hoped we should receive. You can imagine, then, what I felt at seeing my very sensible friend from Owen (Dr. Dobson) giving indications that he was also about poisoning his lance for an attack on us. Formidable as lawyers may be deemed in intellectual conflict, I feel more at home in a rencounter with them, as I am vain enough to believe that I have some knowledge of their mode of warfare, and can be better enabled to parry their thrusts; but I must say that I feel some secret dread coming over me when I discover that I must have a gentleman of the "*pill and lance*" pitted against me. They are so much better skilled in the art of killing, that I should feel almost disposed to come down ere awaiting a fire from one of them, especially from one possessed of the skill and experience of the gentleman from Owen." [Loud laughter.]

And now let us see in what manner the honorable member chooses to treat such an humble individual as myself:

"I cannot but be surprised at the bitterness with which this proposition is assailed by the gentleman from Switzerland (Mr. Kelso). Not satisfied with denouncing the measure as one which should not be entertained by the Convention, he chooses to throw out some illiberal and unmerited imputations against me, as the originator of it. He has gone out of the usual road to arraign my motives for introducing it, as intended for something like buncombe, and has very modestly assumed the part and tone of a very learned member of the legal profession indeed, whilst he placed me amongst the class of humble pettifoggers. He also rants about "*party*," and affects to deprecate the consequences growing out of it. I do not think considerations of this kind should weigh very seriously with that gentleman, or cause him any uneasiness; for if I have read his political history correctly, "*party*" considerations would give him no trouble—as, if necessary, he could

vault from one side to the other with the most perfect facility, according to whichever he discovered to preponderate in strength. He has also chosen (which seems to be perfectly in keeping with *him*) to descend to the use of language with which I would not defile my lips by repeating here."

A part of that he said, but he has taken care to write it out more fully. But here, I say, is what I affirm he never uttered in my hearing, nor was it uttered at all:

"I admit the member has an advantage over me, in *one* particular at least; that whilst my humble name may be consigned to a state of oblivion his will have acquired an immortality of infamy, by being classed among the Judases, the Arnolds and Ravilliacs of a by-gone age; and the only difference between his and theirs, will be that he will occupy a lower and more humble niche in the scale of infamy. I admit the extraordinary powers of the member which enables him so successfully often to annoy an adversary; knowing this I have felt an insurmountable repugnance to be brought into conflict with him, feeling that I *must* be over-matched. But it is somewhat consoling to reflect that whatever his powers in that way may be, they resemble that of a certain diminutive though formidable animal, with which no one is desirous of being brought into association or contact; a power, however, which no one will ever envy the owner the possession of."

I say that the delegate from Floyd never uttered any such language on this floor.

Mr. GORDON. I am inclined to think that he did.

Mr. KELSO. I believe, sir, that my ears are as good as those of any gentleman here, and I say that he *did not* use any such language; if he had, I should have replied to him on the spot.

Mr. GORDON. As my old friend is not present to answer for himself, I will state that while he was making his speech, although there was at the time some degree of confusion prevailing in the Hall, I was seated so near to him that the greater part of what he said was heard by me distinctly. It was perfectly well known throughout the Hall that he was skinning some one most unmercifully.

Mr. HAMILTON. From my recollection of the remarks of the gentleman from Floyd, the speech as printed, is in substance the same as that delivered.

Mr. KELSO. Which part?

Mr. HAMILTON. The whole of it.

Mr. KELSO. I say it is radically different, and I repeat my request that the Convention prevent the publication of those parts of the speech which have been interpolated. I ask this as much on behalf of the gentleman from Laporte, the gentleman from Vanderburg, the gentleman from Crawford, and the gentleman

from Owen, as on my own behalf, because it is about equally as severe on them as it is on me.

The PRESIDENT. Does the gentleman ask that the entire speech be left out?

Mr. KELSO. Yes, sir. I would ask that the entire of it be excluded.

Mr. BLYTHE. So far as concerns myself, I believe there is nothing in that part of the speech which relates to me, to which I make any very serious objection. I am satisfied with my own part of it; I have no apprehension that its publication can do me any very serious injury. There is nothing in it that I regard as personally offensive to me, and therefore I care nothing about it. I think, however, that a portion of that which relates to the gentleman from Switzerland, is not entitled to a place in our Debates, as well as a remark applying to the gentleman from Crawford, who, I will take this occasion to say, is, in every sense of the word, a gentleman. I think that the gentleman from Floyd was trespassing too far in giving publicity to such remarks as he has introduced into his speech. I think he should have stricken from the report those objectionable passages.

Mr. McCLELLAND. I was sitting near the gentleman from Floyd when he made his speech, and I have only to say that, so far as my recollection goes, the report that is published is a tolerably accurate one. I thought there was some little acerbity in his tone and language towards the gentleman from Switzerland, but it was drawn out, the Convention will recollect, by an attack that was made on him.

Mr. KELSO. I will ask if you did not help to write it?

Mr. McCLELLAND. No, sir. I never saw the manuscript or the notes, or any part of the report of the speech, until I saw it this morning in the paper.

Mr. KELSO. I should not feel aggrieved at Major Thornton if he had allowed his remarks, even as written out, to have been published in a reasonable time. I could, and would have found an opportunity to have made a suitable reply; and, so far then as I was concerned, the matter might have rested, or the Major might have chosen his own course. But the pretended speech was delayed from the twenty-first of January until the eighth of February, a lapse of eighteen days. This delay was wholly unnecessary, for Major Thornton has not been over-laborious, nor has he been busy, active, or very efficient in the Convention, and certainly eighteen days was more time than was necessary to prepare such a speech for the press. The delay was, most unquestionably, an unnecessary one.

I therefore feel authorized to make the charge that the pretended speech was purposely delayed until the Saturday (to-day) before the adjournment, (which is on Monday,) so that I might be absent, (for I had set this morning to go home,) and that the base and cowardly fraud might be

practiced upon the public and have its desired effect before I should have an opportunity to counteract or contradict it.

Men who are themselves honest, and who are actuated by pure and honorable motives, never resort to such means. It is only for the low and contemptible portion of mankind, thus to conduct an attack.

I now assert that I never gave Major Thornton any cause to make such an attack upon me, and I am certain in twenty-three years' acquaintance I have never knowingly crossed his path in any way; and it is my fixed opinion that the malice belongs much nearer home, but the lack of moral courage causes it to be concealed. Hence the low, cowardly attempt, to make the stab in my absence.

Should any man doubt the cowardice with which I charge the getters up of this malignant and black-hearted slander, let him read what has been published for Major Thornton's speech in the "Journal" of the eighth. He there pretends he said of me everything vile and vituperative that one man could well say of another; he then proceeds to rate me as to my powers, &c., with a small filthy animal, &c., and in the next breath he plasters me all over with fulsome praise. He speaks of me as a man of talent and ability, and that in great questions of public policy I am generally right, &c. Now, sir, if I abuse a man either with my tongue or the pen, I must first at least believe he deserves it, and then I will not seek to shelter myself behind a fulsome eulogy nor seek to quiet his outraged feelings by praising his many virtues, when I have but a moment before denied that it was possible for him to have any. Major Thornton is not at the bottom of this cowardly attack. He has suffered himself to be used as a cat's paw, to do the dirty work of dirtier men than himself, if possible, and not of his own party.

And I charge, unequivocally, that Major Thornton never uttered the speech which has appeared in the paper of this morning, at any time in the Convention; that, so far as the abusive language against me is concerned, the pretense that it was ever uttered by Major Thornton upon the floor of the Convention, is a base fabrication and a libel.

Major Thornton did say some bitter things about political vacillation on that day, which were directed at me, to which I replied on the same day; but that he ever charged me upon the floor of the Convention with treason or treasonable conduct, or compared me to Judas, or Arnold, or Ravalliac, is basely false; and I now say that any man, be he whom he may, who will make such a charge against me, politically or otherwise, I pronounce him an infamous liar and an unmitigated scoundrel. But, on the contrary, I have always acted boldly and above board in all my political dealings, with

all parties and under all circumstances, and he who asserts to the contrary is a base slanderer.

In the election of Mr. Hannegan, about which so much complaint has been made, I boldly assert that no man in the Legislature of either party was deceived by me, nor was any man deceived at all, unless he was too stupid to understand the plainest kind of plain English; for the day before the election took place, and in the morning of the same day on which it did take place, I repeatedly stated to divers persons that I should vote for Ned Hannegan. And when I was asked how long I would continue to vote for him, I replied, "Until the last star shall fall from heaven, unless the election should be sooner brought to a close." All hands knew who I intended to vote for. There was no deception used in the case.

The question being on excluding the speech from the Book of Debates,

Mr. GREGG. I have only to say that we can get along without any action in regard to this matter. I think I can say for Major Thornton, that he will take care the objectionable portions of the speech shall not appear in the Book of Debates; I therefore move that the subject be passed by.

Mr. PETTIT. Since questions of personal attack and bitterness and vituperation in debate are brought up, I beg leave to say to the Convention that we have had less of it during the four months that we have been in session than might have been anticipated, or than has been found in any other body of the same number of delegates. In a body consisting of a hundred and fifty members, coming together from different parts of the State, among whom such a diversity of opinion existed, it could hardly be expected that all irritation could be avoided, that some degree of warmth would not be exhibited. I believe, however, that the members of this body are going to part with more good feeling existing among them than the members of any other such body ever did part on earth. [Applause.] I am truly glad to see that it is so. We have been engaged in a work that concerns not only ourselves but posterity, and I am satisfied that the result of our labors will redound to their good; and I will take this occasion to say that if, in the course of debate, I have been betrayed into warmth and irritation, if I have thrown a pointed shaft at any one, I now most sincerely and earnestly beg his pardon. I do not desire to wound the feelings of any gentleman, and if mine have been wounded on any occasion it is forgotten.

Mr. KELSO. I do not complain of any wound to my feelings, for I have made it a rule through life to expect to meet annoyances and to disregard them. I have only this to say, that if any man can gain any advantage over me by his tongue, he is at liberty to do it if he can. I am the last man to ask a single particle of favor, and if any such remarks as are

here published had been made in my hearing, or had they been published at the time, they would have received a suitable reply—but I am forced to come to the conclusion that they were kept back in the hope that I might be away. If the gentlemen who are attacked in the same speech are willing that it shall go into the book, I will withdraw my motion. I can take care of myself, though it must be apparent that if inserted it will be a disgrace to the book.

Mr. BLYTHE. The gentleman from Switzerland has perhaps misunderstood what I said. I said that so far as I was myself concerned, I was willing that it should be published; but I said at the same time, that I thought it improper that it should go into the book in consequence of the passages it contained in reference to the gentleman from Switzerland and the gentleman from Crawford.

Mr. KELSO. And the gentleman from Laporte, too.

Mr. BLYTHE. That I have not observed so particularly.

The PRESIDENT. The question is on excluding the speech from the journal of the debates.

The question being put,

It was decided in the negative.

Mr. MILLER of Gibson moved to reconsider the vote concerning report number ten of the committee on revision.

Mr. BRACKEN demanded the previous question.

The demand for the previous question was seconded, and the main question was ordered to be now put.

The question being on the motion of the gentleman from Gibson,

The yeas and nays were demanded, and they were ordered; and, being taken, resulted—yeas 34, nays 46—as follows:

YEAS.—Messrs. Alexander, Badger, Bascom, Borden, Bowers, Butler, Clark of Hamilton, Clements, Crawford, Edmonston, Fisher, Foster, Gordon, Haddon, Hardin, Hitt, Hogin, Kelso, Kilgore, Kinley, Logan, March, McClelland, Miller of Gibson, Milligan, Moore, Mower, Nave, Schoonover, Spann, Tague, Wallace, Watts, and Wolfe—34.

NAYS.—Messrs. Beard, Blythe, Bourne, Bracken, Brookbank, Carr, Chapman, Cookerly, Davis of Madison, Dobson, Dunn of Jefferson, Elliott, Farrow, Foley, Graham of Miami, Graham of Warrick, Gregg, Hall, Hamilton, Hawkins, Helmer, Kent, Lockhart, Maguire, McLean, Miller of Fulton, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Newman, Niles, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Smith of Scott, Tannehill, Thomas, Todd, Wiley, Yocum, and Mr. President—46.

So the vote was not re-considered.

Mr. BRIGHT moved a suspension of the

rules, in order to enable him to introduce a resolution.

The motion was not agreed to.

On motion by Mr. PEPPER of Crawford, leave was granted him to sign the name of Mr. S. FRISBIE (he being absent) to the Constitution, having been requested to do so by that gentleman.

On motion by Mr. BADGER,

The Convention adjourned.

[The following report was omitted at its proper place, and is inserted here by request.]

REPORT BY MR. BIDDLE,

From the select committee of the Convention on the University Fund, made Jan. 21.

The select committee to whom it was referred to inquire into the expediency of dividing the University Fund among the several Colleges of the State; and also, into the right and expediency of appropriating the said Fund to common schools, have directed me to make the following report:

“The fund denominated the ‘University Fund’ originated in a grant by Congress contained in the act of April 19, 1816, enabling ‘the people of the Indiana Territory to form a State government.’ The grant is in the words following: ‘That one entire township, which shall be designated by the President of the United States in addition to the one heretofore reserved for the purpose, shall be reserved for the use of a seminary of learning, and vested in the Legislature of said State to be appropriated solely to the use of such seminary by the said Legislature.’

No language declaring a trust could be more direct and explicit; leaving in fact no room for construction, and as will at once be seen, it excludes the idea of the application of the means derived from the trust to either of the purposes named in the resolutions of inquiry submitted to the committee.

No part of the fund originated from any gift or grant of the State of Indiana. Even the expense of managing it, has been paid from the fund itself. The State is simply the trustee of the fund which, according to the terms of the grant, is to be ‘appropriated solely to the use of the seminary.’

In pursuance of the trust, the management of which the State undertook, the site of the seminary, since denominated the Indiana University, was established on one of the townships granted by Congress for its endowment. This was done for the expressed purpose of increasing the prices of the seminary lands. All the sales of lands in this township (the one in Monroe county) were made subsequently to the said location of the seminary; purchasers were

advised thereof, and in consequence, the land was sold at greatly enhanced prices. The diversion of the fund would seem to inflict a serious injury without corresponding public benefit upon a portion of our own citizens, who contributed to its increase, upon the faith of the advantages which they were to derive from the location of the institution in their midst, and which, in fact, formed a part of the consideration for which they paid in the purchase of their lands.

By the aid of the fund, buildings have been erected for the use of the University, and library, apparatus, and minerals, have been purchased. The institution is now in successful operation, with the different departments of instruction usual in such institutions. A town has grown up around the University, with boarding houses, and other accommodations adapted to the institution.

In addition to the benefits conferred upon young men of our own State, of whom the annual number of sixty from different counties are educated in the institution, free of the cost of tuition, which exemption together with the provision of a College Boarding House, designed to reduce boarding to the lowest possible rate, brings the advantages of the University within the attainment of most young men of enterprise; those resorting to the University from other States, expend among our citizens each year, a sum larger than the whole annual expenditure for the support of the University.

It may likewise be remarked, that the policy of the General Government on this subject, has been uniform for a period of more than half a century. Each State, upon entering the confederacy, has, by act of Congress, received a large gift of public lands for common schools, and a very small grant in comparison therewith for the endowment of a literary institution of a higher grade, which might afford to young men in the new settlements of the country the opportunity of literary and scientific training.

So far as relates to the seminary endowment, Indiana has not had her equal proportion with the other new States. She has in fact received less than any one of them. Thus Ohio received three College townships, and Michigan, Wisconsin, and Iowa, were permitted to select their seminary lands in quarter sections from the whole State, thus in fact more than doubling the value of the endowment. California, upon her recent admission, received no less than four townships of land for the endowment of a University.

The number of acres in Indiana for common schools was 1,113,761, besides the saline lands which have also been given to common schools, while the number of acres reserved for the use of the seminary was but 42,080—4000 acres less than the State was entitled to under the grant.

Could the University fund now be appropriated to common schools, it would, with the pre-

sent population of the State, amount to but about a cent a year to each child, and in a few years not to half a cent a year.

The object to be gained, even if consistent with good faith and the nature of the trust, would seem to be too small for an attempt to produce the disturbing effects in the relations of a community, which would ensue from a diversion of the fund, and would by no means compensate for the destruction of an institution which ranks among the first of our country.

Besides, it is not doubted by the committee that by the establishment of a Normal school in the University or department, for the special training of teachers, more good would be achieved for common schools, in the training of a class of professional teachers, than could result by dispersing the fund in an infinitesimal proportion over the State.

And the committee recommend the indefinite postponement of the subject, and ask to be discharged from the further consideration thereof.

MR. THORNTON'S REMARKS

In Convention, January 20th, 1851.

The article in relation to the trustees of the town of Clarksville was taken up on its second reading.

MR. THORNTON. This is an article which I had the honor to report as chairman of the select committee, which was composed of the delegation from the two counties of Clark and Floyd, to which the subject was referred; and it may not be improper therefore that I should make a brief explanation to the Convention as to the motives that induced the committee to report it. I stated on a former occasion that the town of Clarksville was laid out in pursuance of an act of the Legislature of Virginia, granting to Col. George Rogers Clark and his regiment a tract of land, containing one hundred and fifty thousand acres, of which one thousand acres was authorized to be laid out as the town of Clarksville. Certain individuals were appointed trustees, and those individuals and their successors have acted as trustees of the town of Clarksville ever since. It was remarked the other day, when this question was up, that these trustees had been regarded as an independent and irresponsible corporation, over which the authorities of the State have no control. I have stated on a former occasion that the gentlemen who represent the county of Clark are more immediately interested in this matter than I am. But I wish to say to the Convention that the provisions that are here proposed for the adoption of the Convention are in accordance with the wishes of the corporation. The trustees themselves, it seems, desire that something of this kind should be done. I have taken the liberty of sending copies of this article to all the parties concerned, and have received replies

from them that it is entirely satisfactory. So far as the trustees are concerned, they are, I believe, satisfied with it. I consulted with Mr. Crawford, who is their counsel, and in fact this article was drawn up in accordance with his suggestions. I will say further that it is necessary that such a provision should be adopted in order to enable the authorities of the town of Clarksville to collect certain debts, for which suits are now pending. The Convention will recollect that there was a special exemption in the old Constitution, in the article which required that all officers should live within the township or county in which they were elected, in favor of the trustees of Clarksville.

When a similar exception was sometime ago proposed by my friend from Clark, (Judge Read,) to be inserted in the new Constitution, it was opposed by me, and the provision herein contained suggested, which meets the concurrence of the whole delegation from Clark and Floyd counties. The town of Clarksville is principally situated in the county of Clark, although a small portion of it lies in Floyd county, and in the immediate vicinity of the city of New Albany. It is now proposed to appoint three trustees, two of whom to reside in Clark county, one of which to reside in the town of Clarksville, and the other in Floyd county, as substitutes for the present trustees, which, I believe, are nine in number, though seventeen was the number at first when the town was laid out. I will say to gentlemen who entertain doubts as to the propriety of the measure, that the sole object is to place the property of the town in a way that it can be applied for the benefit of the persons who are justly entitled to it—the citizens of the said town. The trustees who have heretofore acted as such are none of them residents of that town, and feel no interest in common with the citizens of the place. It seems that they are all residents of Jeffersonville—at all events they have ever been non-residents of said town. The citizens complain of this, and I think justly. They charge that the trustees, though frequently called on for the purpose, have never appropriated one dollar for the benefit of the people of the place, or for its improvement. It seems that there are several suits pending, and debts outstanding which are liable to be lost unless something of the kind here proposed is done.

I understand therefore that all those who are interested in this matter are in favor of the adoption of the article as reported. I do not wish to detain the Convention by reading some documents which would conduce to present the matter in its proper light. As I understand it this Convention has the power, and I believe it to be our duty, to make the article under consideration a part of the new Constitution. I presume that the State Legislature *might* legitimately exercise control over the subject, but doubts have been entertained as to it, and therefore we had best settle the thing at once. This

corporation has been in existence for upwards of a half century, and I suppose it may be said with truth, that there has not been a single act done for the benefit of the town for the last twenty or thirty years, although the acting trustees were in possession of a large amount of means and funds belonging to the town which should have been applied for the benefit of its citizens. I am aware that some gentlemen here feel doubts as to the power of this Convention, or the authorities of this State, to interfere with it. I do not understand that a corporation of this character occupies the same footing with a private corporation. It is a municipal corporation, over which the Legislature has control to change, modify, enlarge, or restrict it, &c.—(See 4 Wheat. 659, 694; 2 Kent's Comm. 245; 4 Ham. O. R. 427; 15 Mass. 197; 13 Wend. 325; 7 Con. R. 585; 5 Greenl. 342). If the provision here proposed for adoption becomes a part of the Constitution, it will authorize the Legislature to modify the charter of the town of Clarksville, which will place it in the power of the corporate authorities to collect the debts and demands due it, and for which suits are pending, and upon the collection to apply them to some useful purpose, such as a school, public ground, &c., which seems to be desired by all those concerned.

I have personally no kind of interest in the matter, but knowing the circumstances and believing it to be indispensably necessary to accomplish the objects before stated, I have, at the request of the citizens of said town, agreed to submit the matter to the Convention, and use my agency in trying to effect its accomplishment in conjunction with the immediate representatives of the county of Clark. I have no doubt but the proposed arrangement will receive the approbation of all the persons in any way concerned. I hope, therefore, that the article will become a part of the Constitution. It is proposed to insert it under the head of miscellaneous provisions.

Mr. THORNTON. I have heretofore indicated, Mr. President, that I am a warm and decided advocate for something like a reformation in the practice of the law; and I am fully aware, sir, that I am opposed in this opinion by many members of my own profession. But, sir, this is not to be wondered at; for, if you look into the whole history of the legal world, you will find that the most bitter opponents of everything in the way of change or reformation in the law, have been found among the members of the legal profession. It has lately been remarked on the floor of the Parliament of Great Britain, by an English attorney, if you wish to effect any reformation in the laws of the country, you must never look to lawyers to aid you in the accomplishment of it.

Now, sir, I have *some* experience at the bar,

and I fully believe that the present system does not favor the promotion of the ends of justice. I am by no means, however, an advocate for the appointment of commissioners as the only mode to effect this object, but we unquestionably, I think, ought to take such action in the premises, as will enable the Legislature to require this reformation to be made.

Now the objection of the gentleman from Hancock would seem to indicate that the object of this article was to delegate the power of making law to a commission, and so he would appear to be desirous of impressing the Convention. Sir, I will not do the shrewd and masterly intellect of that gentleman the injustice to suppose that the objection he made a few moments ago, was made in all sincerity. The argument which he used and the style he adopted, may be very well adapted to the course of a rabble-rouser, and I admit the eminent qualifications of the gentleman from Hancock in that respect, to the fullest extent, [laughter,] but such declamation and sophistry as he has used on this occasion, are not the most successful means to be used in preventing the adoption of the necessary reforms. And, sir, after all, in regard to this commission, I believe it is the only way in which we can procure a correct system of reform in the practice of law. The gentleman from Hancock says, "Let the Legislature do this." He says he would leave it entirely to the General Assembly; not remembering, however, that the unwieldy character of that body would render such a thing wholly impracticable. Now, sir, we know very well that there is no other mode of effecting a codification of our laws except by a commission. The example of some of the first States of the Union is enough for me. Virginia has ever pursued that course, and in one instance the immortal Jefferson composed one of a commission for that purpose. The great Empire State of New York has done the same, and that eminent jurist, James Kent, was one of the commission; and I call upon every member here who knows anything of the matter, to say whether the fruits of that commission were not good. Sir, this is calculated to bring about a result which has been approved of by the best judges of law, and the most experienced statesmen and members of the legal profession. In New York they have recently appointed three gentlemen as commissioners to prepare a code of procedure, and they have gone on and in pursuance of their appointment they have completed a code which has been approved by the Legislature; and the bench and bar of New York are now practicing upon that principle, and I believe it is well liked by all, except some of the old hunker members of the bar. [Laughter and applause.] And, sir, you will find that these are the very gentlemen now here who, if they dared, would rise in opposition to this attempt at reform. I was somewhat surprised,

however, to see my very learned and judicious friend from Delaware (Mr. Kilgore) rise in his place and make the motion which he did; but I must confess that I was not at all astonished to see my friend from Hancock, who is so notorious a rabble-rouser, engage in opposition to this measure.

Sir, the constituency whom I represent feel a very great interest in this matter, and I promised them when they honored me with this trust, to endeavor to carry out in practice the principles which I believed to be correct in reference to law reform.

Now let us read this article again. [Mr. T. read the article.] I would remark to the Convention that the committee on the practice of law and law reform, of whom Judge Borden is chairman, has reported this article. I believe, however, that Mr. Borden dissented from this report, and submitted a minority report, *pretty much the same in substance*. The delegate from Wayne (Mr. Newman) also dissented from this report, and presented another minority report to the Convention. So far as I am concerned, however, I approve of the report made by the majority of the committee. One great objection to the proposition of the gentleman from Wayne is, that it puts the matter off. I admire my friend from Wayne very much for his clearheadedness and great law learning, but at the same time I must remark that I fear he belongs to that class who cherish strong attachments to old, obsolete systems, and which are so very difficult to overcome or get rid of. His plan, I apprehend, is only a covert effort at staving off and defeating the contemplated reform, by proposing to leave it discretionary with the Legislature to engage in something of the kind at some future, and perhaps distant day. I cannot agree to this, for I am now becoming an old man and I am extremely anxious to see something in the way of salutary and rational reform adopted ere I close my earthly career.

Now, sir, the article provides that "the General Assembly shall at its first session after the adoption of this Constitution, (yes, sir, I hope it will be at its *first* session,) provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings, both civil and criminal, of the courts of this State, and they shall provide for the abolition of the distinct forms of action."

Here is the provision which is presented for the consideration of the Convention:

"They shall provide for the abolition of the distinct forms of actions at law now in use, and that justice may be administered in a uniform mode of pleading without reference to any distinction between law and equity."

There it is, sir. Now the only objection which I have to the plan proposed, is that it will incur some expense to have a commission to effect the object contemplated, but I hope that will

not be an insurmountable objection. We are also seeking to abolish the distinction between law and equity. This, I think, is a reform which is absolutely necessary, and imperiously demanded. With the permission of the Convention I will take the liberty of stating a case, by way of illustrating the workings of our present system. Some years ago a lady, who had considerably passed the year of her majority, took it into her head—which, by the way, is nothing very unusual—to get married. She was the owner of a little patrimony left her by her father, being a small farm consisting of fifty or sixty acres, worth about three hundred dollars and upwards; and the intended husband having been married before and having several children by his first wife, was gallant enough to propose to the lady in case of any difficulty arising that she should be sole possessor of her own estate. She immediately turned in and sold her farm to a brother-in-law, for which she executed to him a deed, and he was to execute his notes in payment thereof payable to a trustee for her use. She was, however, in such a hurry to get married that she did not take the precaution to see to the execution of the notes, and they never were executed until after the lapse of five years; when, her brother-in-law refusing to pay or execute the notes for the payment of the purchase money, a suit in chancery was instituted by her husband and her to compel the payment of it, and to subject the land for it. The bill was drawn by eminent and able counsel, and, as I conceive, with great legal skill. A demurrer was interposed to the bill, which, after a very elaborate argument, was overruled by the court and the defendant ruled to answer, which he did. Exceptions were filed to his answer, which were sustained, and the defendant ruled to answer over. After this the defendant died and letters of administration were taken out, and the administrator was made a party to the suit. The lady having died the suit was revived by her husband, as administrator. Various other steps were taken in the cause, and a great mass of testimony taken. After the cause had been pending for some twelve or fourteen years it was finally brought to a hearing, when the cause was dismissed by the court upon the ground that the complainant's remedy was at law and not in equity. A heavy bill of costs was the consequence, which the complainant was ruled to pay. In accordance with the decision of the court the complainant then instituted his action at law in the same court, when behold, the unfortunate plaintiff was met with the statute of limitations as a defense, which was sustained by the very same court which had previously decided the remedy of the plaintiff was at law instead of in equity, and the case, together with the debt, was lost! The case has been taken to the Supreme Court, where it is now pending and undetermined, but what is to be the final result is uncertain. It is, however,

of little consequence to the complainant, as most of the parties are dead and the estate of the defendant wasted and gone, so that the debt may be considered as irrecoverably lost. About twenty years have been spent, together with an amount in costs, including the original debt. All this delay, difficulty, and expense, grew out of the circumstance of making a distinction between law and equity and having a separate form for each. This is an outrage upon common sense, and violates the plainest principles of right and justice, and well merits the denunciation of every individual whose notions are untrammelled by sophistry and the senseless, unmeaning quibbles of the law, as now and heretofore administered.

Thus, then, I say that this distinction between law and equity is calculated to close the door of justice, for no man who wishes to appeal to a tribunal to decide a question of right or wrong, can see the necessity of having two distinct forms.

This article, then, contemplates abolishing the distinction between law and equity, as well as all distinction in the forms of actions. As it is now, a man may bring an action of *assumpsit* instead of an action of *debt*, and a demurrer may be interposed and the action lost, although the debt is perfectly just. Now this article proposes that there shall be three commissioners appointed to prepare a system of law procedure which contemplates abolishing these useless distinctions. I do sincerely hope that we will adopt a system which seems to be obtaining in all the most enlightened States of the Union, and is receiving the sanction of the most able statesmen and profound jurists of the age.

Sir, I hope then, that this article will not be indefinitely postponed. If any mode can be resorted to to avoid the expense which will be incurred I should be glad; but whether or not, I should regret to see the present antiquated system, which is not at all adapted to the exigencies of the times, any longer kept up. I should regret to hear the State of Indiana spoken of as clinging to old institutions and obsolete usages, while some of the most distinguished of her sister States are progressing in the high road of reform in the science and practice of the law. Georgia, Missouri, Iowa, and other States, have done so. Texas has adopted the same system; and, as I remarked before, the great Empire State of New York has set us a glorious example for our imitation.

Mr. President, I am sorry at any time to trouble the Convention, but this is a matter about which I feel a deep interest. I do not expect myself to practice much longer, for I am now an old man; and although I never made much at the bar myself, yet I am anxious to leave behind me, in the State of my adoption, a system of practice which the people will approve of. I feel myself fully instructed upon this subject—more than upon any other. It is de-

manded of me by my constituents, that I should use my best efforts, however humble they may be, to effect this reform; for upon it the people had set their hearts more, perhaps, than upon any other, and sooner or later it *must* and will be brought about by the stern voice of our constituency. I say to gentlemen with confidence, but in the kindest spirit, that we had better try and meet the wishes of those who are anxiously looking to us for this great, salutary, and beneficial measure of reform, as so vital to the public interest. If we should recklessly disregard the wishes of our people and procrastinate the proposed reform, we will soon hear their voice coming up in thunder-tones unconditionally demanding its adoption.

REMARKS OF MR. KINLEY, *In the Constitutional Convention.*

INDIANAPOLIS, Feb. 7, 1851.

MR. DEFREES—Sir: My speech of November 8, 1850, is reported so unlike anything I did say, I hope you will place in the errata the following true transcript, written off immediately after the speech was delivered.

ISAAC KINLEY.

MR. PRESIDENT: I know, sir, it is very difficult to form a law that will produce the greatest good to society, and avoid, at the same time, all attendant evil. A law so perfect man never had; a law so perfect no human wisdom can devise. Why, the river sometimes overleaps its natural barriers. Let it then be our aim to *secure the greatest good, and produce the least possible evil.* When we have done this, if, at the same time, we have provided a recompense for the injured party, we have, in my opinion, come as nearly to perfection as it is possible for human wisdom to attain. For, first, you have done the greatest possible good; second, you have produced the least possible evil, and third, you have recompensed the injured party.

Our laws should correspond with the genius and spirit of the people. Gentlemen should remember that we live in an age of enterprise, that we represent enterprising constituents. If we should insert a clause in the Constitution crippling the energies of the people, better had it been if this Convention had never met.

Public works, such as railroads, turnpikes, canals, &c., are the veins and arteries through which the wealth of the country circulates. As the blood must flow freely through the natural veins, in order to the health of the physical system, so there must be no clog to the healthy flow of the blood of the body politic. Let me not be misunderstood. I will go as far as the farthest, in protecting the individual against the encroachments of associated wealth. I would have us form a Constitution by the wise

provisions of which every right may be protected and every wrong redressed.

We came here to declare the *organic* law, not to legislate in detail. Certain principles which time and experience have exemplified, have established beyond a reasonable doubt, may become a part of this Constitution. Further than this, in my opinion, we should not go. We cannot foresee the wants of this country in all time to come. A restraint wise and salutary to-day, within twenty years may oppress the very class you would now protect. Whereas that which is essentially *organic* law, *principle* is the same yesterday, to-day, and forever. But if we commence *legislating* where will it end? Is there any other subject on which we will be called to act, demanding less of special law than the one now in debate? When will our labors close if we must make a *Statute Book* instead of a Constitution? I can see no reason for distrusting the Legislature. The members of that body may be as patriotic, as devoted to the interest of their constituents, as jealous of the rights of the people as the members of this Convention. Let us leave these matters purely legislative to the proper legislative authority.

I propose, Mr. President, if a proper opportunity offers, to move an amendment to this effect:

“No man’s personal services shall be demanded, nor private property taken, without just compensation.”

It will be seen that I prefer the word “personal” to that of “particular.” If we have had the services of a man, equity and justice demand that he should be paid. You pay your Judges, Justices, and other legal officers, but of the witness—contrary to every rule of justice and equity—you demand service and give him no compensation.

Whatever meaning was originally intended by the word *particular*, we know that our courts have given it a very restrictive signification. With the language which I have used, while every one who serves the public will be paid for his services, the meaning will be so explicit that there will be no possibility of its being misunderstood.

The section in relation to the apportionment and representation being under consideration upon its third reading,

MR. HAWKINS said: Mr. President, I was not in my seat yesterday when this section was ordered to be engrossed, or I would have offered an amendment to the section. I have had one drawn up several days, and also an amendment to the next section to the same purport; and I shall now move to re-commit with instructions. It appears to me a plain proposition the force of which cannot well be met and re-

sisted in reason, "that the entire population of any state or country should be the basis of its Representation; all who are the subjects of the law, whose rights are to be protected and guarded by its operations, should be entitled to representation." It is the principle recognized by the General Government, in its apportionment of representation to the several States; the same principle is adopted by Illinois in her new constitution, as well as by some of the other states. I know, sir, that some object to a change because it will make additional expense in ascertaining the number; but the additional expense will be trifling, the individual who takes down the number of inhabitants and over the age of 21 years, can about as easily, with the same trouble, ascertain the entire number residing in each family, and thereby obtain the result of the whole. By adopting this principle, counties in this state, that have a large transient population, in their towns and cities, would lose from their present representation, to the advantage of the interior farming counties; this is a result that I am in favor of bringing about. I move, therefore, that the section be re-committed with instructions, to amend in accordance with the above suggestions.

MONDAY, FEB. 10, 1851—6 o'clock A. M.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. FARROW.

On motion by Mr. BORDEN,

The reading of the Journal of Saturday was dispensed with.

Mr. OWEN, from the committee on revision, made a final report.

On motion,

The report was concurred in.

Mr. CHAPMAN, from the committee on accounts made a report relative to the various allowances made to the members of the Convention for mileage, &c. The report also embraced a detail of sundry claims examined and allowed by the Convention, &c., &c., &c.

The report was concurred in.

Mr. DUNN of Jefferson offered for adoption a resolution directing the Secretary of State to furnish the Governor and other State officers with copies of the Debates and the Journal of the Convention, as also the Judge and Marshal of the United States Court for this District, and the Judges of the Supreme Court.

The resolution was adopted.

Mr. BRIGHT offered a resolution to the effect that the Secretary be authorized to have five thousand copies of the Constitution and Address published in the German language, the additional expense not to exceed the sum of five hundred dollars, &c., &c.

The resolution was adopted.

Mr. MAGUIRE submitted the following resolution:

"Resolved, That the chairman of the committee on accounts, and the Auditor of State, be empowered to examine and pass on such accounts as may not yet have been rendered, the same to be approved by the President of the Convention."

The question being on the adoption of the resolution,

It was decided in the affirmative.

On motion by Mr. BRACKEN,

The thanks of the Convention were unanimously tendered to the committee on revision for the able manner in which they had discharged the duties which had devolved upon them.

The various parts of the new Constitution being now completed and arranged, it is as follows:

PREAMBLE.

TO THE END, that justice be established, public order maintained, and liberty perpetuated; WE, the People of the State of Indiana, grateful to ALMIGHTY God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. WE DECLARE, That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the People; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the People have, at all times, an indefeasible right to alter and reform their government.

SEC. 2. All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, nor interfere with the rights of conscience.

SEC. 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

SEC. 5. No religious test shall be required as a qualification for any office of trust or profit.

SEC. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

SEC. 8. The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

SEC. 9. No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever : but, for the abuse of that right, every person shall be responsible.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous, may be given in justification.

SEC. 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated ; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

SEC. 12. All courts shall be open ; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase ; completely, and without denial ; speedily, and without delay.

SEC. 13. In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed ; to be heard by himself and counsel ; to demand the nature and cause of the accusation against him, and to have a copy thereof ; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

SEC. 14. No person shall be put in jeopardy twice, for the same offense ; and no person, in any criminal prosecution, shall be compelled to testify against himself.

SEC. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

SEC. 20. In all civil cases, the right of trial by jury shall remain inviolate.

SEC. 21. No man's particular services shall be demanded, without just compensation. No man's property shall be taken by law, without just compensation ; nor, except in case of the State, without such compensation first assessed and tendered.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recog-

nized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted : and there shall be no imprisonment for debt, except in case of fraud.

SEC. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.

SEC. 26. The operation of the laws shall never be suspended, except by the authority of the General Assembly.

SEC. 27. The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion ; and then, only if the public safety demand it.

SEC. 28. Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

SEC. 30. No conviction shall work corruption of blood, or forfeiture of estate.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good ; nor from instructing their representatives ; nor from applying to the General Assembly for redress of grievances.

SEC. 32. The people shall have a right to bear arms, for the defense of themselves and the State.

SEC. 33. The military shall be kept in strict subordination to the civil power.

SEC. 34. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner ; nor, in time of war, but in a manner to be prescribed by law.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

SEC. 36. Emigration from the State shall not be prohibited.

SEC. 37. There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the State.

ARTICLE II.

SUFFRAGE AND ELECTION.

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election; and every white male, of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization; shall be entitled to vote, in the township or precinct where he may reside.

SEC. 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine, have the right to vote.

SEC. 4. No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States.

SEC. 5. No Negro or Mulatto shall have the right of suffrage.

SEC. 6. Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward, to procure his election.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

SEC. 9. No person holding a lucrative office or appointment, under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, that offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *And provided, also*, that counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.

SEC. 10. No person who may hereafter be a collector, or holder of public moneys, shall be eligible to any office of trust or profit, until he shall have accounted for, and paid over, according to law, all sums for which he may be liable.

SEC. 11. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

SEC. 12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.

SEC. 13. All elections by the people shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

SEC. 14. All general elections shall be held on the second Tuesday in October.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

ARTICLE IV.

LEGISLATIVE.

SECTION 1. The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana;" and no law shall be enacted, except by bill.

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts, into which the State may, from time to time, be divided.

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: *Provided, however*, that the Senators elect, at the second meeting of the General Assembly under this Constitution¹ shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and of those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the white

male inhabitants over the age of twenty-one years.

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age, in each: *Provided*, that the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.

SEC. 6. A Senatorial or Representative district, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

SEC. 7. No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district, whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

SEC. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process, during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

SEC. 9. The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session.

SEC. 10. Each House, when assembled, shall choose its own officers, (the President of the Senate excepted,) judge the elections, qualifications, and returns of its own members, determine its rules of proceeding, and sit upon its own adjournment. But neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

SEC. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members.

A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing, shall be entitled to no compensation, from the end of the said five days until an organization shall have been effected.

SEC. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal: *Provided*, that on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

SEC. 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases as, in the opinion of either House, may require secrecy.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior, in its presence; but such imprisonment shall not, at any one time, exceed twenty-four hours.

SEC. 16. Each House shall have all powers necessary for a branch of the legislative department of a free and independent State.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the House of Representatives.

SEC. 18. Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending, shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill, by sections on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

SEC. 19. Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

SEC. 22. The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice; Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening, and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys, and public squares;

Summoning and empanneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township, or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries;

In relation to interest on money;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

SEC. 24. Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

SEC. 25. A majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed shall be signed by the Presiding Officers of the respective Houses.

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the Journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect until the same shall have been published and circulated in the several counties of the State, by authority, except in cases of emergency, which emergency shall be declared in the preamble or in the body of the law.

SEC. 29. The members of the General Assembly shall receive, for their services, a com-

pensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased during such term; but this latter provision shall not be construed to apply to any office elective by the People.

ARTICLE V.

EXECUTIVE.

SECTION 1. The executive power of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years, in any period of eight years.

SEC. 2. There shall be a Lieutenant Governor, who shall hold his office during four years.

SEC. 3. The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the General Assembly.

SEC. 4. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant Governor, as the case may be.

SEC. 6. Contested elections for Governor or Lieutenant Governor, shall be determined by the General Assembly, in such manner as may be prescribed by law.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant Governor, who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices, who shall not have attained the age of thirty years.

SEC. 8. No member of Congress, or person holding any office under the United States or under this State, shall fill the office of Governor or of Lieutenant Governor.

SEC. 9. The official term of the Governor and Lieutenant Governor shall commence on the second Monday of January, in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

SEC. 10. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the Lieutenant Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant Governor, declaring what officer shall then act as Governor; and such officer shall act accordingly, until the disability be removed, or a Governor be elected.

SEC. 11. Whenever the Lieutenant Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 14. Every bill which shall have passed both Houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated, which House shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State, who shall lay the same before the General Assembly, at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor, within two days next previous to the final adjournment of the General Assembly.

SEC. 15. The Governor shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative depart-

ment, upon any subject relating to the duties of their respective offices.

SEC. 16. He shall take care that the laws be faithfully executed.

SEC. 17. He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however,* That the General Assembly may, by law, constitute a council to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when at any time a vacancy shall have occurred in any other State office, or in the office of Judge of any Court, the Governor shall fill such vacancy, by appointment, which shall expire when a successor shall have been elected and qualified.

SEC. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

SEC. 20. Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

SEC. 21. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the Senate shall be equally divided, he shall give the casting vote.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 23. The Lieutenant Governor, while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person acting as Governor, shall receive the compensation attached to the office of Governor.

SEC. 24. Neither the Governor nor Lieutenant Governor shall be eligible to any other office, during the term for which he shall have been elected.

ARTICLE VI.

ADMINISTRATIVE.

SECTION 1. There shall be elected, by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall, severally, hold their offices for two years. They shall perform such duties as may be enjoined by law, and no person shall be eligible to either of said offices more than four years in any period of six years.

SEC. 2. There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor, and Recorder shall continue in office four years, and no person shall be eligible to the office of Clerk, Recorder, or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff, more than four years in any period of six years.

SEC. 3. Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law.

SEC. 4. No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county, nor any one who shall not have been an inhabitant thereof during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties, out of which the same shall have been taken.

SEC. 5. The Governor, and the Secretary, Auditor, and Treasurer of State, shall, severally, reside and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

SEC. 6. All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law.

SEC. 7. All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

SEC. 8. All State, county, township, and town officers, may be impeached, or removed from office, in such manner as may be prescribed by law.

SEC. 9. Vacancies in county, township, and town offices, shall be filled in such manner as may be prescribed by law.

SEC. 10. The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character.

ARTICLE VII.

JUDICIAL.

SECTION 1. The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such inferior Courts as the General Assembly may establish.

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five Judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

SEC. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population, as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judges shall be elected by the electors of the State at large.

SEC. 4. The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

SEC. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.

SEC. 6. The General Assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution; but no Judge shall be allowed to report such decisions.

SEC. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

SEC. 8. The Circuit Courts shall each consist of one Judge, and shall have such civil and criminal jurisdiction as may be prescribed by law.

SEC. 9. The State shall, from time to time, be divided into judicial Circuits; and a Judge for each Circuit, shall be elected by the voters thereof. He shall reside within the Circuit, and shall hold his office for the term of six years, if he so long behave well.

SEC. 10. The General Assembly may provide by law, that the Judge of one Circuit may hold the Courts of another Circuit, in cases of necessity or convenience; and in case of temporary inability of any Judge, from sickness or

other cause, to hold the Courts in his Circuit, provision may be made, by law, for holding such courts.

SEC. 11. There shall be elected, in each Judicial Circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years.

SEC. 12. Any Judge or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

SEC. 13. The Judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

SEC. 14. A competent number of Justices of the Peace shall be elected, by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

SEC. 16. No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office.

SEC. 17. The General Assembly may modify, or abolish, the Grand Jury system.

SEC. 18. All criminal prosecutions shall be carried on, in the name, and by the authority, of the State; and the style of all process shall be: "The State of Indiana."

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other Courts of justice; but such tribunals or other Courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or Court.

SEC. 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, simplify, and abridge, the rules, practice, pleadings, and forms, of the Courts of justice. And they shall provide for abolishing the distinct forms of action at law, now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said Commissioners to reduce into a systematic code, the general statute law of the State; and said Commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to abridgement and amendment, as to said Commissioners may seem necessary or

proper. Provision shall be made, by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners.

SEC. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all Courts of justice.

ARTICLE VIII.

EDUCATION.

SECTION 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

SEC. 2. The Common School fund shall consist of the Congressional Township fund, and the lands belonging thereto;

The Surplus Revenue fund;

The Saline fund and the lands belonging thereto;

The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of County Seminaries, and the moneys and property heretofore held for such Seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to this State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; the net proceeds of the sales of the Swamp Lands, granted to the State of Indiana by the act of Congress of 28th September, 1850, after deducting the expense of selecting and of draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for Common School purposes.

SEC. 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.

SEC. 5. If any county shall fail to demand its proportion of such interest, for Common

School purposes, the same shall be re-invested, for the benefit of such county.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

SEC. 7. All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction; who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

ARTICLE IX.

STATE INSTITUTIONS.

SECTION 1. It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also, for the treatment of the Insane.

SEC. 2. The General Assembly shall provide Houses of Refuge, for the correction and reformation of juvenile offenders.

SEC. 3. The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, may have a claim upon the sympathies and aid of society.

ARTICLE X.

FINANCE.

SECTION 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

SEC. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the Treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than Bank bonds; shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the Public Debt.

SEC. 3. No money shall be drawn from the Treasury, but in pursuance of appropriations made by law.

SEC. 4. An accurate statement of the receipts and expenditures of the public money, shall be published with the laws of each regular session of the general Assembly.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except

in the following cases: to meet casual deficits in the revenue; to pay the interest on the State Debt; to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town, or township; nor of any corporation whatever.

ARTICLE XI.

CORPORATIONS.

SECTION 1. The General Assembly shall not have power to establish, or incorporate, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

SEC. 2. No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security as required in the preceding section.

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities upon all paper credit issued as money.

SEC. 6. The stockholders in every bank or banking company shall be individually responsible, to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

SEC. 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension by any bank or banking company, of specie payments.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall

be allowed, by law, to individuals loaning money.

SEC. 10. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter to close its business.

SEC. 11. The General Assembly is not prohibited from investing the Trust Funds in a bank with branches; but, in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association, or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

SEC. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

SEC. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporations, or other means, as may be prescribed by law.

ARTICLE XII.

MILITIA

SECTION 1. The militia shall consist of all able-bodied white male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained, in such manner as may be provided by law.

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster, and Commissary Generals.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

SEC. 4. The General Assembly shall, by law determine the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and fix the rank of all staff officers.

SEC. 5. The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law.

SEC. 6. No person, conscientiously scrupulous of bearing arms, shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

ARTICLE XIII.

NEGROES AND MULATTOES.

SECTION 1. No Negro or Mulatto shall come into, or settle in the State, after the adoption of this Constitution.

SEC. 2. All contracts, made with any Negro or Mulatto coming into the State, contrary to the provision of the foregoing section, shall be

void; and all persons who shall employ such Negro or Mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

SEC. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed, for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such Negroes and Mulattoes and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

SEC. 4. The General Assembly shall pass laws to carry out the provisions of this article.

ARTICLE XIV.

BOUNDARIES.

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded, on the East, by the meridian line, which forms the western boundary of the State of Ohio; on the South, by the Ohio river, from the mouth of the Great Miami river to the mouth of the Wabash river; on the West, by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the north-western shore of said Wabash river; and, thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the North, by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

SEC. 2. The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio river, and with the State of Illinois on the Wabash river, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE XV.

MISCELLANEOUS.

SECTION 1. All officers, whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or may hereafter be, prescribed by law.

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

SEC. 4. Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office.

SEC. 5. There shall be a Seal of State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed with the State Seal, and attested by the Secretary of State.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county under that area, be further reduced.

SEC. 8. No lottery shall be authorized; nor shall the sale of lottery tickets be allowed.

SEC. 9. The following grounds owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven, as lies north of the arm of the Central Canal, shall not be sold or leased.

SEC. 10. It shall be the duty of the General Assembly, to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall be agreed to by a majority of the members elected to the two Houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

SEC. 2. If two or more amendments be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which

shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

SCHEDULE.

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force, until they shall expire or be repealed.

Second. All indictments, prosecutions, suits, pleas, complaints, and other proceedings, pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as is now provided by law.

Third. All fines, penalties, and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force, and inure to the use of those concerned.

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.

Fifth. The Governor, at the expiration of the present official term, shall continue to act, until his successor shall have been sworn into office.

Sixth. There shall be a session of the General Assembly, commencing on the first Monday of December, in the year one thousand eight hundred and fifty-one.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution.

Eighth. The first general election under this Constitution, shall be held in the year one thousand eight hundred and fifty-two.

Ninth. The first election for Governor, Lieutenant Governor, Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorneys, Secretary, Auditor, and Treasurer of State, and State Superintendent of Public Instruction, under this Constitution, shall be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office when this Constitution shall go into effect, shall con-

tinue in their respective offices, until their successors shall have been elected and qualified.

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution (except as in this Constitution otherwise provided), shall continue in office until the term for which such person has been, or may be elected, shall expire: *Provided*, that no such person shall continue in office, after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office, shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this Constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law.

Thirteenth. At the time of submitting this Constitution to the electors, for their approval or disapproval, the article numbered thirteen, in relation to Negroes and Mulattoes, shall be submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye" or "No." And should a majority of the votes cast be in favor of said article, then the same shall form a part of this Constitution; otherwise, it shall be void, and form no part thereof.

Fourteenth. No Article or Section of this Constitution shall be submitted, as a distinct proposition, to a vote of the electors, otherwise than as herein provided.

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same, by proper metes and bounds, of equal portions as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same, out of the territory thus designated.

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied, according to the intention of the grantor.

Mr. FOLEY moved that the Convention do now adjourn *sine die*.

The yeas and nays were demanded on the motion to adjourn *sine die*, and they were ordered, and, being taken, resulted—yeas 74, nays 5—as follows:

YEAS.—Messrs. Alexander, Badger, Beard, Blythe, Borden, Bowers, Bracken, Bright, Brookbank, Bryant, Carr, Clements, Crawford, Davis of Madison, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmondson, Elliott, Farrow, Fisher, Foley, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hall, Hamilton, Hardin, Hawkins, Hitt, Holman, Johnson of Dearborn, Johnson of Orange, Kelso, Kent, Kilgrrre, Lockhart, Maguire, March, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Newman, Niles, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Schoonover, Sherrod, Smith of Scott, Spann, Tannehill, Thomas, Thornton, Todd, Wallace, Watts, Wiley, Wolfe, Yocum, and Mr. President—74.

NAYS.—Messrs. Berry, Chapman, Dick, Gibson, and Pettit—5.

Biddle, Ristine, and Hogin, sick—3.

[Messrs. Ristine, Biddle, and Hogin were in the city, but unable to attend by reason of severe indisposition.]

So the Convention agreed to adjourn *sine die*.

The PRESIDENT then rose and said:

GENTLEMEN OF THE CONVENTION:

The object for which this body was called together being completed, and the time fixed for a final adjournment having arrived, we are now about to separate, and again return the power with which for a time we have been entrusted, to those to whom it legitimately belongs, and render an account of our stewardship, and submit, as the result of our deliberations, a new Constitution or organic law of the State, to the sovereign people for their approval or rejection. I think I may say for it, without disparagement to others, or egotism to ourselves, that, taken as a whole, it may justly be regarded as one of the very best Constitutions that has yet been framed for any State in this Union; by it, the rights of the individual citizen, in his person and property, are well secured; the freedom of speech, and of the press; the liberty of conscience is guaranteed to all the people of the State; in it will also be found some very necessary and wholesome checks against hasty, inconsiderate, or reckless legislative enactments, and an effectual remedy for that most injurious evil in our legislation for many years past, known as local and special enactments. We hold it to be a correct principle in government, that every community united together by the same organic law, should have upon all general subjects the same statutory provisions; and I may here remark, that of the three departments into which governments are usually

divided, that of the legislative or law making department or power, is the one above all others the most likely to encroach upon the rights of the citizen, and to subvert the liberties of the mass of the people ; hence the necessity to restrain, (within proper and safe limits,) not the people themselves, but those to whom their power for a time may be delegated for the purpose of making laws for their government. I think it may justly be inferred, from the fact that as no particular sect or party in politics has given shape to the general provisions of this instrument, they therefore have been settled and agreed upon within a proper medium, to advance generally the interests of this growing State, and promote the prosperity and general welfare of the whole people.

This session, although regarded by many as a long one, will be found, by a comparison with the sessions of other Conventions in other States, to be positively a short session : and I here remark, without intending any disparagement to others, that this Convention; from its commencement to the close, has been the most assiduously industrious deliberative body I have ever seen, and therefore really merit praise for having accomplished their labors in the time they have, rather than censure for having wantonly protracted its sitting beyond its proper limit. It is alike gratifying to all and creditable to yourselves that your consultations and deliberations have been uniformly entirely free from those party feuds and animosities which but too frequently divide and distract the coun-

sels of deliberative bodies to the great injury of the public ; and notwithstanding feelings may occasionally have been produced in the excitement of debate, I have never seen a deliberative body close its labors with a more general good feeling than has marked the close of this Convention.

For myself, permit me to return to you my grateful acknowledgments for the general kind and courteous treatment I have received from you, and for the generous aid and support uniformly afforded by you, which has materially assisted me in the discharge of those duties devolving on the Chair. The high compliment you were pleased to award to me by the adoption of a resolution referring to the manner in which I have discharged the duties of the position you assigned me, will ever be gratefully remembered by me. I, however, have not the vanity to suppose that in the discharge of my official duty I have been free from errors, but on the contrary feel assured I have committed many. But I trust you will believe me sincere when I say, I have intentionally committed none.

I now wish each member and officer of this body a safe journey to their respective places of abode ; and I desire, whenever it may be my fortune hereafter to meet with any member or officer of this Convention, personally to hail him as a friend.

I now discharge the last official duty incumbent upon me, by declaring this Convention adjourned *sine die*.

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Erratum.—In remarks on homestead exemption, page 770, near middle of second column, for "nothing word" read "nothing worth."

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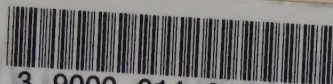
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